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FILED
 SUPERIOR COURT of CALIFORNIA
 COUNTY of SANTA BARBARA

FEB 18 2005

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

4 Attorney for Co-Defendants
 5 HENRY VACCARO JR., VINTAGE POP,
 ELMER KENDRICK, EL-RICH CORP,
 6 HENRY VACCARO, DEEP END ENTERTAINMENT;
 in Federal Civil Actions
 7 Case Nos. CV 04-1946 MRP (Ex) and
 CV-04-1987 FMC (Ex)

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 COUNTY OF SANTA BARBARA
 12 COOK DIVISION/SANTA MARIA BRANCH

14	PEOPLE OF THE STATE OF CALIFORNIA,)	Dept. 02
	)	HON. RODNEY S. MELVILLE
15	Plaintiff,)	Case No. 1133603
)	
16	vs.)	NOTICE OF MOTION AND MOTION
	)	FOR ORDER THAT OWNERS' MOTION
17	)	FOR RETURN OF PERSONAL TAKEN
	)	BY DISTRICT ATTORNEY, TOM
18	MICHAEL JOE JACKSON,)	SNEDDON, FOR USE IN CRIMINAL
	)	CASE AGAINST MICHAEL JOE
19	Defendant.)	JACKSON, PURSUANT TO C. PEN.
	)	CODE §1417.2 et. seq. BE
20	)	MAINTAINED UNDER CONDITIONAL
	)	SEAL; MEMORANDUM OF POINTS
21	)	AND AUTHORITIES; DECL. OF
	)	EDGAR B. PEASE III, ESQ.

22 _____)
 23 TO THIS HONORABLE COURT, MICHAEL JOE JACKSON, AND TO THOMAS
 24 A. MESEREAU, JR., ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF
 RECORD, AND TO THEODORE J. BOUTROUS, JR. ESQ., GIBSON, DUNN, AND
 25 CRUTCHER, LLP; AND TO THOMAS SNEDDON, DISTRICT ATTORNEY FOR THE
 26 COUNTY OF SANTA BARBARA:
 27

1 PLEASE TAKE NOTICE that on the date and time fixed for the
 2 hearing on Movants HENRY VACCARO JR., VINTAGE POP, ELMER KENDRICK,
 3 EL-RICH CORP, HENRY VACCARO, and DEEP END ENTERTAINMENT's Motion
 4 For Return Of Personal Property, at 8:30 a.m., or as soon
 5 thereafter as the matter may be heard, in Department TBA or
 6 Dept./Div. 02 (HON. JUDGE RODNEY S. MELVILLE), of the Superior
 7 Court of California, Santa Barbara County, Cook Division, located
 8 at 312-C East Cook Street, Santa Maria, CA 93456-5369, all Co-
 9 Defendants in Federal Civil Actions Case Nos. CV 04-1946 MRP (Ex)
 10 and CV-04-1987 FMC (Ex), styled as MICHAEL J. JACKSON, v. HENRY V.
 11 VACCARO, dba Deep End Entertainment and dba Vintage Pop, DEEP
 12 ENTERTAINMENT, VINTAGE POP, et. al. and consolidated case JANET
 13 JACKSON, BLACK DOLL v. HENRY V. VACCARO et. al., including HENRY
 14 V. VACCARO, HENRY VACCARO JR., VINTAGE POP, INC., ELMER KENDRICK,
 15 EL-RICH CORP, and DEEP END ENTERTAINMENT, JACKSONVAULT.COM and
 16 THEJACKSONVAULT.COM, will move, and hereby do move, for an order
 17 directing that all motions, oppositions and replies related to the
 18 above-referenced Motion For Return of Property shall be maintained
 19 under conditional seal until further order of this Court, pursuant
 20 to California Rule of Court 243.1 et. seq.

21 This Motion will be made on the grounds that the facts, as
 22 established by the accompanying declaration of Edgar B. Pease III,
 23 Esq., attorney for Co-Defendants in Federal Civil Actions Case
 24 Nos. CV 04-1946 MRP (Ex) and CV-04-1987, are sufficient to justify
 25 sealing the requested documents pursuant to California Rule of
 26 Court 243.1 et. seq.

27 This Motion will be further based on the attached Memorandum

28

1 of Points and Authorities, all papers filed and records in the
2 above referenced actions, evidence taken at the hearing on this
3 motion, and oral argument at the hearing.

4
5 Date: February 18, 2005

Respectfully submitted,

6
7 THE LAW OFFICES OF PEASE & de PETRIS

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10 EDGAR B. PEASE III
11 Attorney for Movants/Co-Defendants
12 HENRY VACCARO JR., VINTAGE POP,
13 ELMER KENDRICK AND EL-RICH CORP,
14 HENRY VACCARO, DEEP END ENTERTAINMENT;
15 in Federal Civil Actions
16 Case Nos. CV 04-1946 MRP (Ex) and
17 CV-04-1987 FMC (Ex)

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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 prejudices 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 that

- (1) An order sealing the record must (i) specifically set forth the facts 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."

In the instant case, the Motion for Return of Property, expected oppositions and replies, make references, or are likely to make references to, evidentiary facts not yet made public in

1 the criminal action against Michael Joe Jackson, Case No. 1133603.
 2 The interests of the parties hereto to a fair trial in both
 3 the criminal case and the Joined Federal actions, Case Nos. CV 04-
 4 1946 MRP (Ex) and CV-04-1987 FMC (Ex), styled as MICHAEL J.
 5 JACKSON, v. HENRY V. VACCARO, dba Deep End Entertainment and dba
 6 Vintage Pop, DEEP ENTERTAINMENT, VINTAGE POP, et. al. and
 7 consolidated case JANET JACKSON, BLACK DOLL v. HENRY V. VACCARO
 8 et. al., should remain under conditional seal until the
 9 appropriateness of sealing of the documents and the release of a
 10 redacts version of the Motion, oppositions and replies is
 11 determined by the Court.

12 An order of the court maintaining the under seal in the
 13 interim would avert the probability of prejudice, and that no more
 14 narrowly tailored order could with respect to the motion could be
 15 drafted to achieve the overriding interest of a fair trial.

16 Accordingly, Movants request that this Court sign the
 17 attached and concurrently filed Order as submitted by Movants
 18 herein on these basis.

19
 20 Date: February 18, 2005

Respectfully submitted,

21 THE LAW OFFICES OF PEASE & de PETRIS

22 

23 EDGAR B. PEASE III
 24 Attorney for Co-Defendants
 25 HENRY VACCARO JR., VINTAGE POP,
 26 ELMER KENDRICK AND EL-RICH CORP,
 27 HENRY VACCARO, DEEP END ENTERTAINMENT;
 in Federal Civil Actions
 Case Nos. CV 04-1946 MRP (Ex) and
 CV-04-1987 FMC (Ex)

DECLARATION OF EDGAR B. PEASE III, ESQ.

I, EDGAR B. PEASE III, do declare that:

1. I am an attorney licensed to practice in all of the courts in the State of California and am admitted to the California State Bar. I am the attorney of record for all Defendants in the Federal court actions styled as Michael Jackson v. Henry V. Vaccaro, Case No.: CV 04-1946 FMC (Ex) and Black Doll, Inc., Janet Jackson v. Henry V. Vaccaro, et. al. Case No: CV 04 1987 FMC (SSx).

2. I make the following statements based on personal knowledge and, if called upon to testify, I could and would testify competently to the statements contained herein.

3. I am writing this Declaration in support of Movants/Co-Defendants, HENRY VACCARO JR., ELMER KENDRICK, DEEP END ENTERTAINMENT, VINTAGE POP, INC., and EL-RICH CORP., JACKSONVAULT.COM, and THEJACKSONVAULT.COM's Motion For Conditional Seal related to their Motion For Return of Personal Property,

4. Said property is currently in the possession of Santa Barbara District Attorney Tom Sneddon and was taken by the District Attorney of Santa Barbara in or about March, 2004, from some of these Movants/Co-Defendants from storage warehouse(s) in Asbury Park, NJ in the instant criminal matter The People of the State of California v. Michael Jackson, et al, Case No. 1133603.

5. I believe that the Motion for Return of Property,

1 expected oppositions and replies, make references, or are likely
 2 to make references to, evidentiary facts not yet made public in
 3 the criminal action against Michael Joe Jackson, Case No.
 4 1133603.

5 6. I further believe that the interests of the parties
 6 hereto to a fair trial in both the criminal case and the Joined
 7 Federal actions, Case Nos. CV 04-1946 MRP (Ex) and CV-04-1987 FMC
 8 (Ex), styled as MICHAEL J. JACKSON, v. HENRY V. VACCARO, dba Deep
 9 End Entertainment and dba Vintage Pop, DEEP ENTERTAINMENT,
 10 VINTAGE POP, et. al. and consolidated case JANET JACKSON, BLACK
 11 DOLL v. HENRY V. VACCARO et. al., should remain under conditional
 12 seal until the appropriateness of sealing of the documents and
 13 the release of a redacted version of the motion, oppositions and
 14 replies is determined by the Court.

15 7. I believe an order of the court maintaining the under
 16 seal in the interim would avert the probability of prejudice, and
 17 that no more narrowly tailored order could with respect to the
 18 motion could be drafted to achieve the overriding interest of a
 19 fair trial.

20
 21 Executed on this 18th day of February, 2005, at Los Angeles,
 22 CA. I declare under penalty of perjury and under the laws of the
 23 United States and the State of California that the foregoing is
 24 true and correct.

25 
 26 EDGAR B. PEASE III, ESQ.