

JAN 31 2005

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

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9 Attorneys for Janet Arvizo

** Unsealed pursuant
to 1/16/05 court
order*

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

12 THE PEOPLE OF THE STATE OF
13 CALIFORNIA,

14 Plaintiff,

15 v.

16 MICHAEL JACKSON,

17 Defendant.

CASE NO. 1133603

APPLICATION FOR AN ORDER
DIRECTING THAT THE OBJECTION
TO SUBPOENAS DATED
JANUARY 27, 2005 BE MAINTAINED
UNDER CONDITIONAL SEAL

KAYE SCHOLER LLP

TO BE FILED UNDER SEAL
[Signature]

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SUPERIOR COURT
SANTA BARBARA COUNTY
MILLER DIVISION

KAYE SCHOLER LLP

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

PLEASE TAKE NOTICE that Janet Arvizo hereby moves for an order directing that the Notice of Objection to Subpoenas dated January 27, 2005 be maintained under conditional seal until further order of court, pursuant to California Rules of Court, Rule 243.1, *et seq.*, and pursuant to this Court's Order of July 9, 2004 (the "July 9 Order").

The Motion will be based on this Notice of Motion, the Memorandum of Points and Authorities served and filed herewith, the Declaration of Larry R. Feldman, the records and the file herein, and on such evidence as may be presented to the Court.

Dated: January 27, 2005

KAYE SCHOLER LLP

By: 
Larry Feldman
Attorneys for Janet Arvizo

MEMORANDUM OF POINTS AND AUTHORITIES

KAYE SCHOLER LLP

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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. (See Exh. 1 at ¶ 4.) Furthermore, the facts of

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1 and intense public interest in this case justify maintaining these records under conditional
2 seal, for instance to protect Complainant's well-being. Accordingly, Janet Arvizo
3 respectfully asks that this Court file these papers under seal.
4

5 Dated: January 27, 2005

KAYE SCHOLER LLP

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8 Larry Feldman
9 Attorneys for Janet Arvizo
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KAYE SCHOLER LLP

DECLARATION OF LARRY R. FELDMAN

I, Larry R. Feldman, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am Special Counsel with the firm of Kaye Scholer LLP, counsel for Janet Arvizo for purposes of the Objection to Notice of Objection to Subpoenas. If called to testify in this action, I could and would testify as follows:

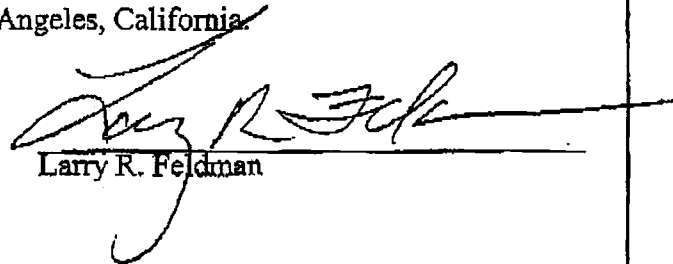
2. This Application to file records under seal is made on the grounds that these records make reference to evidentiary facts not yet made public.

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 27, 2005, at Los Angeles, California.


Larry R. Feldman

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 28, 2005, I served the following documents described as:

7 **APPLICATION FOR AN ORDER DIRECTING THAT THE**
8 **OBJECTION TO SUBPOENAS DATED JANUARY 27, 2005 BE**
MAINTAINED UNDER CONDITIONAL SEAL

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

11 **SEE ATTACHED SERVICE LIST**

12 by **FEDERAL EXPRESS**

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

17 **OR**

18 by **PERSONAL SERVICE**

by personally delivering such envelope to the addressee.

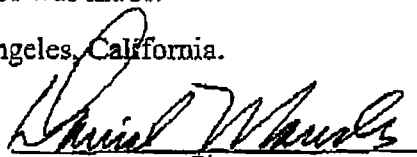
by causing such envelope to be delivered by messenger to the office of the
addressee.

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

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

23 Executed on January 28, 2005, at Los Angeles, California.

24
25 David Mandis
26 Name

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Signature

KAYE SCHOLER:rip

SERVICE LIST

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Thomas A. Mesereau, Jr.
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KAYE SCHOLER:ip