DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 South Potomac Street Centennial, Colorado 80112	REDACTED
Plaintiff(s): People of the State of Colorado **v.** **Defendant(s): Holmes, James Eagan**	**♦ COURT USE ONLY ♦** Case Number: **12CR1522** Div.: **22**

AMENDED ORDER UNSUPPRESSING COURT FILE (C-12)

The Court hereby issues this Amended Order Unsuppressing Court File (C-12) in order to include the C-12 designation in the caption of the Order, which was inadvertently omitted from the original order.

This Matter comes before the Court pursuant to Media Petitioners' Motion to Unseal Court File (Including Docket), filed July 27, 2012; People's Response to Motion to Unseal Court File (Including Docket) (P-9), filed August 6, 2012; Media Petitioners' Reply in Support of Motion to Unseal Court File, filed August 8, 2012; Defendant's Response to Motion to Unseal Court File and Prosecution's Response (P-9), filed August 9, 2012; and Media Petitioners' Request for Timely Release of Court Filings to Provide for Meaningful Right to Observe Judicial Proceedings, filed August 27, 2012. The Court also heard oral argument from the People, Defendant, and the Media Petitioners during a hearing on September 20, 2012. Having reviewed the pleadings and the oral argument, the Court hereby Finds and Orders:

In its Order Re: Media Petitioners' Request for Timely Release of Court Filings to Provide for Meaningful Right to Observe Judicial Proceedings (C-9), issued August 28, 2012, this Court denied the Media's Request to release certain documents and stated that "[i]t may well be that the posture of the case is different after a determination regarding privilege and confidentiality is made." Order, p.3. Although the privilege issue has not been resolved but is currently being held in abeyance, the Court nonetheless FINDS that it is appropriate to GRANT Media Petitioners' request as set forth herein. As justification therefor, the Court hereby incorporates the standards used in its Order Re: Motion to Unseal Court File (Including Docket)/("Suppression Order") (C-4c), issued August 13, 2012, and the standards reiterated in its Order Re: Media Petitioners' Request for Timely Release of Court Filings to Provide for Meaningful Right to Observe Judicial Proceedings (C-9), issued August 28, 2012.

Specifically, the Court notes that in *Star Journal v. County Court,* 591 P.2d 1028, 1030 (Colo. 1979), the Colorado Supreme Court stated that "[t]his court has continually recognized the fundamental nature of First Amendment rights and ruled that these rights may only be abridged upon a showing of an overriding and compelling state interest." Pursuant to the standards and analysis this Court has consistently used over the course of the proceedings, the

Court makes the following findings: 1) using a balancing test taking into account relevant public and private interests pursuant to *Harris v. Denver Post Corp.*, 123 P.3d 1166, 1171 (Colo. 2005), no sufficient private interest now exists that outweighs the public's and media's interest in disclosure of the file, with a few exceptions as listed below; 2) under the ABA Standard 8-3.2 adopted in *Star Journal*, unrestricted access to the court file, with a few exceptions listed below, would no longer pose a substantial probability of harm to the fairness of the trial, and even if a substantial probability of harm to the fairness of the trial still exists, and suppression of the documents would effectively prevent such harm, a less restrictive alternative, that of redaction, is reasonably available to prevent the harm; and 3) under the Colorado Criminal Justice Records Act (CCJRA), C.R.S. § 24-72-301 *et seq.* (2012), the pleadings comprising the file constitute criminal justice records and all such records may be open for inspection, and inspection of said documents would not be contrary to state statute, nor is inspection prohibited by any rules of the supreme court or any order of the court, with the exception of a few pleadings listed below. Therefore, mindful of the Colorado Supreme Court's instruction in *Star Journal, supra*, the Court ORDERS that any documents which until now have been suppressed in the file in this case shall be released to the public and media, with appropriate redactions as made by the parties, with the following exceptions.

First, anything which has been filed under seal shall remain so, pending further order of this Court. This includes evidence which has been submitted to the Court under seal. As to the People's Response to Defendant's D-16 Motion for Sanctions Filed Under Seal, filed September 13, 2012, and Defendant's Reply to People's Response to Defendant's Motion for Sanctions Resulting from Prosecution's Reckless Disregard for the Truth, filed September 17, 2012, as well as People's Notice of Endorsement (P-15), filed August 20, 2012, those pleadings were filed under seal but would now more properly be characterized as remaining suppressed (understanding that *sealed* means available only to the Court, while *suppressed* means available to the Court and the Parties, but not the public and/or media). Defendant's Motion for Sanctions Resulting from Prosecution's Reckless Disregard for the Truth (D-16), filed August 27, 2012, shall be released, as well as the Court's Order relating to same, because the Court has already heard oral argument on the matter and the substance of the Motion has already been divulged to the public. The People's Response to D-16 and Defendant's Reply to People's Response remain suppressed because they contain potentially privileged and/or suppressed information.

Second, all warrants and affidavits of probable cause remain suppressed, under the rationale previously stated by the Court in its Order Re: Motion to Unseal Court File (Including Docket)/("Suppression Order") (C-4c). Specifically, that Order stated that after considering the positions of Media Petitioners, the People, and Defendant, under C.R.S. § 24-72-305(5), disclosure of affidavits of probable cause, subpoenas, arrest warrants, search warrants, and requests for and court orders for production of records would be contrary to the public interest at this time. This remains true today, though that may well change after the preliminary/proof evident hearing currently scheduled for November 13, 2012. The Court also found that, using the balancing test and taking into account relevant public interests such as the public's interest in knowing the contents of affidavits of probable cause, subpoenas, arrest warrants, search warrants, and requests for and court orders for production of records versus the private interests of witnesses and victims, disclosure of such documents would be imprudent at that stage of the proceedings. The Court reiterates that finding now, and specifically notes that disclosure of such

documents prior to the preliminary hearing would be premature, given the People's continued assertions that release would interfere with their ability to conduct an investigation. Previously, the Court also found that, under the ABA Standard 8-3.2 adopted in *Star Journal, supra,* unrestricted access to those documents would pose a substantial probability of harm to the fairness of the trial, suppression of the documents would effectively prevent such harm, and there is no less restrictive alternative reasonably available to prevent the harm. This finding also remains applicable today, based on the People's prior assertions that disclosure would hinder the investigation, and that law enforcement needs the opportunity to contact witnesses and victims unfettered by possible intrusion by the media or public.

The Parties have also requested that curricula vitae, and references to such curricula vitae in pleadings, should not be released to the public out of concerns for the privacy of the persons described therein. Specifically, the People have referenced People's Pleading P-17 Brief Relating to Correct Statutory Privilege, Doctor-Patient Privilege or Psychologist-Patient Privilege, filed August 24, 2012, and Defendant has cited Defendant's Response to People's Motion for Disclosure of Defense Expert, filed September 17, 2012. Both the People and Defendant request that their respective experts' curricula vitae remain suppressed, and the Court GRANTS that request. Because the curricula vitae are attached to the respective pleadings, the Court shall release the pleadings without the curricula vitae. Any references to the contents of the curricula vitae in the body of the pleadings will need to be redacted by the Parties, as those pleadings shall be released.

Having released the file, with the above exceptions, the Court also FINDS that, in the future, any documents which are filed with the Court shall be presumed released to the public and the media. The Court shall determine, *sua sponte*, which documents shall be displayed on the judicial website, while the public file shall remain available at the Clerk's office Monday through Friday during normal business hours. On August 21, 2012, this Court solicited input from the People and Defendant regarding the filing of redacted copies of pleadings. On September 7, 2012, this Court issued its Supplemental Case Management Order (C-11) requiring the People and Defendant to file one redacted copy and one unredacted original of all motions and pleadings. The logistical issue this Court envisioned has now come to fruition, and pleadings which were filed previous to this Order and were suppressed may need appropriate redactions, including redactions for privileged information, which the court staff is not best qualified to do. This task falls to the attorneys in this case. Counsel is now expected to review any previous pleadings and file redacted copies as necessary for release to the public and the media. There may be circumstances in which the Court disagrees with redactions made by Counsel. In that case, the Court reserves the right to amend or modify redactions. If Counsel feels that highly unusual circumstances exist such that it is necessary to suppress any future pleadings or documents filed with the Court, Counsel must state the grounds for suppression in that pleading. Counsel must also alert court staff by stamping or writing "SUPPRESSED" at the top of both the original and the redacted version of the pleading (i.e., the original would read "SUPPRESSED" at the top and the redacted version would read "REDACTED SUPPRESSED"). Counsel should continue to comply with the Supplemental Case Management Order (C-11) when filing documents under seal. Counsel may continue to file pleadings and/or documents under seal, with the understanding that sealed documents or pleadings may be viewed only by the Court.

Finally, given the anticipated crush of requests from the public and/or the media, and in order to give the People and Defendant the opportunity to review previous pleadings and file redacted copies as required by the Court's Order, this Order, although issued today, will not take effect until one week from today, on September 28, 2012, at 8:00 am. On that date, the file, with the exception of any evidence filed under seal or any documents excepted herein, shall be released to the public and the media. To assist Counsel in making redactions of documents which were filed prior to the Court's entry of the Supplemental Case Management Order (C-11), the Court encourages, and shall permit, Counsel to review the public/redacted file which the Court has maintained thus far in the Clerk's Office.

Media Petitioners' Motion to Unseal Court File (Including Docket) and Media Petitioners' Request for Timely Release of Court Filings to Provide for Meaningful Right to Observe Judicial Proceedings are now GRANTED, with the exceptions noted above.

Entered September 25, 2012.

BY THE COURT:

WILLIAM BLAIR SYLVESTER
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2012 a true and correct copy of **Amended Order Unsuppressing Court File (C-12)** was served upon the following parties of record.

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