

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

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 31 2005

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,)

15 v.)

16 MICHAEL JOE JACKSON,)

17 Defendant.)

No. 1133603

PLAINTIFF'S NOTICE OF
MOTION THAT MOTION TO
EXCLUDE REFERENCE BY
DEFENSE COUNSEL TO JANE
DOE'S USE OF "[REDACTED]"
"[REDACTED]" BE MAINTAINED
UNDER CONDITIONAL SEAL;
DECLARATION OF GERALD
McC. FRANKLIN IN SUPPORT
THEREOF; MEMORANDUM
OF POINTS AND AUTHORITIES

19 DATE: February 10, 2005
20 TIME: 8:30 a.m.
21 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, 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 Motion to Limit Any Reference By
28 Defense Counsel to Jane Doe's Use Of (Or Failure To Use) "[REDACTED]" Etc.,

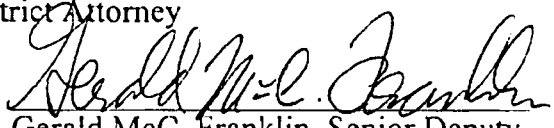
1 filed contemporaneously with this Request for Conditional Sealing, be maintained under
2 conditional seal until further order of court, pursuant to California Rules of Court, rule 243.1 et
3 seq.

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

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

11 DATED: January 31, 2005

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13 THOMAS W. SNEDDON, JR.
District Attorney

14 By: 
15 Gerald McC. Franklin, Senior Deputy

16 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 Motion to Limit Any Reference By Defense Counsel to Jane Doe's Use Of (Or Failure To Use) "[REDACTED]" Etc., filed contemporaneously with this Request, is made on the ground that Plaintiff's Motion to Limit Any Reference By Defense Counsel to Jane Doe's Use Of (Or Failure To Use) "Psychiatric Medication" makes reference to evidentiary facts not yet made public, and to the names of potential witnesses.

3. I believe that the interest of each party to a fair trial overrides the public's prompt access to Plaintiff's Motion to Limit Any Reference By Defense Counsel to Jane Doe's Use Of (Or Failure To Use) "[REDACTED]" Etc. until the appropriateness of the release of a redacted version of the Motion is determined by the Court.

4. I believe an order maintaining Plaintiff's Motion to Limit Any Reference By Defense Counsel to Jane Doe's Use Of (Or Failure To Use) "[REDACTED]" Etc. 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 Maria, California on January 31, 2005.


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.”

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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
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3 **PROOF OF SERVICE**

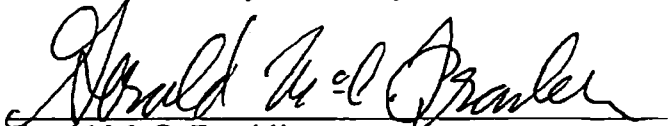
3 STATE OF CALIFORNIA
4 COUNTY OF SANTA BARBARA } SS

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

10 On January 31, 2005. I served the within PLAINTIFF'S REQUEST THAT
11 PLAINTIFF'S MOTION TO LIMIT ANY REFERENCE BY DEFENSE COUNSEL TO
12 JANE DOE'S USE OF (OR FAILURE TO USE) "[REDACTED]" ETC. BE
13 MAINTAINED UNDER SEAL on Media's counsel and on Defendant, by THOMAS A.
14 MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by serving a true copy thereof
15 on defendant's counsel in open court and by transmitting a true copy thereof by facsimile to
16 Media's counsel at the facsimile number shown with the address for counsel on the attached
17 Service List.

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

19 Executed at Santa Maria, California on this 31st day of January, 2005.

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22 Gerald McC. Franklin

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SERVICE LIST

GIBSON, DUNN & CRUTCHER, LLP
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Attorneys for (collectively) "Media"

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Attorney for Defendant Michael Jackson

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Co-counsel for Defendant

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