

MAR 01 2005

GARY M. BLAIR, Executive Officer

By *Carrie L. Wagner*  
CARRIE L. WAGNER, Deputy Clerk

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2 Larry R. Feldman, Bar Number 45126  
3 Julian Brew, Bar Number 150615  
4 Theodore Maya, Bar Number 223242  
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9 Attorneys for Subpoenaed Parties  
10 DAVID and MARIA VENTURA

*\* Unsealed pursuant  
to 6/11/05 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 PAPERS FILED  
21 BY THE VENTURAS ON MARCH 1,  
22 2005, BE MAINTAINED UNDER  
23 CONDITIONAL SEAL;  
24 MEMORANDUM OF POINTS AND  
25 AUTHORITIES; AND DECLARATION  
26 OF THEODORE MAYA IN SUPPORT  
27 THEREOF

28 ~~TO BE FILED UNDER SEAL~~ *In Camera*

KAYE SCHOLER LLP

KAYE SCHOLER LLP

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

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

7 The records covered by this Application are:

8 1. The "Ex Parte Application for an Order Vacating the Court's February 25,  
9 2005 Order on Motion to Quash Ventura and Bank of the West Subpoenas; Declaration of  
10 Theodore Maya in Support Thereof"; and

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

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

17 The Motion will be based on this Notice of Motion, the Memorandum of Points and  
18 Authorities served and filed herewith, the Declaration of Theodore Maya, the records and the  
19 file herein, and on such evidence as may be presented to the Court.  
20

21 Dated: March 1, 2005

KAYE SCHOLER LLP

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24 By: \_\_\_\_\_

Theodore Maya  
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.

4  
5 Dated: March 1, 2005

KAYE SCHOLER LLP

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7  
8 By: 

Theodore Maya  
Attorneys for David and Maria Ventura

KAYE SCHOLER<sup>LLP</sup>

DECLARATION OF THEODORE MAYA

KAYE SCHOLER LLP

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I, Theodore Maya, declare as follows:

1. I am an attorney licensed to practice law in the State of California, and I 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:

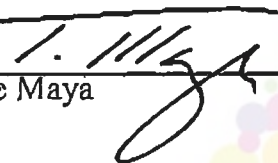
2. This Application to file records under seal is made on the grounds that these records make reference to evidentiary facts not yet made public.

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 March 1, 2005 at Los Angeles, California.

  
\_\_\_\_\_  
Theodore Maya

KAYE SCHOLER LLP

**PROOF OF SERVICE**

**STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

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

On March 1, 2005, I served the following documents described as:

**APPLICATION FOR AN ORDER DIRECTING THAT PAPERS FILED BY THE VENTURAS ON MARCH 1, 2005, BE MAINTAINED UNDER CONDITIONAL SEAL; MEMORANDUM OF POINTS AND AUTHORITIES; AND DECLARATION OF JULIAN BREW IN SUPPORT THEREOF**

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

**SEE ATTACHED SERVICE LIST**

by **FEDERAL EXPRESS**

by **U.S. MAIL** (I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los 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.)

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.

(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.

Executed on March 1, 2005, at Los Angeles, California.

David Mandis

Name

  
Signature

KAYE SCHOLER LLP

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