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7

SUPERIOR COURT OF CALIFORNIA
SEP 16 2004
GARY M. ...
BY ...
CARRIE ...

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,
13 Plaintiff,

14 v.

15
16 MICHAEL JOE JACKSON,
17 Defendant.

No. 1133603
PLAINTIFF'S NOTICE OF
MOTION FOR ORDER
DIRECTING THAT PLAINTIFF'S
RESPONSE TO DEFENDANT'S
REPORT RE: FAILURE TO
PRODUCE DISCOVERY, ETC.
BE MAINTAINED UNDER SEAL.
UNTIL FURTHER ORDER OF
COURT; DECLARATION OF
GERALD McC. FRANKLIN IN
SUPPORT OF SEALING;
MEMORANDUM OF POINTS
AND AUTHORITIES

~~UNDER SEAL~~

DATE: September 16, 2004
TIME: 8:30 a.m.
DEPT: TBA (Melville)

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

28 PLEASE TAKE NOTICE that on September 16, 2004, at 8:30 a.m. or as soon

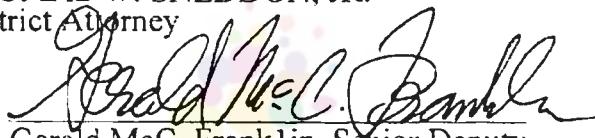
1 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and
2 hereby does, move for an order directing that the contemporaneously-filed People's Response
3 To Defendant's Report Re: Failure to Produce Discovery and Request for Sanctions, filed
4 under seal, be maintained under conditional seal until further order of court, pursuant to
5 California Rules of Court, rule 243.1 et seq.

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

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

13 DATED: September 8, 2004

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15 THOMAS W. SNEDDON, JR.
District Attorney

16 By: 
17 Gerald McC. Franklin, Senior Deputy

18 Attorneys for Plaintiff
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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 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: September 8, 2004

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

SERVICE LIST

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