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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

OCT 28 2004

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

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SANTA BARBARA
12 SANTA MARIA DIVISION

13
14 THE PEOPLE OF THE STATE OF
CALIFORNIA,

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16 Plaintiff,

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18 v.

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20
21 MICHAEL JOE JACKSON,

22 Defendant.

Case No. 1133603

ATTORNEY GENERAL'S NOTICE OF
MOTION AND MOTION FOR ORDER
DIRECTING THAT ATTORNEY
GENERAL'S OPPOSITION TO
DEFENDANT'S MOTION TO RECUSE
THE DISTRICT ATTORNEY'S
OFFICE BE MAINTAINED UNDER
SEAL UNTIL FURTHER ORDER OF
COURT; MEMORANDUM OF POINTS
AND AUTHORITIES; DECLARATION
OF STEVEN D. MATTHEWS IN
SUPPORT OF SEALING

~~(FILED UNDER SEAL)~~

Date: November 4, 2004
Time: 8:30 a.m.
Dept: TBA (Melville)

1 PLEASE TAKE NOTICE that on November 4, 2004, at 8:30 a.m. or as soon as thereafter
2 as the matter may be heard, in Department SM 2, the Attorney General will, and hereby does, move
3 for an order directing that the Attorney General's Opposition to Motion to Recuse the District
4 Attorney's Office, filed under seal and contemporaneously with this Request for Conditional Sealing,
5 be maintained under conditional seal until further order of court, pursuant to California Rules of
6 Court, rule 243.1 et seq.

7 The motion will be made on the ground that the facts, as established by the accompanying
8 declaration of Steven D. Matthews, are sufficient to justify sealing the specified motion pursuant to
9 California Rules of Court, rule 243.1 et seq.

10 The motion will be based on this notice of motion and motion, the attached memorandum
11 of points and authorities, Declaration of Steven D. Matthews, the concurrently filed [Proposed]
12 Order Granting the Attorney General's Motion, the records and the files herein, and on such evidence
13 and argument as may be presented at the hearing of the motion.

14 Dated: October 27, 2004

15 Respectfully submitted,

16 BILL LOCKYER
Attorney General of the State of California

17 ROBERT R. ANDERSON
Chief Assistant Attorney General

18 PAMELA C. HAMANAKA
Senior Assistant Attorney General

19 ROBERT M. SNIDER
Deputy Attorney General

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22 STEVEN D. MATTHEWS
23 Supervising Deputy Attorney General
24 Attorneys for the Attorney General

25 SDM:mol
26 LA2004RE0012

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 The Court has entered a protective order in this matter concerning the filing and
3 maintaining of filed documents under seal. (See Declaration of Steven D. Matthews ("Matthews
4 Decl."), ¶ 2.)

5 The procedure for sealing records under California Rules of Court, rule 243.1 et seq.
6 applies only to records that are deemed public. (*Id.*, rule 243.1(a)(2).) Motions and responsive
7 pleadings in criminal cases are, ordinarily, "public" records of the court.

8 Rule 243.1(d) provides that

9 The court may order that a record be filed under seal only if it expressly finds facts
10 that establish:

11 (1) There exists an overriding interest that overcomes the right of public access to
12 the record;

13 (2) The overriding interest supports sealing the record;

14 (3) A substantial probability exists that the overriding interest will be prejudiced if
15 the record is not sealed;

16 (4) The proposed sealing is narrowly tailored; and

17 (5) No less restrictive means exist to achieve the overriding interest.

18 Rule 243.1(e) provides, in pertinent part:

19 (1) An order sealing the record must (i) specifically set forth the facts that support
20 the findings and (ii) direct the sealing of only those documents and pages, or, if reasonably
21 practicable, portions of those documents and pages, that contain the material that needs
22 to be placed under seal. All other portions of each documents or page must be included
23 in the public file.

24 Rule 243.2(b)(4) provides, in pertinent part, that "Pending the determination of the motion
25 [of a party to file a record under seal], or application, the lodged record will be conditionally under
26 seal."

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CONCLUSION

To comply with the Court's protective order and procedures to maintain the sealed nature of filed pleadings and in accordance with rule 234.2 of the California Rules of Court, the Attorney General has concurrently filed under seal the Attorney General's Opposition to Defendant's Motion to Recuse the Santa Barbara County District Attorney's Office. Pursuant to the Court's protective order and procedures, the Attorney General respectfully requests that the Court enter an order directing that the Attorney General's Opposition be maintained under seal until further order of the Court.

Dated: October 27, 2004

Respectfully submitted,

BILL LOCKYER
Attorney General of the State of California

ROBERT R. ANDERSON
Chief Assistant Attorney General

PAMELA C. HAMANAKA
Senior Assistant Attorney General

ROBERT M. SNIDER
Deputy Attorney General



STEVEN D. MATTHEWS
Supervising Deputy Attorney General
Attorneys for the Attorney General

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DECLARATION OF STEVEN D. MATTHEWS

1. I am a lawyer admitted to practice in the State of California and a Supervising Deputy Attorney General assigned the responsibility of representing the Attorney General's Office in responding to the defendant's motion to recuse the Santa Barbara County District Attorney's Office.

2. On Thursday, October 21, 2004, I spoke with Deputy District Attorney Gerald Franklin, who informed me of the Court's protective order in this matter and the procedures in place concerning the filing and maintaining of filed documents under seal.

3. This motion to conditionally seal the Attorney General's Opposition to Defendant's Motion to Recuse the District Attorney's Office is made on the ground that the Opposition makes reference to the names of certain witnesses.

4. I believe that the interest of each party in a fair trial overrides the public's prompt access to the Attorney General's Opposition to Defendant's Motion to Recuse until the appropriateness of the release of a redacted version of the Opposition is determined by the Court.

5. I believe an order maintaining this Opposition under seal in the interim would avert the probability of prejudice, and that no more narrowly tailored order with respect to that pleading 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 Los Angeles, California on October 27 2004.



STEVEN D. MATTHEWS
Supervising Deputy Attorney General

DECLARATION OF SERVICE

Case Name: *People v. Michael Joe Jackson*

Case No.: 1133603

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the Bar of this Court at which member's direction this service is made. I am 18 years of age or older and not a party to the within entitled cause; I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On October 28, 2004, I placed the attached

ATTORNEY GENERAL'S NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING THAT ATTORNEY GENERAL'S OPPOSITION TO DEFENDANT'S MOTION TO RECUSE THE DISTRICT ATTORNEY'S OFFICE BE MAINTAINED UNDER SEAL UNTIL FURTHER ORDER OF COURT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF STEVEN D. MATTHEWS IN SUPPORT OF SEALING (FILED UNDER SEAL)

in the internal mail collection system at the Office of the Attorney General, 300 S. Spring Street, Los Angeles, California, 90013, for deposit in the United States Postal Service that same day in the ordinary course of business, in a sealed envelope, postage thereon fully prepaid, addressed as follows:

PLEASE SEE ATTACHED SERVICE LIST

I certify that the document was produced on paper purchased as recycled paper.

I declare under penalty of perjury the foregoing is true and correct and that this declaration was executed on October 28, 2004, at Los Angeles, California.

M.O. LEGASPI


Signature

SDM:mol
LA2004RE0012



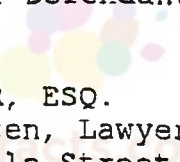
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