

FILED
PLACER COUNTY
SUPERIOR COURT OF CALIFORNIA

OCT 26 2005

JOHN MENDES
EXECUTIVE OFFICER & CLERK
By Sharon Fast-Crow, Deputy

SUPERIOR COURT, STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF PLACER

SARAH DAVIS

Plaintiff,

v.

THE CITY OF AUBURN, ET. AL.

Defendant

No. SCV9736

**ORDER UNSEALING
RECORD AND STRIKING
PORTIONS OF SEALING
ORDER**

I. INTRODUCTION

Moving Parties¹ request an order unsealing and modifying this court's order filed October 11, 2002.² That order provided for the sealing and ordering further restrictions upon, inter alia, the use, distribution or citation to an order of October 3, 2002 imposing sanctions against the "Honda Defendants". The motion is opposed by American Honda Motor Co. Inc., and Daniel Wilcoxon, one of the attorneys for the Plaintiff herein.

II. FACTS

Trial began in the above-entitled case on July 9, 2002. By September 4, 2002 Plaintiff had rested her case-in-chief, as had defendants Batterman and the City of Auburn. The "Honda Defendants" began the presentation of their case, but were interrupted by Plaintiff's motion for

¹ Center for Auto Safety, Patrick Ardis and Lee Griffin

² A copy of that order is attached hereto as Attachment A.

sanctions based upon allegations that Mr. Robert Gratzinger, investigator for Honda, was involved with spoliation of evidence. The jury adjourned until the motion was resolved. Hearing on the motion was conducted on September 20 and 23, 2002. On October 3, 2002 this court issued its decision, imposing the following sanctions against the Honda defendants: (1) The court directed a verdict for Plaintiff and against defendant Honda on the issue of Honda's liability for the injuries suffered by Plaintiff (2) The court ordered that the case be submitted to the jury on the sole issue of Plaintiff's damages; (3) Honda was barred from introducing any testimony on any issue except that of plaintiff's damages; (4) The court ordered that Honda would be jointly and severally liable for any damages awarded against co-defendant Batterman; (5) The court awarded attorney fees and costs to Plaintiff, defendants Batterman and the City of Auburn; and (6) ordered Honda to reimburse the fees of the special master appointed by the court to safeguard the evidence in question. The court ordered that the trial resume on the issue of damages commencing October 8, 2002.

On October 8, all parties rested. The case proceeded to final arguments. Before final arguments were completed, the court was informed that the parties had reached a tentative settlement. The settlement of the case was accomplished with the execution and filing of the documents to which all parties are familiar.

III. DISCUSSION

A. Application of Calif. Rules of Court, Rule 243.1 et. seq. It is clear that the procedures set forth in **California Rules of Court Rule 243.1 et. seq.** for sealing records were not followed with regard to the October 11, 2002 order. The findings required by **Rule 243.1(d)** were not made, nor was there a motion which contained the necessary factual basis required by **Rule 243.2(b)(1)**.

Honda seeks to avoid the application of **Rule 243.1 et. seq.** on the basis that the October 3, 2002 decision is not a “record” within the meaning of **Rule 243.1(b)(1)**. Honda characterizes the order as “vacated” and “nullified” and “Non-Final” and equates the granting of a motion for reconsideration as if it operated to expunge the document from the record³. The argument is based upon the well-established case law that when an order is set aside or vacated, the order is to be treated as if it had never been made. However, no case squarely decides the issue as to whether an order reconsidered pursuant to **Calif. Code Civ. Proc. 1008** constitutes a “record”.

Rule 243.1 itself states that a record means “all or a portion of any document, paper, exhibit, transcript, or other thing filed or lodged with the court.” This all-inclusive definition leaves little doubt that it applies to any document which meets its description, regardless of the legal efficacy of that document. The clear meaning of the rule is that any document which is filed or lodged with the court is subject to the rules regarding sealing that document. To argue that the document is not subject to the rule regarding sealing of records because it has lost its legal vitality, ignores the application of the rule to such things as lodging depositions, marking exhibits which are later refused for admission, or the myriad of documents which find their way into the files of a court, but have no inherent operative value.

The document in this case was a decision of the court which was filed in the court file. The decision was neither interim nor was it tentative. The decision directed a verdict and made other substantive orders which unalterably affected the conduct of the trial. The October 3, 2001 decision was therefore one which was subject to **Rule 243.1 et. seq.** Ordering the document sealed without compliance with the rule constituted an abuse of discretion. **In re Providian Credit Card Cases (2002) 96 Cal.App.4th 292.**

³ For purposes of a motion for reconsideration, it does not matter whether the order attacked is interim one or whether it is final. **Lucas v. Santa Maria Public Airport Dist. (1995) 39 Cal.App.4th 1017.**
Order Unsealing Record

B. Scope of Relief. The order of October 11, 2002 contained many provisions, some of which amounted to functionally “sealing” the record. Movants request that the court vacate several portions of paragraphs C, D, G, I, J, K. and L. The following portions of the Order filed October 11, 2002 are hereby stricken from the order:

Paragraph C⁴ is stricken from the order, this paragraph being the portion of the order which seals the October 3 Sanctions Order.

Paragraph D⁵⁶ is stricken from the order, since its prohibitions against future publication are meant to further the sealing order.

Paragraph I⁷ is stricken from the order. Since this paragraph sought to control the distribution of the order, the unsealing of the order no longer makes possession of the order prohibited.

Paragraph J⁸ is stricken as it also seeks to control the distribution of the order.

Paragraph K⁹ is stricken as is it is meant to further the prohibitions against future disclosure. Unsealing the October 11, 2002 order makes this paragraph unnecessary.

Paragraph L¹⁰ is stricken, as it’s premise is the compliance with a sealing order. Since the document in question will be unsealed, it becomes part of the public domain. Thus, there are no prohibitions against referring to the vacated order.

⁴ “C. The Court’s vacated order will be sealed and will remain sealed except upon further order of this Court.”

⁵ “D. Because the October 3, 2002, order has been vacated and sealed, no party, attorney for any party, or expert or consultant for any party is permitted to testify about the vacated order or any of its contents.”

⁶ There is no Paragraph E. in the Order. **Paragraph G**, while inartfully composed, shall remain in the October 11, 2002 order. Since reconsideration of the October 3, 2002 order was granted by the court, that order is vacated as a matter of law and cannot not be cited as authority for any fact, conclusion, finding, or legal conclusion.

⁷ “I. All copies of the vacated order, and any portions or excerpts thereof, are permanently sealed by order of the Court and all recipients of this order shall destroy such copies of the vacated order, and any portions or excerpts thereof, in their possession or under their control.”

⁸ “J. If any party has provided the vacated order to any retained expert or consultant, the party is directed to obtain and destroy these copies and to advise those experts that the vacated order is null and void and is not to be cited by them for any purpose whatsoever. Further, plaintiff shall make good faith efforts to obtain an affidavit of compliance from each outside expert and consultant who has received a copy of the vacated order.”

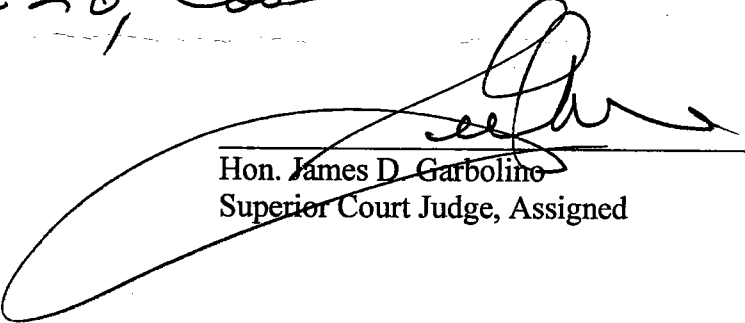
⁹ “K. All parties shall destroy all copies of the vacated order and any portions or excerpts thereof, in their possession or under their control.”

IV. CONCLUSION

For the foregoing reasons, the order of the court dated October 3, 2002 was improperly ordered sealed. The October 11, 2002 order is modified as stated above, and the October 3, 2002 order is hereby unsealed.

Dated:

October 26, 2002



Hon. James D. Garbolino
Superior Court Judge, Assigned

¹⁰ "L. Publication of the vacated order or any citation of the vacated order, or any portion or excerpts (sic) thereof, to any Court or any party from and after the effective date of this order, is prohibited and shall be reportable to this Court."

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF PLACER**

CASE NAME: Sarah Davis

vs.

City of Auburn et al.

Case Number: S-CV-9736

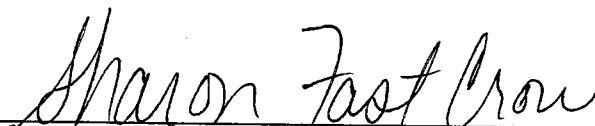
Document: Order After Hearing:
~~Order Unsealing Record and Striking~~
Portions of Sealing Order

DECLARATION OF SERVICE BY MAIL

I am employed by the Superior Court of California, County of Placer; am over 18 years of age and not a party to the within above entitled action. My business address is Clerk of the Superior Court, 453 G. Street, Lincoln, CA 95648. I am readily familiar with the business practice of the County of Placer for collection and processing of correspondence for mailing with the United States Postal Service. This date I served the within document on the parties below named in said action by:

 X placing a true copy thereof in the Placer County inter-office mail addressed in the manner set forth on attachment to this declaration.

October 28, 2005



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