

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 07 2005

GARY M. BLAIR, Executive Officer
BY *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

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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Santa Barbara, CA 93101
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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
REQUEST FOR ORDER
DIRECTING THAT PLAINTIFF'S
RESPONSE TO DEFENDANT'S
MOTION TO COMPEL BE
MAINTAINED UNDER
CONDITIONAL SEAL;
DECLARATION OF GERALD
McC. FRANKLIN IN SUPPORT
THEREOF; MEMORANDUM
OF POINTS AND AUTHORITIES

DATE: January 12, 2005
TIME: 8:30 a.m.
DEPT: TBA (Melville)

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 January 12, 2005, at 8:30 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 Response to Defendant's Motion to
28 Compel, filed contemporaneously with this Request for Conditional Sealing, be maintained

1 under conditional seal until further order of court, pursuant to California Rules of Court, rule
2 243.1 et seq.

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

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

10 DATED: January 7, 2005

11 THOMAS W. SNEDDON, JR.
12 District Attorney

13 By: 
14 Gerald McC. Franklin, Senior Deputy

15 Attorneys for Plaintiff
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DECLARATION OF GERALD McC. FRANKLIN

I, Gerald McC. Franklin, say:

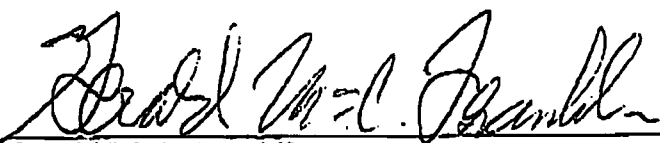
1. I am a lawyer admitted to practice in the State of California. I am a Senior Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for the People, Plaintiff in this action.

2. Plaintiff's Response to Defendant's Motion to Compel Discovery, filed contemporaneously with this Request, is made on the ground that the Response makes reference to evidentiary facts not yet made public.

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

4. I believe an order maintaining our Response to Defendant's Motion to Compel 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 January 7, 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.

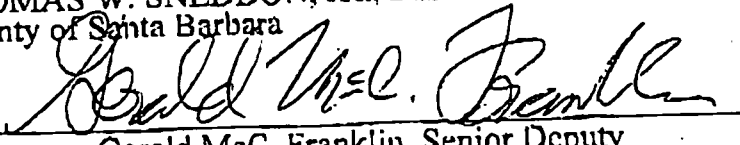
Rule 243.2(b) provides, in pertinent part, that "Pending the determination of the motion [of a party to file a record under seal], the lodged record will be conditionally under seal."

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1 DATED: January 7, 2005

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
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3 **PROOF OF SERVICE**


4 STATE OF CALIFORNIA
5 COUNTY OF SANTA BARBARA } SS

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; 1112 Santa Barbara Street, Santa Barbara,
9 California 93101.

10 On January 7, 2005, I served the within PLAINTIFF'S REQUEST THAT
11 PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL BE MAINTAINED
12 UNDER SEAL on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR.,
13 ROBERT SANGER and BRIAN OXMAN, by personally delivering a true copy thereof to
14 Attorney Robert Sanger's office and by causing a true copy to be transmitted by facsimile to
15 Defendant's co-counsel (except Mr. Sanger and Mr. Oxman) and to Media's counsel at the
16 facsimile number shown with the address for counsel on the attached Service List, and then
17 causing that copy to be mailed to each (except Mr. Sanger and Mr. Oxman) at the address
18 shown on the Service List.

19 I declare under penalty of perjury that the foregoing is true and correct.

20 Executed at Santa Barbara, California on this 7th day of January, 2005.

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23 Gerald McC. Franklin

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SERVICE LIST

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