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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 10 2005

GARY M. BLAIR, Executive Officer
By *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

11
12 THE PEOPLE OF THE STATE OF CALIFORNIA,)

No. 1133605

13 Plaintiff,)

PLAINTIFF'S NOTICE OF
MOTION THAT PLAINTIFF'S
14 OPPOSITION TO DEFENDANT'S
REQUEST THAT "FOOTAGE"
15 VIDEO BE INCLUDED AS PART
OF PLAINTIFF'S CASE IN CHIEF
16 BE MAINTAINED UNDER
CONDITIONAL SEAL:
17 DECLARATION OF GERALD
McC. FRANKLIN IN SUPPORT
18 THEREOF; MEMORANDUM
OF POINTS AND AUTHORITIES

15 v.

17 MICHAEL JOE JACKSON,

18 Defendant.)

19 DATE: ~~February 21, 2005~~
20 TIME: ~~9:30 a.m.~~
DEPT: TBA (Melville)

21
22 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR.,
23 ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF RECORD, AND TO
24 THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN & CRUTCHER, LLP:

25 PLEASE TAKE NOTICE that on ~~February 21, 2005, at 9:30 a.m.~~ or as soon
26 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and
27 hereby does, move for an order directing that Plaintiff's Opposition to Defendant's Request
28 That Plaintiff Be Required To Present The Hearsay Evidence Of Defendant's Response To

1 "Living With Michael Jackson" As Part Of Its Case In Chief, filed contemporaneously with
2 this Request for Conditional Sealing, be maintained under conditional seal until further order of
3 court, pursuant to California 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

12 THOMAS W. SNEDDON, JR.
13 District Attorney

14 By: 
15 Gerald McC. Franklin, Senior Deputy

16 Attorneys for Plaintiff

DECLARATION OF GERALD McC. FRANKLIN

1. 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 Opposition to Defendant's Request That Plaintiff Be Required To Present The Hearsay Evidence Of Defendant's Response To "Living With Michael Jackson" As Part Of Its Case In Chief, filed contemporaneously with this Request, is made on the ground that Plaintiff's Opposition re Hearsay 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 overrides the public's prompt access to Plaintiff's Opposition re Hearsay until the appropriateness of the release of a redacted version of the Opposition is determined by the Court.

4. I believe an order maintaining Plaintiff's Opposition to Defendant's Request That Plaintiff Be Required To Present The Hearsay Evidence Of Defendant's Response To "Living With Michael Jackson" As Part Of Its Case In Chief 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 10, 2005.

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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