

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara  
2 By: RONALD J. ZONEN (State Bar No. 85094)  
Senior Deputy District Attorney  
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Senior Deputy District Attorney  
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FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

SEP 16 2004

SANTA MARIA CLERK  
COURT CLERK  
COURT DIVISION

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,  
13 Plaintiff,  
14 v.  
15 MICHAEL JOE JACKSON,  
16 Defendant.

No. 1133603

PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
COURT'S REVIEW OF EX  
EX PARTE REQUEST FOR  
ORDER DIRECTING THE  
CALIFORNIA DEPARTMENT OF  
JUSTICE TO PRODUCE  
CERTAIN DOCUMENTS TO  
DETERMINE WHETHER SEALING  
IS APPROPRIATE; DECLARATION  
OF GERALD McC. FRANKLIN;  
MEMORANDUM OF POINTS AND  
AUTHORITIES

UNDER SEAL

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

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, request the Court to review Plaintiff's Ex Parte Request for Order Directing the  
3 California of Justice to Produce Documents and Evidence to the District Attorney Concerning  
4 the Arrest and Booking of Defendant, filed contemporaneously with this Motion, to determine  
5 for itself whether an order directing that the Ex Parte Request is an appropriate document for  
6 sealing., and that the Request be maintained under conditional seal until further order of court,  
7 pursuant to California Rules of Court, rule 243.1 et seq.

8 The motion will be made on the ground that the facts, as established by the  
9 accompanying declaration of Gerald McC. Franklin, may not be sufficient to justify sealing the  
10 specified motion pursuant to California Rules of Court, rule 243.1 et seq.

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

15 DATED: September 16, 2004

16 THOMAS W. SNEDDON, JR.  
17 District Attorney

18 By:   
19 Gerald McC. Franklin, Senior Deputy

20 Attorneys for Plaintiff

1 DECLARATION OF GERALD McC. FRANKLIN

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. This motion to conditionally seal the contemporaneously-filed Plaintiff's  
7 Plaintiff's Ex Parte Request for Order Directing the California of Justice to Produce  
8 Documents and Evidence to the District Attorney Concerning the Arrest and Booking of  
9 Defendant, and requesting that the Court determine for itself whether the Ex Parte Request for  
10 Order Re Booking Documents, is made on the ground that the Ex Parte Request does not, in  
11 the undersigned's opinion, itself reveal any information that would warrant sealing.

12 3. I believe that the interest of each party to a fair trial dictates that the Ex Parte  
13 Request should remain under conditional seal until the appropriateness of sealing the document  
14 and, if sealing is ordered, of the release of a redacted version of the opposition is determined by  
15 the court.

16 I declare under penalty of perjury under the laws of California that the  
17 foregoing is true and correct, except as to matters stated upon my information and belief, and as  
18 to such matters I believe it to be true. I execute this declaration at Santa Maria, California on  
19 September 16, 2004.

20   
21 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: September 16, 2004

2 Respectfully submitted,

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

5 By:



6 Gerald McC. Franklin, Senior Deputy

7 Attorneys for Plaintiff

1  
2 PROOF OF SERVICE

3 STATE OF CALIFORNIA )  
4 COUNTY OF SANTA BARBARA ) SS

5  
6 I am a citizen of the United States and a resident of the County aforesaid; I am over  
7 the age of eighteen years and I am not a party to the within-entitled action. My business  
8 address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara,  
9 California 93101.

10 On September 16, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION  
11 FOR COURT'S REVIEW OF PLAINTIFF'S EX PARTE REQUEST FOR ORDER  
12 DIRECTING THE CALIFORNIA OF JUSTICE TO PRODUCE DOCUMENTS AND  
13 EVIDENCE TO THE DISTRICT ATTORNEY CONCERNING THE ARREST AND  
14 BOOKING OF DEFENDANT and PROPOSED ORDER on THEODORE BOUTROUS,  
15 Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN,  
16 ROBERT SANGER and BRIAN OXMAN, by personally delivering a true copy to each  
17 counsel in open court. I declare under penalty of perjury that the foregoing is true and correct.

18 Executed at Santa Maria, California on this 16th day of September, 2004.

19  
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21 \_\_\_\_\_  
22 Gerald McC. Franklin