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2 County of Santa Barbara
3 By: RONALD J. ZONEN (State Bar No. 85094)
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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

FEB 09 2005

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

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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,)

No. 1133603

13 Plaintiff.)

14 PLAINIFF'S NOTICE OF
15 MOTION FOR ORDER THAT
16 PLAINTIFF'S REPLY TO
17 DEFENDANT'S OPPOSITION TO
18 MOTION TO EXCLUDE
19 REFERENCE TO JANE DOE'S
20 REFUSAL TO WAIVE PRIVILEGE
21 BE MAINTAINED UNDER
22 CONDITIONAL SEAL:
23 DECLARATION OF GERALD
24 McC. FRANKLIN IN SUPPORT
25 THEREOF: MEMORANDUM
26 OF POINTS AND AUTHORITIES

16 v.

18 MICHAEL JOE JACKSON,

19 Defendant.)

20 DATE: TBA
21 TIME: 8:30 a.m.
22 DEPT: TBA (Melville)

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

26 PLEASE TAKE NOTICE that on the date next fixed for the hearing of motions, at
27 8:30 a.m. or as soon thereafter as the matter may be heard, in the Department to be assigned.
28 Plaintiff will, and hereby does, move for an order directing that Plaintiff's Reply to

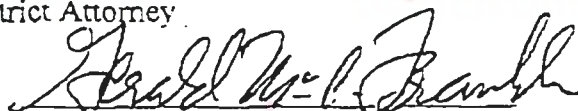
1 Defendant's Opposition to Exclude Reference to Jane Doe's Refusal to Waive Attorney Client
2 Privilege, filed contemporaneously with this Request for Conditional Sealing, be maintained
3 under conditional seal until further order of court, pursuant to California Rules of Court, rule
4 243.1 et seq.

5 The motion will be made on the ground that the facts, as established by the
6 accompanying declaration of Gerald McC. Franklin, are sufficient to justify sealing the Reply
7 pursuant to California Rules of Court, rule 243.1 et seq.

8 The motion to conditionally seal will be based on this notice of motion, on the
9 declaration of Gerald McC. Franklin and the memorandum of points and authorities served and
10 filed herewith, on the records and the file herein, and on such evidence as may be presented at
11 the hearing of the motion.

12 DATED: February 9, 2005

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14 THOMAS W. SNEDDON, JR.
District Attorney

15 By: 
16 Gerald McC. Franklin, Senior Deputy

17 Attorneys for Plaintiff
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DECLARATION OF GERALD McC. FRANKLIN

I, Gerald McC. Franklin, 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. Plaintiff's Reply to Defendant's Opposition to Exclude Reference to Jane Doe's Refusal to Waive Attorney Client Privilege, filed contemporaneously with this Motion to Conditionally Seal, is made on the ground that Plaintiff's Reply to Defendant's Opposition to Exclude Reference to Jane Doe's Refusal to Waive Attorney Client Privilege makes reference to evidentiary facts not yet made public, and to the names of potential witnesses.

3. I believe that the interest of each party to a fair trial dictates that Plaintiff's Reply to Defendant's Opposition to Exclude Reference to Jane Doe's Refusal to Waive Attorney Client Privilege should remain under conditional seal until the appropriateness of sealing the document and the release of a redacted version of the Reply is determined by the Court.

4. I believe an order maintaining Plaintiff's Reply to Defendant's Opposition to Exclude Reference to Jane Doe's Refusal to Waive Attorney Client Privilege 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 Santa Barbara, California on February 9, 2005.


Gerald McC. Franklin

MEMORANDUM OF POINTS AND AUTHORITIES

The procedure for sealing records under California Rules of Court, rule 243., 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: February 9, 2005

2 Respectfully submitted,

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

5 By: Gerald McC. Franklin
6 Gerald McC. Franklin, Senior Deputy

7 Attorneys for Plaintiff

PROOF OF SERVICE

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; 1112 Santa Barbara Street, Santa Barbara, California 93101.

On February 9, 2005, I served the within PLAINTIFF'S REQUEST THAT PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO EXCLUDE REFERENCE TO JANE DOE'S REFUSAL TO WAIVE ATTORNEY CLIENT PRIVILEGE BE MAINTAINED UNDER SEAL on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by transmitting a true copy thereof on defendant's counsel by fax at the confidential fax number in Santa Maria and to Media's counsel at the facsimile number shown with the address for counsel on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Santa Barbara, California on this 9th day of February, 2005.

Gerald McC. Franklin
Gerald McC. Franklin

SERVICE LIST

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