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County of Santa Barbara

2 By: RONALD J. ZONEN (State Bar No. 85094)

Senior Deputy District Attorney

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**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

SEP 29 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

11  
12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15 MICHAEL JOE JACKSON,

16 Defendant.

No. 1133603

17 NOTICE OF MOTION AND  
18 MOTION FOR ORDER  
19 DIRECTING THAT STIPULATION  
20 REGARDING RELEASE OF  
21 CERTAIN GRAND JURY  
22 FOR FURTHER EXAMINATION,  
23 AND ORDER THEREON, BE  
24 FILED AND MAINTAINED  
25 UNDER CONDITIONAL SEAL  
26 UNTIL FURTHER ORDER OF  
27 COURT; DECLARATION OF  
28 GERALD McC. FRANKLIN;  
MEMORANDUM OF POINTS  
AND AUTHORITIES;

(Cal. Rules of Ct., rule 243.1 et seq.)

DATE: October 14, 2004

TIME: 8:30 a.m.

DEPT: SM 2 (Melville)

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

28 PLEASE TAKE NOTICE that on October 14, 2004, at 8:30 a.m. or as soon

1 thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby docs,  
2 move for an order directing that the following records be maintained under conditional seal  
3 until further order of court, pursuant to California Rules of Court, rule 243.1 et seq:

4 Stipulation for release of certain grand jury exhibits for further  
5 forensic examination, and Order thereon.

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

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

13 DATED: September 29, 2004

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15 THOMAS W. SNEDDON, JR.  
District Attorney

16 By:   
17 Gerald McC. Franklin, Senior Deputy

18 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 seal Stipulation for Release of Certain Grand Jury Exhibits and the Order thereon is made because both the Stipulation and the Order disclose the nature of certain evidence received by the grand jury, which information has not been disclosed to the public.

3. The information revealed by the identification of certain of the exhibits would be prejudicial to defendant's right to a fair trial if disclosed to the public prior to trial and while the investigation itself is still underway.

4. I therefore believe that the interest in a fair trial overrides the public's prompt access to an unredacted copy of the stipulation and order.

6. I believe an order maintaining the stipulation and any order thereon under seal would avert the probability of prejudice, and that no more narrowly tailored order with respect to those documents 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 29, 2004.

  
Gerald McC. Franklin

MEMORANDUM OF POINTS AND AUTHORITIES

1  
2 Evidence Code section 1040, subdivision (a) provides: "As used in this section,  
3 'official information' means information acquired in confidence by a public employee in the  
4 course of his or her duty and not open, or officially disclosed, to the public prior to the time the  
5 claim of privilege is made."

6 Evidence Code section 1042, subdivision (b) provides: "Notwithstanding  
7 subdivision (a) [requiring a court to make adverse findings adverse to the public entity upon  
8 any issue in a court proceeding to which privileged information is material], where a search is  
9 made pursuant to a warrant valid on its face, the public entity bringing a criminal proceeding is  
10 not required to reveal to the defendant *official information* or the identity of an informer in  
11 order to establish the legality of the search or the admissibility of any evidence obtained as a  
12 result of it." (Emphasis added.)

13 The procedure for sealing records under California Rules of Court, rule 243.1 et seq.  
14 applies only to records that are deemed public. (*Id.*, rule 243.1(a)(2).)

15 Rule 243.1(d) provides that

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

- 18 (1) There exists an overriding interest that overcomes the right of  
19 public access to the record;
- 20 (2) The overriding interest supports sealing the record;
- 21 (3) A substantial probability exists that the overriding interest will  
22 be prejudiced if the record is not sealed;
- 23 (4) The proposed sealing is narrowly tailored; and
- 24 (5) No less restrictive means exist to achieve the overriding interest.

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

- 26 (1) An order sealing the record must (i) specifically set forth the  
27 facts findings that support the findings and (ii) direct the sealing of  
28 only those documents and pages, or, if reasonably practicable,  
portions of those documents and pages, that contain the material that

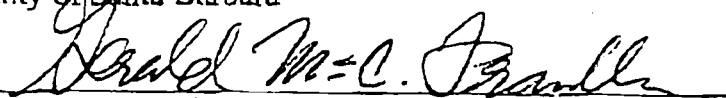
1 needs to be placed under seal. All other portions of each documents  
2 or page must be included in the public file.

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

6 DATED: September 29, 2004

7 Respectfully submitted,

8 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
9 County of Santa Barbara

10 By:   
11 Gerald McC. Franklin, Senior Deputy

12 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 29, 2004, I served the within NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING THAT STIPULATION REGARDING RELEASE OF CERTAIN GRAND JURY EXHIBITS FOR FURTHER EXAMINATION, AND THE ORDER THEREON, BE FILED AND MAINTAINED UNDER CONDITIONAL SEAL UNTIL FURTHER ORDER OF COURT on Defendant, and THE PROPOSED ORDER and PROPOSED REDACTION on Media's counsel, and on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, and ROBERT SANGER, by causing to be mailed a true copy to each counsel at the address shown on the attached Service List.

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

Executed at Santa Barbara, California on this 29th day of September, 2004.

  
Gerald McC. Franklin

## SERVICE LIST

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