

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
3 J. GORDON AUCHINCLOSS (State Bar No. 150251)
Senior Deputy District Attorney
4 GERALD McC. FRANKLIN (State Bar No. 40171)
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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

SEP 17 2004

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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,
13 Plaintiff.

14 v.

16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
COURT'S REVIEW OF
PROPOSED REDACTION OF
EXHIBITS TO DETERMINE
WHETHER SEALING IS
APPROPRIATE; DECLARATION
OF GERALD McC. FRANKLIN;
MEMORANDUM OF POINTS AND
AUTHORITIES

~~UNDER SEAL~~

DATE: September 17, 2004
TIME: 8:30 a.m.
DEPT: TBA (Melville)

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

27 PLEASE TAKE NOTICE that on September 17, 2004, at 8:30 a.m. or as soon
28 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and


1 hereby does, request the Court to review Plaintiff's Proposed Redaction of Exhibits Offered In
2 Connection with Pending Motions to Suppress Evidence, filed contemporaneously with this
3 Motion, to determine for itself whether an order directing that the Plaintiff's Proposed
4 Redactions is an appropriate document for sealing., and that the Proposed Redactions
5 submission be maintained under conditional seal until further order of court, pursuant to
6 California Rules of Court, rule 243.1 et seq.

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

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

14 DATED: September 17, 2004

15 THOMAS W. SNEDDON, JR.
16 District Attorney

17 By: 
18 Gerald McC. Franklin, Senior Deputy

19 Attorneys for Plaintiff
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1 DECLARATION OF GERALD McC. FRANKLIN

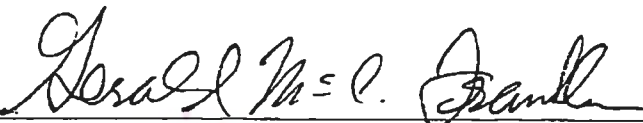
2 I, Gerald McC. Franklin, say:

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 Proposed Redaction of Exhibits in Connection With Pending Motions to Suppress, and
8 requesting that the Court determine for itself whether the Proposed Redactions document and
9 its attached exhibits requires sealing, is made on the ground that the Proposed Redactions and
10 attachments do not, in the undersigned's opinion, reveal any information that would warrant
11 sealing.

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

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

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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; 1105 Santa Barbara Street, Santa Barbara, California 93101.

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

Executed at Santa Maria, California on this 17th day of September, 2004.


Gerald McC. Franklin