

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)
Senior Deputy District Attorney
5 1112 Santa Barbara Street
Santa Barbara, CA 93101
6 Telephone: (805) 568-2300
FAX: (805) 568-2398
7

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA
FEB 10 2005
By: [Signature] Executive Officer
OF PUBLIC WORKS 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
15 v.
16
17 MICHAEL JOE JACKSON,
18 Defendant.

No. 1133603
PLAINTIFF'S NOTICE OF
MOTION THAT MOTION TO
EXCLUDE ANY REFERENCE
BY DEFENSE COUNSEL TO
[REDACTED]
[REDACTED] BE MAINTAINED
UNDER CONDITIONAL SEAL;
DECLARATION OF GERALD
McC. FRANKLIN IN SUPPORT
THEREOF; MEMORANDUM
OF POINTS AND AUTHORITIES

DATE: February 10, 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 ^{February 10,} ~~January 28,~~ 2005, at 8:30 a.m. or as soon thereafter as the
26 matter may be heard, in the Department to be assigned, Plaintiff will, and hereby does, request
27 the Court to review Plaintiff's Motion to Exclude Any Reference By Defense Counsel To [REDACTED]
28 [REDACTED] filed contemporaneously with this

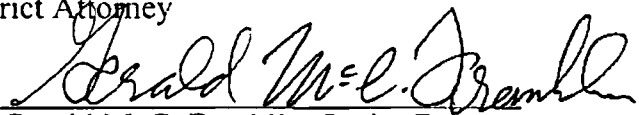
1 Motion, to determine for itself whether an order directing that the Motion re: [REDACTED] is
2 an appropriate document for sealing., and that the Motion be maintained under conditional seal
3 until further order of court, pursuant to California Rules of Court, rule 243.1 et seq.

4 The motion will be made on the ground that the discussion of facts in Plaintiff's
5 Motion to Exclude Any Reference By Defense Counsel To [REDACTED]
6 [REDACTED] as established by the accompanying declaration of Gerald McC.
7 Franklin, may not be sufficient to justify sealing the specified motion pursuant to California
8 Rules of Court, rule 243.1 et seq.

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

13 DATED: January 31, 2005

14 THOMAS W. SNEDDON, JR.
15 District Attorney

16 By: 
17 Gerald McC. Franklin, Senior Deputy

18 Attorneys for Plaintiff
19
20
21
22
23
24
25
26
27
28

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. This motion to conditionally seal the contemporaneously-filed Plaintiff's Motion to Exclude Any Reference By Defense Counsel To [redacted] and requesting that the Court determine for itself whether the Motion is appropriate for sealing, is made on the ground that the Motion does not, in the undersigned's opinion, itself reveal any information that would warrant sealing.

3. I believe that the interest of each party to a fair trial dictates that Plaintiff's Motion to Exclude Any Reference By Defense Counsel To [redacted] should remain under conditional seal until the appropriateness of sealing the document and, if sealing is ordered, of the release of a redacted version of the Motion is determined by the court.

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 Maria, California on January 31, 2005.

Gerald McC. Franklin
Gerald McC. Franklin

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 . The procedure for sealing records under California Rules of Court, rule 243.1 et seq.
3 applies only to records that are deemed public. (*Id.*, rule 243.1(a)(2).) Motions and responsive
4 pleadings in criminal cases are, ordinarily, “public” records of the court.

5 Rule 243.1(d) provides that

6 The court may order that a record be filed under seal only if it
7 expressly finds facts that establish:

- 8 (1) There exists an overriding interest that overcomes the right of
9 public access to the record;
- 10 (2) The overriding interest supports sealing the record;
- 11 (3) A substantial probability exists that the overriding interest will
12 be prejudiced if the record is not sealed;
- 13 (4) The proposed sealing is narrowly tailored; and
- 14 (5) No less restrictive means exist to achieve the overriding interest.

15 Rule 243.1(e) provides, in pertinent part:

16 (1) An order sealing the record must (i) specifically set forth the
17 facts findings that support the findings and (ii) direct the sealing of
18 only those documents and pages, or, if reasonably practicable,
19 portions of those documents and pages, that contain the material that
20 needs to be placed under seal. All other portions of each documents
or page must be included in the public file.

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

24 ////

25 ////

26 ////

27 ////

28 ////

1 DATED: January 31, 2005

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
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

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

On January 31, 2005, I served the within PLAINTIFF'S REQUEST THAT PLAINTIFF'S MOTION TO EXCLUDE ANY REFERENCE BY DEFENSE COUNSEL TO [REDACTED] BE MAINTAINED UNDER SEAL on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by serving a true copy thereof on defendant's counsel in open court and by transmitting a true copy thereof by facsimile to Media's counsel at the facsimile number shown with the address for counsel on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Santa Maria, California on this 31st day of January, 2005.


Gerald McC. Franklin

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

GIBSON, DUNN & CRUTCHER, LLP
Theodore J. Boutrous, Jr., Esq.
William E. Thomson, Esq.
Julian Poon, Esq.
333 S. Grand Avenue
Los Angeles, CA 90071-3197
FAX: (213) 229-6758

Attorneys for (collectively) "Media"

THOMAS A. MESEREAU, JR.
Collins, Mesereau, Reddock & Yu, LLP
1875 Century Park East, No. 700
Los Angeles, CA 90067
FAX: [SANTA MARIA - CONFIDENTIAL]

Attorney for Defendant Michael Jackson

ROBERT SANGER, ESQ.
Sanger & Swysen, Lawyers
233 E. Carrillo Street, Suite C
Santa Barbara, CA 93001
FAX: (805) 963-7311

Co-counsel for Defendant

BRIAN OXMAN, ESQ.
Oxman & Jaroscak, Lawyers
14126 E. Rosecrans Blvd.,
Santa Fe Springs, CA 90670

Co-counsel for Defendant