

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
SEP 16 2004
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

SEP 17 2004

GARY M. PLATT
St. Barbara
CRIMINAL JUSTICE CENTER

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION
11

12 THE PEOPLE OF THE STATE OF CALIFORNIA,
13 Plaintiff,
14 v.
15
16 MICHAEL JOE JACKSON,
17 Defendant.
18
19

No. 1133603
PLAINTIFF'S NOTICE OF
MOTION FOR ORDER
DIRECTING THAT PLAINTIFF'S
SUPPLEMENTAL RESPONSE TO
MOTION TO SUPPRESS BE
MAINTAINED UNDER SEAL
UNTIL FURTHER ORDER OF
COURT; DECLARATION OF
GERALD McC. FRANKLIN;
MEMORANDUM OF POINTS
AND AUTHORITIES

~~UNDER SEAL~~

20
21 DATE: September 16, 2004
TIME: 8:30 a.m.
DEPT: TBA (Melville)
22

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 16, 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, move for an order directing that Plaintiff's Supplemental Response In Opposition
 2 To Defense Motion To Suppress, filed September 3, 2004 under seal be maintained under
 3 conditional seal until further order of court, pursuant to California Rules of Court, rule 243.1 et
 4 seq.

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

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

12 DATED: September 3, 2004

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 14 THOMAS W. SNEDDON, JR.
 District Attorney

15 By: 
 16 Gerald McC. Franklin, Senior Deputy
 17 Attorneys for Plaintiff
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DECLARATION OF GERALD McC. FRANKLIN

I. Gerald McC. Franklin, say:

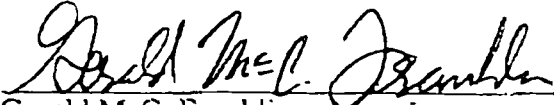
1. I am a lawyer admitted to practice in the State of California. I am a Senior Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for the People, Plaintiff in this action.

2. This motion to conditionally seal Plaintiff's Supplemental Response In Opposition to Defense Motion to Suppress is made on the ground that the pending responsive pleading makes reference to evidentiary facts not yet made public, the names of certain witnesses, and information that would tend to identify them. It also makes arguments concerning the legal and factual merits of other motions which are currently under seal, in whole or in part.

3. I believe that the interest of each party to a fair trial overrides the public's prompt access to Plaintiff's opposition to Defendant's motion to traverse the affidavits and quash certain search warrants until the appropriateness of the release of a redacted version of the opposition is determined by the court.

4. I believe an order maintaining this motion 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 September 3, 2004.


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: September 3, 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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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; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On September 4, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR ORDER DIRECTING THAT PLAINTIFF'S SUPPLEMENTAL RESPONSE IN OPPOSITION TO DEFENSE MOTION TO SUPPRESS BE MAINTAINED UNDER SEAL and PROPOSED ORDER on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER and BRIAN OXMAN, by faxing a true copy to counsel (except Mr. Oxman) at the facsimile number shown with the address of each on the attached Service List, and then by causing to be mailed a true copy to each counsel at that address.

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

Executed at Santa Barbara, California on this 4th day of September, 2004.


Gerald McC. Franklin

SERVICE LIST

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