

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA
FEB 10 2005
GARY H. BLANK, EXECUTIVE DIRECTOR
COURT CLERK

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

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14 MICHAEL JOE JACKSON,

15 Defendant.

No. 1133603

16 PLAINTIFF'S NOTICE OF
17 MOTION THAT PLAINTIFF'S
18 MOTION FOR ADMISSION OF
19 CERTAIN STATEMENTS BY
20 DEFENDANT ON "LIVING WITH
21 MICHAEL JACKSON" AND "60
22 MINUTES BE MAINTAINED
23 UNDER CONDITIONAL SEAL;
24 DECLARATION OF GERALD
25 McC. FRANKLIN IN SUPPORT
26 THEREOF; MEMORANDUM
27 OF POINTS AND AUTHORITIES

28 DATE: ~~February 21, 2005~~
TIME: ~~8:30 a.m.~~
DEPT: TBA (Melville)

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

32 PLEASE TAKE NOTICE that on ~~February 21, 2005~~, at ~~9:30~~ a.m. or as soon
33 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and
34 hereby docs, move for an order directing that Plaintiff's Motion For Admission Of Certain
35 Statements By Defendant On "Living With Michael Jackson" And "60 Minutes" As

1 Exceptions To The Hearsay Rule, filed contemporaneously with this Request for Conditional
2 Sealing, be maintained under conditional seal until further order of court, pursuant to California
3 Rules of Court, rule 243.1 et seq.

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

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

11 DATED: February 10, 2005

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13 THOMAS W. SNEDDON, JR.
District Attorney

14 By: 
15 Gerald McC. Franklin, Senior Deputy

16 Attorneys for Plaintiff
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DECLARATION OF GERALD McC. FRANKLIN

1
2 I, Gerald McC. Franklin, say:

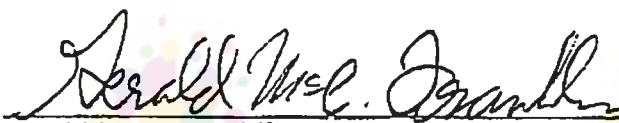
3 1. I am a lawyer admitted to practice in the State of California. I am a Senior
4 Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for
5 the People. Plaintiff in this action.

6 2. Plaintiff's Motion For Admission Of Certain Statements By Defendant On
7 "Living With Michael Jackson" And "60 Minutes" As Exceptions To The Hearsay Rule. filed
8 contemporaneously with this Request, is made on the ground that Plaintiff's Motion re
9 Admissions makes reference to evidentiary facts not yet made public, and to the names of
10 potential witnesses.

11 3. I believe that the interest of each party to a fair trial overrides the public's prompt
12 access to Plaintiff's Motion re Admissions until the appropriateness of the release of a redacted
13 version of the Motion is determined by the Court.

14 4. I believe an order maintaining Plaintiff's Motion For Admission Of Certain
15 Statements By Defendant On "Living With Michael Jackson" And "60 Minutes" As
16 Exceptions To The Hearsay Rule under seal in the interim would avert the probability of
17 prejudice, and that no more narrowly tailored order with respect to that pleading could be
18 drafted to achieve the overriding interest in a fair trial.

19 I declare under penalty of perjury under the laws of California that the foregoing is
20 true and correct, except as to matters stated upon my information and belief, and as to such
21 matters I believe it to be true. I execute this declaration at Santa Barbara, California on
22 February 10, 2005.

23
24 
Gerald McC. Franklin

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: February 10, 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

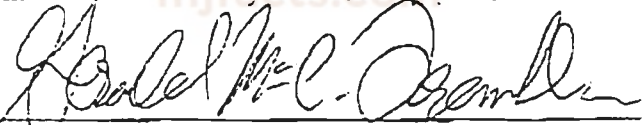
STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) SS

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 January 31, 2005, I served the within PLAINTIFF'S REQUEST THAT PLAINTIFF'S MOTION FOR ADMISSION OF CERTAIN STATEMENTS BY DEFENDANT ON "LIVING WITH MICHAEL JACKSON" AND "60 MINUTES" AS EXCEPTIONS TO THE HEARSAY RULE BE MAINTAINED UNDER SEAL on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by serving a true copy thereof on defendant's counsel in open court and by transmitting a true copy thereof by facsimile 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 10th day of February, 2005.


Gerald McC. Franklin

SERVICE LIST

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