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16 MARK FAINARU-WADA and
LANCE WILLIAMS

17 UNITED STATES DISTRICT COURT
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19 NORTHERN DISTRICT OF CALIFORNIA
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21 SAN FRANCISCO DIVISION

22 In re:
23 GRAND JURY SUBPOENAS TO
MARK FAINARU-WADA AND
24 LANCE WILLIAMS

Case No. CR-06-90225 MISC-JSW

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR CLARIFICATION BY MARK FAINARU-
WADA AND LANCE WILLIAMS**

25 Date: September 21, 2006
26 Time: 2:30 p.m.
27 Place:
28 Judge: Hon. Jeffrey S. White

1 *San Francisco Chronicle* (“*Chronicle*”) reporters Mark Fainaru-Wada and Lance
2 Williams hereby move for an order clarifying the Court’s August 15, 2005 Order Denying The
3 Motion to Quash (the “Order”), to specifically limit the scope of inquiry permitted under that
4 Order to their confidential source(s) of BALCO grand jury transcripts, which was the focus of
5 the parties’ briefing, oral argument, and the Court’s Order.

6 This motion is made necessary by the government’s recent unilateral modification of the
7 agreed-upon understanding of the scope of a separate but identical subpoena issued to the
8 *Chronicle*. The sweeping overbreadth of the *Chronicle* subpoena under the government’s new
9 interpretation has prompted the *Chronicle* to file its own separate motion, which is annexed
10 hereto and the contents of which are incorporated by reference. The *Chronicle* subpoena, as
11 initially construed by the government, sought copies of BALCO grand jury transcripts and
12 documents revealing the name(s) of those who provided such transcripts to Messrs. Fainaru-
13 Wada and Williams. As newly articulated by the government, the subpoena would require the
14 disclosure of *any* documents that reflect *any* discussion between *any* correspondent participants
15 about *any* grand jury testimony in the BALCO investigation, even in the most peripheral manner.
16 The government’s new interpretation amounts to a fishing expedition broadly aimed at
17 confidential sources *other than* those who provided the reporters with grand jury transcripts.
18 This would include even grand jury witnesses who have every right to discuss their testimony.
19 The government advised the *Chronicle*’s criminal counsel of this new interpretation verbally, for
20 the first time, just hours before oral argument on the reporters’ fully-briefed motion to quash.

21 Because the reporters anticipate that the government may attach its new interpretation to
22 the same language in the identical subpoenas issued to the reporters, they seek clarification from
23 the Court that the Order enforcing those subpoenas permits inquiry only as to the reporters’
24 source(s) of BALCO grand jury transcripts, and does not sanction questioning as to the reporters’
25 other confidential sources. This would be consistent with the Order and the parties’ submissions
26 to the Court.

27 The Order broadly concludes that the reporters are “to appear before the grand jury ... to
28 answer questions posed to them and to produce all documents or objects requested in the

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