

1 Bruce S. Ross, State Bar No. 51468
John Vaughn, State Bar No. 171801
2 Vivian L. Thoreen, State Bar No. 224162
Jonathan H. Park, State Bar No. 239965
3 LUCE, FORWARD, HAMILTON & SCRIPPS LLP
601 South Figueroa Street, Suite 3900
4 Los Angeles, CA 90017
Tele.: 213.892.4992
5 Fax: 213.892.7731

6 Attorneys for Howard K. Stern, Executor
7

ORIGINAL FILED
JUL 06 2007
LOS ANGELES
SUPERIOR COURT

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**
10

11 In re the Matter of the Estate of

Case No. BP 104575

12 VICKIE LYNN MARSHALL, also
known as VICKIE LYNN SMITH,
13 also known as VICKIE LYNN
HOGAN, also known as ANNA
14 NICOLE SMITH

**NOTICE OF *EX PARTE* APPLICATION
AND APPLICATION FOR TEMPORARY
RESTRAINING ORDER AND ORDER
TO SHOW CAUSE RE: PRELIMINARY
INJUNCTION**

15 Deceased.

16
17 HOWARD K. STERN, as Executor under the
Will of Vickie Lynn Marshall,

Date: July 6, 2007
Time: 8:30 a.m.
Judge: Hon. Mitchell L. Beckloff
Dept.: 5

18 Petitioner,

19 v.

20 THOMAS RICCIO, and individual;
21 UNIVERSAL RARITIES LLC, a California
Limited Liability Company; GERALD
22 WAYNE JOHNSON, M.D., an individual; and
DOES 1 through 100, inclusive,

23 Respondents.
24

25 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE that on July 6, 2007 at 8:30 a.m., or as soon thereafter as may be
27 heard in Department 5 of the above-entitled Court, Petitioner Howard K. Stern, as Executor under
28 the Will of Vickie Lynn Marshall, aka Vickie Lynn Smith, aka Vickie Lynn Hogan, aka Anna

1 Nicole Smith (the "Estate"), will and hereby does apply *ex parte* for a temporary restraining order
2 and an order to show cause why a preliminary injunction as against respondents Thomas Riccio,
3 Universal Rarities LLC, and Gerald Wayne Johnson, M.D. (collectively "Respondents") should
4 not issue to: (1) restrain and enjoin Respondents from the unauthorized and unlawful
5 dissemination of one or more videotapes unlawfully in Respondents' possession depicting a
6 surgical procedure performed on the late Ms. Smith by Respondent Johnson in Houston, Texas in
7 1994, as well as any related derivative information and/or material that may have been created or
8 produced by Respondents; (2) compel Respondents to provide Petitioner with a full accounting of
9 the treatment of the said videotape(s) so that Petitioner may be informed as to whether copies have
10 been made and, if so, the current disposition of those copies; and (3) compel Respondents to return
11 to Petitioner the said videotape(s), as well as all copies, excerpts, or other media depicting the said
12 videotape(s) or any portion thereof created by Respondents.

13 This Application is brought pursuant to California Code of Civil Procedure sections 526
14 and 527, and California Rules of Court, Rules 3.1150 and 3.1200 through 3.1207. This
15 Application is based on this Notice, the accompanying Memorandum of Points and Authorities,
16 the Declarations of Howard K. Stern, Larry Birkhead, Bruce S. Ross, and Vivian L. Thoreen, the
17 Notice of Lodgment of Federal Authorities, the Proposed Order, the pleadings on file herein, and
18 upon such further oral and documentary evidence as may be presented at the hearing on this
19 Application.

20 WHEREFORE, Petitioner respectfully prays that this Court immediately enter the
21 following orders:

22 1. An ORDER TO SHOW CAUSE why a Preliminary Injunction should not issue:

23 (1) Restraining and enjoining Respondents from the unauthorized and unlawful
24 dissemination of the said videotape(s) unlawfully in Respondents' possession, as well as any
25 related derivative information and/or material that may have been created or produced by
26 Respondents;

27 (2) Compelling Respondents to provide Petitioner with a full accounting of the treatment
28 of the said videotape(s) so that Petitioner may be informed as to whether copies have been made

1 and, if so, the current disposition of those copies; and

2 (3) Compelling Respondents to return to Petitioner the said videotape(s), as well as all
3 copies, excerpts, or other media depicting the said videotape(s) or any portion thereof created by
4 Respondents.

5 2. A TEMPORARY RESTRAINING ORDER providing, until further Order of this
6 Court, the following injunctive relief:

7 (1) Restraining and enjoining Respondents from the unauthorized and unlawful
8 dissemination of the said videotape(s) unlawfully in Respondents' possession, as well as any
9 related derivative information and/or material that may have been created or produced by
10 Respondents;

11 (2) Compelling Respondents to provide Petitioner with a full accounting of the treatment
12 of the said videotape(s) so that Petitioner may be informed as to whether copies have been made
13 and, if so, the current disposition of those copies; and

14 (3) Compelling Respondents to return to Petitioner the said videotape(s), as well as all
15 copies, excerpts, or other media depicting the said videotape(s) or any portion thereof created by
16 Respondents.

17 Notice of this application was provided to Respondents in accordance with California
18 Code of Civil Procedure section 527 and California Rules of Court, Rule 3.1200 *et seq.* (*See*
19 *Declaration of Vivian L. Thoreen submitted herewith.*) At this time, and as set forth in the
20 accompanying Declarations, it is unknown whether Respondents are, or will be, represented by
21 counsel at this hearing or in this matter.

22 Pursuant to California Rule of Court, Rule 3.1202(a), Respondents Thomas Riccio and
23 Universal Rarities LLC are located at 512 South Corona Mall, Corona, California 92879-1420.
24 Their telephone number is (800) 270-7273. Respondent Gerald Johnson's addresses are as
25 follows: 20518 Victorious Dr., Hockley, Texas, 77447 (home), 4265 San Felipe, Suite 620,
26 Houston, Texas 77027 (business).

27 ///

28 ///

1 Dated: July 6, 2007

LUCE, FORWARD, HAMILTON & SCRIPPS LLP

2
3 By: *Bruce S. Ross*

4 Bruce S. Ross

5 John Vaughn

6 Attorneys for Howard K. Stern, Executor

7 101018990.1

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28