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County of Santa Barbara
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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

OCT 08 2004

GARY M. BLAIR, Executive Officer
Carril & Wagner
CARRIEL 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,)

14 v.)

16 MICHAEL JOE JACKSON,)

17 Defendant.)

No. 1133603

PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
COURT'S REVIEW OF
PEOPLE'S RESPONSE TO
DEFENDANT'S MOTION TO
COMPEL DISCOVERY, TO
DETERMINE WHETHER SEALING
IS APPROPRIATE; DECLARATION
OF GERALD McC. FRANKLIN;
MEMORANDUM OF POINTS AND
AUTHORITIES

UNDER SEAL

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

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

26 PLEASE TAKE NOTICE that on October 14, 2004, at 8:30 a.m. or as soon thereafter as
27 the matter may be heard, in the Department to be assigned, Plaintiff will, and hereby does, request
28 the Court to review Plaintiff's Response To Defendant's Motion To Compel Discovery, filed

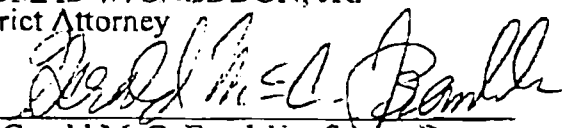
1 contemporaneously with this Motion, to determine for itself whether an order directing that the
2 Response To Defendant's Motion To Compel Discovery is an appropriate document for sealing.,
3 and that the Request be maintained under conditional seal until further order of court, pursuant to
4 California Rules of Court, rule 243.1 et seq.

5 The motion will be made on the ground that the facts, as established by the
6 accompanying declaration of Gerald McC. Franklin, may not be 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 McC.
9 Franklin and the memorandum of points and authorities served and filed herewith, on the records
10 and the file herein, and on such evidence as may be presented at the hearing of the motion.

11 DATED: October 14, 2004

12
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

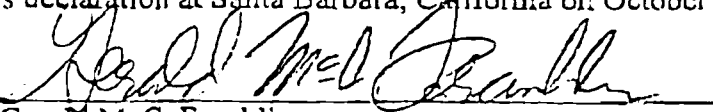
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2 I, Gerald McC. Franklin, say:

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

6 2. This motion to conditionally seal the contemporaneously-filed Plaintiff's Response
7 To Defendant's Motion To Compel Discovery, and requesting that the Court determine for itself
8 whether the Response is suitable for sealing, is made on the ground that the Response does not, in
9 the undersigned's opinion, itself reveal any information that would warrant sealing.

10 3. I believe that the interest of each party to a fair trial dictates that the Response should
11 remain under conditional seal until the appropriateness of sealing the document and, if sealing is
12 ordered, of the release of a redacted version of the opposition is determined by the court.

13 I declare under penalty of perjury under the laws of California that the foregoing is true
14 and correct, except as to matters stated upon my information and belief, and as to such matters I
15 believe it to be true. I execute this declaration at Santa Barbara, California on October 8, 2004.

16 
17 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 be
12 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 facts
17 findings that support the findings and (ii) direct the sealing of only those
18 documents and pages, or, if reasonably practicable, portions of those
19 documents and pages, that contain the material that needs to be placed
20 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 motion
22 [of a party to file a record under seal], the lodged record will be conditionally under seal."

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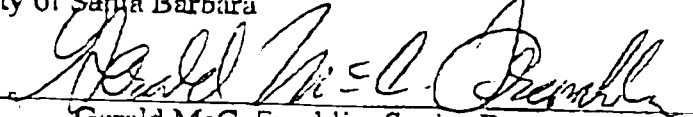
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DATED: October 8, 2004

Respectfully submitted,

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

By: 
Gerald McC. Franklin, Senior Deputy

Attorneys for Plaintiff

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PROOF OF SERVICE

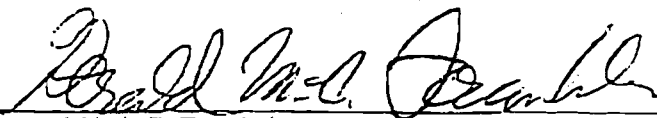
STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

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 October 8, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR COURT'S REVIEW OF PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO COMPEL DISCOVERY on THEODORE BOUTROUS, Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHIRAN, ROBERT SANGER and BRIAN OXMAN, by causing a true copy thereof to be transmitted by facsimile to each counsel at the Fax number 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 8th day of October, 2004.



Gerald McC. Franklin

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SERVICE LIST

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