

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
2 County of Santa Barbara  
3 By: RONALD J. ZONEN (State Bar No. 85094)  
4 Senior Deputy District Attorney  
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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

JAN 24 2005

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

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 FOR THE COUNTY OF SANTA BARBARA  
15 SANTA MARIA DIVISION

ES JAN 24 PM 1:42  
RECORDED

16 THE PEOPLE OF THE STATE OF CALIFORNIA,  
17 Plaintiff,  
18 v.  
19 MICHAEL JOE JACKSON,  
20 Defendant.

No. 1133603

PEOPLE'S MOTION FOR  
ORDER SEALING  
PLAINTIFFS REPLY TO  
DEFENDANT'S  
OPPOSITION RE:  
EVIDENCE CODE § 402

Date: January 28, 2005  
Time: 9:30 a.m.  
Dept.: SM2 (Melville)

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

24 PLEASE TAKE NOTICE that on January 28, 2005, at 9:30 a.m. or as soon  
25 thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does,  
26 move for an order directing that the following records be maintained under conditional seal  
27 until further order of court, pursuant to California Rules of Court, rule 243.1 et seq:  
28

1 "PLAINTIFFS REPLY TO DEFENDANT'S OPPOSITION RE: EVIDENCE CODE § 402"  
2 filed January 24, 2005.

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

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

10 A proposed redacted version of the PLAINTIFFS REPLY TO DEFENDANT'S  
11 OPPOSITION RE: EVIDENCE CODE § 402 is submitted, under seal, with this request for  
12 sealing.

13 DATED: January 24, 2005

14 THOMAS W. SNEDDON, JR.  
15 District Attorney

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

DECLARATION OF GORDON AUCHINCLOSS

I, GORDON AUCHINCLOSS, say:

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

2. This motion to seal records pertains to "PLAINTIFFS REPLY TO DEFENDANT'S OPPOSITION RE: EVIDENCE CODE § 402" filed on January 24, 2005.

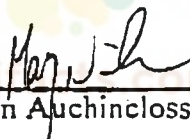
3. I believe some of the information set out in the application for the orders to show cause should remain confidential, because it discloses the names of other persons whose identities have been kept confidential throughout the public proceedings in this matter in addition to disclosing pertinent facts.

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

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

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

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, except as to matters stated upon my information and belief, and as to such matters I believe it to be true. I execute this declaration at Santa Barbara, California on January 24, 2005.

  
\_\_\_\_\_  
Gordon Auchincloss

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 24, 2005

Respectfully submitted,

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

By: 

\_\_\_\_\_  
Gordon Auchincloss, Senior Deputy  
Attorneys for Plaintiff



1 PROOF OF SERVICE


2  
3 STATE OF CALIFORNIA }  
4 COUNTY OF SANTA BARBARA } SS

5  
6 I am a citizen of the United States and a resident of the County aforesaid; I am over  
7 the age of eighteen years and I am not a party to the within-entitled action. My business  
8 address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara,  
9 California 93101.

10 On January 24, 2005, I served the within; PEOPLE'S MOTION FOR ORDER  
11 SEALING PLAINTIFFS REPLY TO DEFENDANT'S OPPOSITION RE: EVIDENCE CODE  
12 § 402 on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, BRIAN  
13 OXMAN and GIBSON, DUNN & CRUTCHER, LLP by personally delivering a true copy  
14 thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to  
15 Attorney Mesereau, and Gibson Dunn and Crutcher and by causing a true copy thereof to be  
16 mailed to, first class postage prepaid to Mr. Mesereau and Gibson Dunn and Crutcher, at the  
17 addresses shown on the attached Service List.

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

19 Executed at Santa Barbara, California on this 24th day of January, 2005.

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23 Gordon Auchincloss

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SERVICE LIST

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Counsel for, collectively, "Media"