

JAN 18 2005

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

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2 County of Santa Barbara
3 By: RONALD J. ZONEN (State Bar No. 85094)
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5 GORDON AUCHINCLOSS (State Bar No. 150251)
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SANTA BARBARA**
10 **SANTA MARIA DIVISION**

13 THE PEOPLE OF THE STATE OF CALIFORNIA,
14 Plaintiff,

15 v.

16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603
PEOPLE'S MOTION FOR
ORDER SEALING
PLAINTIFF'S MOTION IN
LIMINE RE: EVIDENCE
CODE § 402 ISSUES

Date: January 28, 2005
Time: 8:30 a.m.
Dept.: SM2 (Melville)

23 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR.,
24 STEVE COCHRAN, BRIAN OXMAN AND ROBERT SANGER, HIS ATTORNEYS OF
25 RECORD, AND TO GIBSON, DUNN & CRUTCHER, LLP, ATTORNEYS FOR "MEDIA":

26 PLEASE TAKE NOTICE that on January 28, 2005, at 8:30 a.m. or as soon
27 thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does,
28 move for an order directing that the following records be maintained under conditional seal

1 until further order of court, pursuant to California Rules of Court, rule 243.1 et seq:

2 "PLAINTIFF'S MOTION IN LIMINE RE: EVIDENCE CODE SECTION 402 ISSUES" filed
3 January 18, 2005.



4 The motion will be made on the ground that the facts, as established by the
5 accompanying declaration of Gordon Auchincloss, are sufficient to justify sealing the specified
6 records pursuant to California Rules of Court, rule 243.1 et seq.

7 The motion will be based on this notice of motion, on the declaration of
8 Gordon Auchincloss and the memorandum of points and authorities served and filed herewith,
9 on the records and the file herein, and on such evidence as may be presented at the hearing of
10 the motion.

11 A proposed redacted version of the PLAINTIFF'S MOTION IN LIMINE RE:
12 EVIDENCE CODE SECTION 402 ISSUES is submitted, under seal, with this request for
13 sealing.

14 DATED: January 17, 2005

15
16 THOMAS W. SNEDDON, JR.
District Attorney

17 By: 
18  Gordon Auchincloss, Senior Deputy
19 Attorneys for Plaintiff

DECLARATION OF GORDON AUCHINCLOSS

1 I, GORDON AUCHINCLOSS, say:

2
3 1. I am a lawyer admitted to practice in the State of California. I am a Senior
4 Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for
5 the People, Plaintiff in this action.

6 2. This motion to seal records pertains to "PLAINTIFF'S MOTION IN LIMINE
7 RE: EVIDENCE CODE SECTION 402 ISSUES" filed on January 18, 2005.


8 3. I believe some of the information set out in the application for the orders to show
9 cause should remain confidential, because it discloses the names of other persons whose
10 identities have been kept confidential throughout the public proceedings in this matter in
11 addition to disclosing pertinent facts.

12 4. I believe the interests of both parties in a fair trial by a jury would be enhanced if
13 the identities of such persons were disclosed and publicized prematurely.

14 5. I therefore believe that the interest in a fair trial overrides the public's access to
15 an unredacted version of plaintiff's request and its supporting declaration, and supports the
16 sealing of those documents until further order of court.

17 6. I believe an order maintaining the Request and supporting Declaration under seal
18 in the interim would avert the probability of prejudice, and that no more narrowly tailored order
19 with respect to that request could be drafted to achieve the overriding interest in a fair trial.

20 I declare under penalty of perjury under the laws of California that the foregoing is
21 true and correct, except as to matters stated upon my information and belief, and as to such
22 matters I believe it to be true. I execute this declaration at Santa Barbara, California on January
23 17, 2005.

24
25 
26 _____
27 Gordon Auchincloss
28

MEMORANDUM OF POINTS AND AUTHORITIES

The procedure for sealing records under California Rules of Court, rule 243.1 et seq. applies only to records that are deemed public. (*Id.*, rule 243.1(a)(2).)

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:

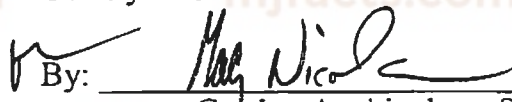
(1) An order sealing the record must (i) specifically set forth the facts findings that support the findings and (ii) direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal.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

DATED: January 17, 2005

Respectfully submitted,

THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara

By: 
Gordon Auchincloss, Senior Deputy
Attorneys for Plaintiff

PROOF OF SERVICE

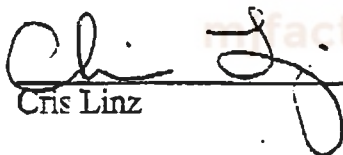
STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On January 10, 2005, I served the within PLAINTIFF'S MOTION IN LIMINE RE: EVIDENCE CODE SECTION 402 ISSUES; on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, BRIAN OXMAN and GIBSON, DUNN & CRUTCHER, LLP, by faxing a true copy to counsel at the facsimile number shown with the address of each on the attached Service List, and then by causing to be mailed a true copy to each counsel at that address.

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

Executed at Santa Barbara, California on this 17th day of January, 2005.


Chris Linz

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3 **SERVICE LIST**

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28 Counsel for, collectively, "Media"