

NO. 13-71021

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

IN RE INDEX NEWSPAPERS LLC.

INDEX NEWSPAPERS LLC (*dba The Stranger*),
Petitioner,

vs.

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
Respondent,
UNITED STATES OF AMERICA,
Plaintiff – Real Party in Interest,
KATHERIN OLEJNIK and MATTHEW DURAN,
Defendants – Real Parties in Interest.

Writ Directed to
United States District Court for the Western District of Washington
No. 12-GJ-145 & No. 12-GJ-149

**MATTHEW DURAN'S RESPONSE
TO PETITION FOR A WRIT OF MANDAMUS**

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I. RELIEF SOUGHT

Petitioner, Index Newspapers LLC, dba *The Stranger*, has requested that this Court issue a writ of mandamus ordering the United States District Court for the Western District of Washington to unseal to the public the portions of the grand jury contempt files in *In re Matthew Duran*, Western District of Washington, No. 12-GJ-149 and *In re Katherine Olejnik*, Western District of Washington No. 12-GJ-145, that do not involve matters that are protected by Fed. R. Crim. P. 6. The order denying the motions is attached as Appendix A.

Matthew Duran, a Real Party in Interest, agrees that the information sought is of great public importance, involving a matter extensively covered in the local, national and international media. Mr. Duran also agrees that the information touches on the public's sacrosanct right to know.

Mr. Duran is also interested in the unsealing of the requested records for two more personal reasons. First, the hearings on Mr. Duran's Motion to Quash and the government's motion for civil contempt were closed to the public, regardless of Mr. Duran's Due Process right to have the portions of

the hearings that did not pertain to substantive grand jury matters conducted openly. But it is now possible to sort through and determine which portions of the record – if any – pertain to substantive grand jury matters. The record is complete, recorded, and can be reviewed and redacted if needed.

Second, whether or not the government intended for this to happen, Mr. Duran's grand jury appearance and the related court proceedings have affected his right to associate with the organizations and individuals that are important to him. Mr. Duran is interested in the release of these records because they will corroborate his claims that he is not a government informant, thereby alleviating this as a barrier to association.

Mr. Duran confirms, as he did in the court below, that he waives protection of his own privacy and consents to the disclosure of anything in the files to which the Petitioner seeks access. A copy of Mr. Duran's Declaration to this effect is attached to this Response as Appendix B. The District Court has acknowledged receipt of Mr. Duran's consent to disclosure and waiver of privacy. Appx. A at 11, n.4.

II. ISSUES PRESENTED FOR REVIEW

a. Does the public have a right to access portions of a grand jury file that do not involve matters enjoined to secrecy by Fed. R. Crim. P. 6(e)?

b. Where the district court recognized that much of the file in a grand jury recalcitrant witness case contained information that the public had the right to obtain, and in fact ordered that the petitioner be allowed access to the transcripts of portions of the contempt hearings, should the district court have unsealed the entire file and ordered the Government to select which portions of the file should then be redacted and sealed?

c. Does Mr. Duran have a right to Due Process that will be furthered by release of the portions of the grand jury file that do not involve matters enjoined to secrecy by Fed. R. Crim. P. 6(e)?

d. Does Mr. Duran has a constitutional right to associate that will be furthered by release of the portions of the grand jury file that do not involve matters enjoined to secrecy by Fed. R. Crim. P. 6(e)?

III. STATEMENT OF JURISDICTION

This Court's jurisdiction is based on 28 U.S.C. §1651 and F.R.A.P.

21.

IV. STANDING

Mr. Duran is one of the “Defendants – Real Parties in Interest.” As such, this Court ordered him to file a response to the Petition for a writ of mandamus.

V. STATEMENT OF FACTS

A. Substantive grand jury matters were not revealed during litigation of the Motion to Quash that took place prior to Mr. Duran’s grand jury appearance. On May 1, 2012, also known as “May Day,” a small group of vandals damaged Seattle’s William Kenzo Nakamura Courthouse during a protest march. Mr. Duran was not in Seattle at the time, did not attend the protest, did not plan to cause the damage that occurred, did not know who caused the damage, and did not have anyone confess their involvement to him.¹ Three months later, on August 8, 2012, Matthew Duran was served with a subpoena to testify before a grand jury. A copy of the subpoena is attached as Appendix C.

The Assistant United States Attorney handling the case then orally confirmed to Mr. Duran’s counsel that the grand jury was investigating the

courthouse damage and related matters, and that Mr. Duran was neither a target nor subject of the investigation. But the government declined to identify the target (or targets) of the investigation. The government declined to provide Mr. Duran any other information about why the grand jury believed he had information relevant to their investigation. During these conversations, Mr. Duran did not receive any other information from the government.

Publicly available information suggested to Mr. Duran that two other individuals had been previously subpoenaed to provide information about this incident to the grand jury. The government declined to verify whether this was true.

Publicly available information discussed search warrants that were executed contemporaneously in Oregon, and suggested that they were executed in an investigation that was related to that of this grand jury. The government declined to affirm or deny whether this impression was accurate.

On August 31, 2012, Mr. Duran and Katherine Olejnik (another individual also subpoenaed to testify before the grand jury) filed a Motion to Quash their subpoenas. A copy of the Motion is attached as Appendix D. The

¹ See Appendix L at 1-3.

government filed a response to the motion, in which it made it clear that it “deliberately” had not, and would not, provide further information.² It would not provide factual support for its belief that Mr. Duran and Ms. Olejnik possibly had information relevant to their investigation. The government provided this rationale for its refusal to do so:

In this case, it has been clear from conversations with counsel that the witnesses are strongly opposed to testifying under any circumstances. Under these circumstances, revealing details about the topics of the testimony and the kinds of questions that would give the witnesses – whose goal is to never testify – a window into the ongoing investigation. The witnesses would be free to share whatever insights they gleaned with the targets of the investigation.

Accordingly, the government has given the witnesses’ counsel only a general, vague and incomplete description of the investigation and how their clients fit in. The government has told counsel that it is deliberately giving them vague and incomplete information to avoid revealing the details of the investigation.

The government has told counsel the general nature of the investigation – namely, that it focuses on the vandalism of the Nakamura Courthouse and related criminal activity.

The government has told counsel that the witnesses are not targets.

² A copy of the government’s Opposition to Motion to Quash is attached as Appendix E.

The government has told counsel that the witnesses have been subpoenaed because the investigation has shown that they are associations of one or more of the targets, and that there is information that they may have lived with one or more of the targets at the time of the offense.

Beyond that limited information, the government has told counsel almost nothing. The government has not said who the targets are or how they were identified. The government has not named the particular people that the witnesses are expected to give information about. The government has reason to believe that the witnesses may have information about targets other than the target(s) that the witness may have actually lived with. The government has not, however, identified who those targets are or why it thinks the witnesses may have information about them.

Appx. E at 4-5.

Although the government also purported to describe, in its Opposition, the topics that the grand jury hoped to discuss with Mr. Duran and Ms. Olejnik, that description also provided no information beyond what was already obvious. The government only indicated that the grand jury wished to inquire whether the subpoenaed parties had associates who

- Had any motive to vandalize the courthouse;
- Travelled, or planned to travel, to Seattle for May Day;
- Had any particular purpose for being in Seattle during May Day;
- Were a part of a group of protesters that marched to the Courthouse;
- Had any contact with other suspects;
- Made any relevant statements;
- Possessed black clothing or anarchist flags; and

- Travelled with any other associates to the May Day demonstrations.

Appx. E at 8-10.

The hearings on Mr. Duran and Ms. Olejnik's Motions to Quash were set for different days, with Mr. Duran's hearing scheduled first. Accordingly, on September 13, 2012, when the Court heard Mr. Duran's Motion to Quash, he did not have any information about grand jury matters that could potentially have been gained during Ms. Olejnik's hearing.

At the outset of the Motion to Quash hearing, the Court closed the courtroom to the public.³ An interested member of the public was denied entry,

³ The District Court has previously confirmed that Mr. Duran, his counsel, and associates

are free to make whatever statements they wish' they have no obligation to preserve grand jury secrecy. To the extent they wish to disclose information they have submitted or received in these proceedings, they may do so.

Appx. A at 11. This portion of the District Court's Order has not been challenged, and comports with Fed. R. Crim. P. 6(e)(2), which provides only a narrow list of persons who are obligated to maintain grand jury secrecy.

But when the Court authorized the Clerk to release the transcripts from the hearings on Mr. Duran's Motion to Quash and the contempt proceedings, the Court noted:

not even able to walk through the courtroom doors with Mr. Duran and counsel.⁴ Mr. Duran, through counsel, addressed the Court first, at which time the Court noted that counsel's arguments were not based on actual information

The court authorizes the Clerk of Court to release the transcripts of the proceedings of September 13, 2012, to Kimberly Gordon, counsel for Matthew Duran. Ms. Gordon may use those transcripts for the sole purpose of pursuing her appeal of the court's September 13 orders. She remains bound by the secrecy and confidentiality in all other respects.

A copy of this Order is attached as Appendix G.

On one hand, Fed. R. Crim. P. 6(e) places no obligation of secrecy upon counsel or Mr. Duran. It does not appear that the Rule requires counsel to keep the transcripts secret and instead would permit counsel to use them in this civil case. This Rule is consistent with United States Supreme Court precedent holding that concerns about secrecy cannot be applied to ban those called before grand juries from discussing their own testimony, and such a ban would violate the First Amendment. *Butterworth v. Smith*, 494 U.S. 624, 626, 110 S. Ct. 1376, 1378, 108 L. Ed. 2d 572 (1990). But the Order attached in Appendix G seems to suggest otherwise. Accordingly, in order ensure that using the transcripts to support Mr. Duran's Response to the writ Petition will not run afoul of the Court's order, counsel will file these transcripts under seal. See Appendices H and I. This procedure appears to comply with 9th Cir. Rule 30-1.4(a)(8)(viii) governing use of the transcripts of oral rulings on appeal, and 9th Cir. Rule 30-1.10 governing the use of Presentence Reports on appeal.

⁴ A copy of Kimberly Gordon's Declaration re: Motion to Unseal is attached as Appendix F. This is referenced on page 2.

about the grand jury's investigation, but speculation, assumptions, and predisposition about its scope and focus. Appx. H at 11-12; 14.

Counsel for Mr. Duran agreed that neither she nor Mr. Duran had specific facts about the grand jury's investigation, other than the extremely limited information disclosed by the government. *Id.* Up to that point, neither Mr. Duran, nor counsel, had any grand jury secrets to discuss or disclose. They had not been included in any pleadings. They were not included in counsel's argument.

The government also provided argument during this hearing, but again provided no facts about the grand jury's investigation or intended questions. Instead, the government discussed cases and the legal issues raised in Mr. Duran's Motion to Quash. *See* Appx. H at 30-39.

The Court then ruled, noting that Counsel for Mr. Duran can "only speculate" as to the nature, scope, and type of examination to be conducted by the grand jury. Appx. H at 70. The Court denied Mr. Duran's Motion to Quash. *Id.* at 44.

The ruling on the Motion to Quash did not conclude the hearing, but the courtroom remained closed to the public while the government persuaded the

Court to directly order him to testify before the grand jury and inform him of the possible civil and criminal contempt penalties. *Id.* at 44. The Court did so. Appx. H at 44-45. The court, through the government, also informed Mr. Duran that the current grand jury's term was set to expire in March, 2014. Appx. H at 45. The hearing then ended, still without referencing anything more than counsel's "speculation" about the grand jury's actual matters.

B. The civil contempt hearing revealed few, if any, grand jury "secrets." The fact that Mr. Duran appeared before the grand jury was not secret, but was covered in the press.⁵ When he appeared, Mr. Duran was placed under oath and stated his name for the record. Appx. I at 4. According to the government, the "first remotely substantive question" asked of Mr. Duran was about where he lived. *Id.* Mr. Duran declined to answer that question, as well as all others. Appx. I at 9-11. As a result, Mr. Duran did not provide any information. The government's questions did not reveal anything secret, detailed, or previously unknown. Appx. I at 9-11.

⁵ Some of these articles are attached as Exhibit 1 to Appendix E of Petitioner's Writ.

Immediately after his grand jury appearance, Mr. Duran was directed back to the court for a civil contempt hearing. He went to the courtroom, together with counsel and an interested member of the public. Appx. F at 2. As they stepped out of the elevator, they were met by a large group of armed officers. *Id.* They were physically stopped and told that they were not allowed to be on the floor. *Id.* After the officers learned of their reason for going to the courtroom, they let Mr. Duran and his counsel go inside. *Id.* The member of the public was prohibited. *Id.*

At the beginning of the hearing, the courtroom was ordered closed by the court. Appx. I at 4. The doors to the courtroom were locked and blocked by the armed officers. Appx. F at 3. The government called the Court Reporter to read the questions asked by the grand jury, as well as Mr. Duran's answers (or rather, refusals to answer). Appx. I at 9-11. The government noted that Mr. Duran refused to answer any questions that went "directly to the core of the criminal conduct in this case." Appx. I. at 12. Mr. Duran did not indicate where he was when the courthouse was vandalized, whether he saw it vandalized, or whether anyone told him that they were involved in the vandalism. *Id.* The government also indicated that it specifically declined to

ask Mr. Duran questions that would give Mr. Duran “insight into who our suspects are and what kind of evidence we have against them.” Appx. I at 19. The government deliberately declined to ask questions that would create a risk of “giving [targets] information, a risk that it [would] get back to the targets.” Appx. I at 18.

Mr. Duran was held in civil contempt and the Court directed that the courtroom be reopened. Appx. I at 21. While it appeared to those inside the courtroom that the doors were then unlocked, Mr. Duran’s counsel later learned that the interested member of the public, as well as others, were still denied access. Appx. F at 3.

In any event, the Court then explained its ruling and Mr. Duran’s procedural options, set a date for a status hearing, and denied Mr. Duran’s request for an Appeal Bond. Appx. I at 22-23. The hearing concluded without the government or counsel revealing substantive grand jury matters.

C. Subsequent events are not secret. As Petitioner Index Newspapers notes, the grand jury proceedings and Mr. Duran’s incarceration were covered by the domestic and international press. Petition for Writ at 5 and Appx. E. Mr. Duran appealed the District Court’s Order to the Ninth Circuit. *In re*

Grand Jury Testimony, No. 12-35774. Although the appeal is purportedly “under seal”, the ruling is publically available at <http://law.justia.com/cases/federal/appellate-courts/ca9/12-35774/12-35774-2012-10-19.html>.⁶ Mr. Duran’s release from confinement, after more than five months of custody (many of them in solitary confinement), was also widely publicized. See Appendix J. As was widely reported, Mr. Duran was released after the Court determined that further confinement would not serve any coercive purpose. *Id.*

VI. ARGUMENT AS TO WHY THE WRIT SHOULD ISSUE.

A. This Court should grant Petitioner’s Requested Relief because Mr. Duran does not seek privacy of the grand jury matter in which he was a witness, sealing will not prevent potential indictees from escaping, sealing is not needed to protect another witness, sealing will harm the exonerated, sealing will not harm the grand jury’s unfettered deliberations, unsealing will further Mr. Duran’s Due Process right to

⁶ A screenshot of that webpage, as well as the opinion, are attached as Appendix K.

public proceedings, and unsealing will further his right to freely associate.

This Writ asks the Court to weigh multiple interests. The first is the public's interest open court proceedings.

In that regard, it is axiomatic that, barring an exceptional and particularized reason for sealing court proceedings or filings, they should be conducted openly and transparently, and available on the public record.

"[T]he guarantee [of public proceedings] has always been recognized as a safeguard against any attempt to employ our courts as instruments of persecution." *In re Oliver*, 333 U.S. 257, 270, 68 S.Ct. 499, ___ L.Ed. ___ (1948). It also reflects "the notion, deeply rooted in common law, that 'justice must satisfy the appearance of justice.'" *Levine v. United States*, 362 U.S. 610, 616, 80 S.Ct. 1038 ___ L.Ed. ___ (1960) (quoting *Offutt v. United States*, 348 U.S. 11, 14, 75 S.Ct. 11, ___ L.Ed. ___ (1954)).

The second interest is that of secrecy for matters occurring before the grand jury. There are well-established potential justifications for such secrecy: preventing those persons who may be indicted from escaping; insuring that the grand jury enjoys unfettered freedom in its deliberations;

preventing targets of the investigation from tampering with witnesses; encouraging witnesses to testify frankly and truthfully without fear of retaliation; and shielding those who are exonerated by the grand jury. *United States v. Procter & Gamble Co.*, 356 U.S. 677, 681-82 n. 6, 78 S.Ct. 983, 986 n. 6, 2 L.Ed.2d 1077 (1958) (quoting *United States v. Rose*, 215 F.2d 617, 628-29 (3rd Cir.1954)); see also *In re Grand Jury Matter*, 906 F.2d 78, 86 (3rd Cir. 1990).

Undoubtedly, some individuals subject to grand jury subpoenas wish to have this fact remain secret. But Mr. Duran has never insisted on secrecy, and has consistently pursued the opposite. Mr. Duran has never feared the public's scrutiny, but has embraced it as a safeguard against what he perceived was an unjust action that unfairly affected his ability to associate with his chosen communities. He has also embraced it as a means to show that, despite any suspicions raised by his grand jury subpoena, he did not damage the courthouse or otherwise commit a crime. Contrariwise, the government has deliberately hidden behind the cloak of secrecy, so much so that multiple pleadings, multiple hearings, and a grand jury appearance all occurred without specific facts or grand jury secrets being disclosed to

anyone – even Mr. Duran and his counsel. Under these circumstances, granting Petitioner's writ will certainly further the public's interest in open proceedings.

Continued sealing will not prevent those who may be indicted from escaping, because the records from Mr. Duran's case do not identify anyone who may be indicted. In fact, the records do not provide any details about the May Day incident that are not already publicly known.

Unsealing these records will not serve to discourage Mr. Duran from testifying; rather, Mr. Duran has already refused to testify and spent months in solitary confinement without changing his mind about doing so.

Continued sealing is not required in order to protect Mr. Duran or any other witness from tampering. It has already been widely known, for considerable time, that Mr. Duran was subpoenaed as a witness by the grand jury. Mr. Duran has not previously been subjected to tampering and does not seek continued sealing in order to protect him in the future. Mr. Duran has also made it clear that his decision not to testify is one of personal

choice and conscience, instead of pressure from anyone else.⁷

To the extent that the interest is in protecting *another* witness, other than Mr. Duran, continued sealing will not serve that end either. The record in Mr. Duran's case does not contain any reference to or identification of any other witness.

For this same reason, continued sealing will not protect anyone who has been exonerated by the grand jury. Instead, unsealing will help Mr. Duran demonstrate that, despite the grand jury subpoena, he was not a suspect or target of the investigation into the courthouse damage.

While sealing may serve to insure that the some grand juries enjoy unfettered freedom in their deliberations, it is again difficult to imagine how, due to the facts of this case and the length of time that has passed since Mr. Duran's appearance before the grand jury, unsealing the records in Mr. Duran's case will serve as any constraint on this grand jury.

A third interest is Mr. Duran's due process right to public proceedings. These were implicated by the Court's closure of the Motion to

⁷ See Declaration of Matthew Duran, attached as Appendix M.

Quash and contempt proceedings, and remain affected by continued sealing of the records for those hearings. In *United States v. Levine*, the United States Supreme Court held that, if public access is requested by the person facing contempt, then continued exclusion of the public, except for when substantive grand jury matters are being discussed, is deemed “contrary to the requirements of the Due Process Clause” 362 U.S. at 619. The Second Circuit further explained why civil contemnors have public hearing rights:

Given the burden that imprisonment imposes on an individual, a civil contempt trial that could result in an order of confinement carries with it the same concerns and purposes that lead to the requirement of a public trial in the criminal context, such as the need to assure accountability in the exercise of judicial and governmental power, the preservation of the appearance of fairness, and the enhancement of the public's confidence in the judicial system.

In re Rosahn, 671 F.2d 690, 697 (2d Cir. 1982); *See also In re Grand Jury Matter*, 906 F.2d 78, 86-87 (3rd Cir. 1990) (“We believe that the Second Circuit’s approach, which balances the need for secrecy in grand jury matters against important considerations favoring open judicial proceedings, is sound. We hold, therefore, that in a civil contempt proceeding where an alleged contemnor faces possible incarceration, the proceeding may be closed to the public only to the extent that substantive grand jury matters are

being considered; the remainder of the hearing must take place in open court.”)

A fourth interest, protected by the First Amendment, is Mr. Duran’s freedom of association. Mr. Duran has made no secret of the fact that he has been involved in activist and social justice communities. Regardless of whether this was the government’s intent here, individuals who are subject to grand jury inquiry often face suspicion and ostracism from such communities. As Mr. Duran’s Motion to Quash demonstrates, he is aware of, and quite concerned about, this tendency. Appx. D at 10-13. The closure of the courtroom and sealing of the proceedings has only made it more difficult for him to alleviate others’ concerns about his continued association with their organizations.

B. Unsealing and Redaction is the Appropriate Remedy. Other Circuit courts have made it clear that the appropriate procedure is to unseal these court files, but redact grand jury material that is not subject to disclosure. In *In re Newark Morning Ledger Co.*, 260 F.3d 217, 228 (3d Cir. 2001), the Court approved of the District Court’s decision to initially seal filings and motions, but only until the Court could determine what

information, if any, involved secret grand jury materials. The Court explained:

On June 20, 2011, the District Court issued a final order denying the complaining party's motion for contempt proceedings. But the District Court did not unseal all the records pertaining to the motion nor did it lift the seal on future proceedings. Under *Smith*, we believe the District Court should complete its review of the proceedings and after determining what, if any, materials contain secret grand jury information, unseal all non-secret material.

Id., at 228; *see also United States v. Smith*, 123 F.3d 140, 153 (3rd Cir. 1997)

("It is not until the district court determines what constitutes grand jury material in the context of this case, which it can only do at the conclusion of the proceedings before it, that it will know what aspects of the briefs, the hearing, and the sentencing memorandum to make public, if any.")

Similarly, in *In re Grand Jury Subpoena*, 97 F.3d 1090, 1095 (8th Cir. 1996), the Court of Appeals Directed the Office of Independent Counsel to work with the Clerk of Court to substitute

for our current sealed file a public file, redacted to exclude portions of the record that disclose substantive grand jury proceedings, supplemented by a filing under seal that contains all redacted portions of the briefs and records on appeal. After an unsealed public file has been created in this fashion, counsel for McDougal may challenge by motion OIC's decision as to the portions of our file which should remain under seal.

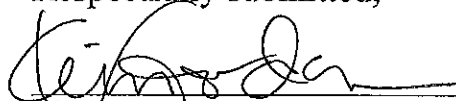
See also, United States v. McDougal, 559 F.3d 837, 841 (8th Cir. 2009)
(Recognizing that the District Court should, in the face of a challenge to blanket sealing of a civil contempt proceeding, undertake and *in camera* review of the sealed record to determine which records “related to a grand jury proceeding.” If the records were “related”, then they should remain sealed. Otherwise, they should be unsealed.)

It does not appear that the Ninth Circuit has ruled on this issue. This is another reason that this writ should issue. This Court should provide its guidance on this question.

VII. CONCLUSION

For the foregoing reasons Mr. Duran joins in Petitioner Index Newspapers LLC’s request that this Court issue a writ of mandamus to the district court to unseal the files (including the ECF docket, the briefing and transcripts) and order the Government to propose redactions.

Respectfully submitted,



KIMBERLY N. GORDON #25401

Attorney for Real Party in Interest, Matthew Duran

STATEMENT OF RELATED CASES

Katherine Olejnik and Matthew Duran filed recalcitrant witness appeals in this Court. Mr. Duran's was filed on September 29, 2012 and is numbered 12-35774. Mr. Duran does not know the specific date, or case number for Ms. Olejnik's appeal, as the file and docket are sealed.

DATED this 5th day of July, 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kim Gordon', written over a horizontal line.

KIMBERLY N. GORDON
Attorney for Real Party in Interest
Matthew Duran

BRIEF FORMAT CERTIFICATE PURSUANT TO

CIRCUIT RULE 32(e)(4)

Pursuant to Ninth Circuit Rule 32 (e) (4), I certify that the opening brief
is

_____ Proportionately spaced, has a typeface of 14 points
or more and contains 9,573 words, or is

_____ Monospaced, has 10.5 or less characters per inch and
X Does not exceed 30 pages (opening and answering
briefs) or 15 pages (reply briefs)

or

_____ Contains _____ words.

DATED this 5th day of July, 2013.



KIMBERLY N. GORDON
Attorney Real Party in Interest
Matthew Duran

CERTIFICATE OF SERVICE

I hereby certify that on July 5, 2013, for In re Index Newspapers LLC, No. 13-71021, I electronically filed the foregoing Response to Petition for Writ of Mandamus and Excerpts of Record with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

I further certify that on July 5, 2013, I sent this Court via First Class Mail Postage Prepaid four copies of the Appendix H and I, which are Excerpts of Record to be filed under seal.

DATED this 5th day of July, 2013.


KIMBERLY GORDON
Law Office of Gordon & Saunders