

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

OCT 08 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.)

16 MICHAEL JOE JACKSON,)

17 Defendant.)

No. 1133603

PLAINTIFF'S NOTICE OF
REQUEST FOR ORDER
DIRECTING THAT PLAINTIFF'S
RESPONSE TO COURT-ORDERED
DISCOVERY COMPLIANCE AND
STATUS REPORT BE
MAINTAINED UNDER
CONDITIONAL SEAL;
DECLARATION OF GERALD
McC. FRANKLIN IN SUPPORT
THEREOF; MEMORANDUM OF
POINTS AND AUTHORITIES

~~UNDER SEAL~~

20 DATE: October 14, 2004
21 TIME: 8:30 a.m.
22 DEPT: TBA (Mcville)

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 October 14, 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 Response to Court-Ordered Discovery
2 Compliance And Status Report, filed contemporaneously with this Request for Conditional
3 Sealing, be maintained under conditional seal until further order of court, pursuant to California
4 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, are sufficient to justify sealing the
7 Response 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 Response.

12 DATED: October 8, 2004

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14 THOMAS W. SNEDDON, JR.
District Attorney

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16 By: 

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 Response to Court-Ordered Discovery Compliance And Status Report, filed contemporaneously with this Motion, is made on the ground that the Response makes reference to evidentiary facts not yet made public and the name of certain potential witnesses.

3. I believe that the interest of each party to a fair trial overrides the public's prompt access to Plaintiff's Response until the appropriateness of the release of a redacted version of the Response is determined by the Court.

4. I believe an order maintaining our Response 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 October 8, 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(c) 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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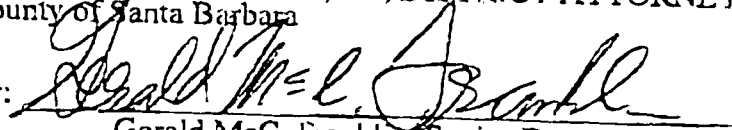
28 ////

1 DATED: October 8, 2004

2 Respectfully submitted,

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

5 By:


6 Gerald McC. Franklin, Senior Deputy

7 Attorneys for Plaintiff
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3 **PROOF OF SERVICE**

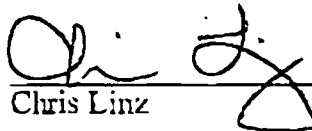
4 STATE OF CALIFORNIA }
5 COUNTY OF SANTA BARBARA } SS

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; 1105 Santa Barbara Street, Santa Barbara,
9 California 93101.

10 On October 8, 2004, I served the within PLAINTIFF'S MOTION THAT
11 PLAINTIFF'S RESPONSE TO COURT-ORDERED DISCOVERY COMPLIANCE AND
12 STATUS REPORT BE MAINTAINED UNDER SEAL on Media's counsel and on Defendant,
13 by THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER and BRIAN
14 OXMAN, by personally delivering a true copy to Robert Sanger's Office and then transmitting
15 a true copy to Defendant's co-counsel and to Media's counsel at the facsimile number shown
16 with the address for counsel on the attached Service List, and then causing that copy to be
17 mailed to each at the address shown on the Service List.

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

19 Executed at Santa Barbara, California on this 8th day of October, 2004.

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22 Chris Linz

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SERVICE LIST

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