

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

SEP 17 2004

GARY BLAIR, Executive Officer
B. [Signature]
COURT CLERK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

11
12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

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16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

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PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
COURT'S REVIEW OF
PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION FOR
DISCOVERY TO DETERMINE
IF SEALING IS APPROPRIATE;
DECLARATION OF GORDON
AUCHINCLOSS; MEMORANDUM
OF POINTS AND AUTHORITIES

UNDER SEAL

DATE: September 17, 2004
TIME: 8:30 a.m.
DEPT: TBA (Melville)

23 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR.,
24 STEVE COCHRAN, ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF
25 RECORD, AND TO THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN &
26 CRUTCHER, LLP:

27 PLEASE TAKE NOTICE that on September 17, 2004, at 8:30 a.m. or as soon
28 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and


1 hereby does, request the Court to review Plaintiff's Response To Defendant's Motion to
2 Compel Discovery, filed contemporaneously with this Motion, to determine for itself whether
3 an order directing that the Plaintiff's Response to Motion for Discovery is an appropriate
4 document for sealing., and that the Response be maintained under conditional seal until further
5 order of court, pursuant to California Rules of Court, rule 243.1 et seq.

6 The motion will be made on the ground that the facts, as established by the
7 accompanying declaration of Gordon Auchincloss, may not be sufficient to justify sealing the
8 specified document and its attachments pursuant to California Rules of Court, rule 243.1 et seq.

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

13 DATED: September 17, 2004

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 conditionally seal the contemporaneously-filed Plaintiff's Response to Defendant's Motion for Discovery, and requesting that the Court determine for itself whether the Response requires sealing, is made on the ground that the Response does not, in the undersigned's opinion, reveal any information that would warrant sealing.

3. I believe that the interest of each party to a fair trial dictates that the Response should remain under conditional seal until the appropriateness of sealing the document and, if sealing is ordered, of the release of a redacted version of the Response is determined by the court.

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 Maria, California on September 17, 2004.



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).) 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 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.”

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1 DATED: September 17, 2004

2 Respectfully submitted,

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

5 By: 
6 Gordon Auchindloss

7 Attorneys for Plaintiff

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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 September 17, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR COURT'S REVIEW OF PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION FOR DISCOVERY on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER and BRIAN OXMAN, by personally delivering a true copy to each counsel in open court. I declare under penalty of perjury that the foregoing is true and correct.

Executed at Santa Maria, California on this 17th day of September, 2004.


Gordon Auchincloss