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10 DAVID and MARIA VENTURA

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 12 2005

GARY M. BLAIR, Executive Officer
BY *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

* Unsealed pursuant
to 6/16/05 Court
order

11 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

13 THE PEOPLE OF THE STATE OF
14 CALIFORNIA,

15 Plaintiff,

16 v.

17 MICHAEL JACKSON,

18 Defendant.

CASE NO. 1133603

19 APPLICATION FOR AN ORDER
20 DIRECTING THAT THE REPLY IN
21 SUPPORT OF MOTION TO QUASH AND
22 OPPOSITION TO SUBPOENAS DATED
23 JANUARY 6, 2005 BE MAINTAINED
24 UNDER CONDITIONAL SEAL;
25 MEMORANDUM OF POINTS AND
26 AUTHORITIES; AND DECLARATION
27 OF JULIAN BREW IN SUPPORT
28 THEREOF

~~TO BE FILED UNDER SEAL~~ *Dr. Lerner*

KAYE SCHOLER LLP

KAYE SCHOLER LLP

1 TO DEFENDANT MICHAEL JOSEPH JACKSON AND HIS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Maria and David Ventura (the "Venturas") hereby move
3 for an order directing that the following records be maintained under conditional seal until
4 further order of the Court, pursuant to California Rules of Court, Rule 243.1, *et seq.*, and
5 pursuant to this Court's Order of July 9, 2004 (the "July 9 Order").

6 The records covered by this Application are:

7 1. The "Reply in Support of Motion to Quash and Opposition to Subpoenas Dated
8 January 6, 2005," filed January 12, 2005; and

9 2. This Application for an Order Directing that these papers be filed under seal.

10 This Motion is made on the ground that, pursuant to the July 9 Order, any objections
11 to subpoenas are to be filed under seal. Furthermore the facts, as established by the
12 accompanying declaration of Julian Brew, are sufficient to justify sealing of these records
13 pursuant to California Rules of Court, Rule 243.1, *et seq.*

14 The Motion will be based on this Notice of Motion, the Memorandum of Points and
15 Authorities served and filed herewith, the Declaration of Julian Brew, the records and the file
16 herein, and on such evidence as may be presented to the Court.

17
18 Dated: January 12, 2004

KAYE SCHOLER LLP

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21 By: 

22 Julian Brew
23 Attorneys for David and Maria Ventura

MEMORANDUM OF POINTS AND AUTHORITIES

KAYE SCHOLER

Under California Rule of Court 243.2, “[a] record must not be filed under seal without a court order.” Motions and responsive pleadings in criminal cases are, ordinarily, “public” records of the court.

Rule 243.1(d) provides that

The court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

Rule 243.1(e) provides, in pertinent part:

- (1) An order sealing the record must (i) specifically set forth the facts, findings that support the findings and (ii) direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each document or page must be included in the public file.

Rule 243.2(b) provides in pertinent part that “pending the determination of the motion [of a party to file a record under seal], the lodged record will be conditionally under seal.”

In its July 9 Order, the Court has already determined that papers such as those sought to be filed under seal here should be so filed. Furthermore, the facts of, and intense public

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1 interest in, this case justify maintaining these records under conditional seal, for instance to
2 protect Complainant's well-being. Accordingly, the Venturas respectfully ask that this Court
3 file these papers under seal.

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5 Dated: January 12, 2004

KAYE SCHOLER LLP

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7
8 By: 

Julian Brew

Attorneys for David and Maria Ventura

KAYE SCHOLER LLP

DECLARATION OF JULIAN BREW

I, Julian Brew, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am an associate with the firm of Kaye Scholer LLP, counsel for David and Maria Ventura for purposes of their motion to quash. If called to testify in this action, I could and would testify as follows:


2. This Application to file records under seal is made on the grounds that these records make reference to evidentiary facts not yet made public.

3. I believe that the interest of each party to a fair trial overrides the public's prompt access to these records until the appropriateness of the release of a redacted version of these records is determined by the court.

4. I believe an order maintaining these records under seal in the interim would avert the probability of prejudice, and that no more narrowly tailored order with respect to these records could be drafted to achieve the overriding interest in a fair trial.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 12, 2004 at Los Angeles, California.



Julian Brew

KAYE SCHOLER LLP

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA**

3 **COUNTY OF LOS ANGELES**

4 I am employed in the County of Los Angeles, State of California. I am over the age of
5 18 and not a party to the within action. My business address is 1999 Avenue of the Stars,
Suite 1700, Los Angeles, California 90067.

6 On January 12, 2005, I served the following documents described as:

7 **APPLICATION FOR AN ORDER DIRECTING THAT THE "MOTION**
8 **TO QUASH AND OPPOSITION TO SUBPOENAS DATED JANUARY**
9 **6, 2005" AND ACCOMPANYING PAPERS FILED ON DECEMBER 30,**
10 **2004, AS WELL AS PAPERS FILED JANUARY 3, 2005, BE**
11 **MAINTAINED UNDER CONDITIONAL SEAL; MEMORANDUM OF**
12 **POINTS AND AUTHORITIES; AND DECLARATION OF THEODORE**
13 **MAYA IN SUPPORT THEREOF**

14 by placing a true copy of the above entitled document in a sealed envelope addressed as
15 follows:

16 **Thomas A. Mesereau, Jr.**
17 **1875 Century Park East, Suite 700**
18 **Los Angeles, CA 90067**

19 **Brian Oxman**
20 **14126 E. Rosecrans**
21 **Santa Fe Springs, CA 90670**

22 X by **FEDERAL EXPRESS**

23 by **U.S. MAIL** (I am readily familiar with the firm's practice of collection and
24 processing correspondence for mailing. Under that practice it would be deposited
25 with U.S. Postal Service on that same day with postage thereon fully prepaid at Los
26 Angeles, California in the ordinary course of business. I am aware that on motion of
27 the party served, service is presumed invalid if postal cancellation date or postage
28 meter date is more than one day after date of deposit for mailing in affidavit.)

OR

 by **PERSONAL SERVICE**

 by personally delivering such envelope to the addressee.

 by causing such envelope to be delivered by messenger to the office of the
addressee.

 X (State) I declare under penalty of perjury under the laws of the State of California
that the above is true and correct.

 (Federal) I declare that I am employed in the office of a member of the bar of this
court at whose direction the service was made.

KAYE SCHOLER llp

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Executed on January 12, 2005, at Los Angeles, California.

Deborah G. Clow

Name

Deborah G. Clow

Signature

KAYE SCHOLER:lp