

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

OCT 18 2004

GARY M. BLAIR, Executive Officer  
BY *Carrie L. Wagner*  
CARRIE L. WAGNER, Deputy Clerk

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  
5 1105 Santa Barbara Street  
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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.

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16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

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PLAINTIFF'S NOTICE OF  
MOTION FOR ORDER  
DIRECTING THAT PLAINTIFF'S  
REPLY TO OPPOSITION TO  
MOTION TO QUASH CERTAIN  
SUBPOENAS, FILED JULY 27,  
2004 UNDER SEAL, BE  
MAINTAINED UNDER SEAL  
UNTIL FURTHER ORDER OF  
COURT; DECLARATION OF  
GERALD McC. FRANKLIN IN  
SUPPORT OF SEALING;  
MEMORANDUM OF POINTS  
AND AUTHORITIES

~~UNRECORDED~~

DATE: November 4, 2004  
TIME: 8:30 a.m.  
DEPT: TBA (Melville)

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

PLEASE TAKE NOTICE that on November 4, 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 Plaintiff's Reply to Opposition to Motion to Quash certain  
3 subpoenas, filed July 27, 2004 under seal and contemporaneously with this Request for  
4 Conditional Sealing, be maintained under conditional seal until further order of court, pursuant  
5 to California Rules of Court, rule 243.1 et seq.

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 motion 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: October 18, 2004

14 THOMAS W. SNEDDON, JR.  
15 District Attorney

16 By:   
17 Gerald McC. Franklin, Senior Deputy

18 Attorneys for Plaintiff  
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1                               DECLARATION OF GERALD McC. FRANKLIN

2               I, Gerald McC. Franklin, say:

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

6               2. This motion to conditionally seal Plaintiff's Reply to Opposition to Motion to  
7 Quash certain subpoenas, filed July 27, 2004, is made on the ground that the Reply makes  
8 reference to the names of certain witnesses.

9               3. I believe that the interest of each party to a fair trial overrides the public's prompt  
10 access to Plaintiff's motion to quash subpoenas until the appropriateness of the release of a  
11 redacted version of the Reply is determined by the court.

12              4. I believe an order maintaining this Reply under seal in the interim would avert  
13 the probability of prejudice, and that no more narrowly tailored order with respect to that  
14 pleading could be drafted to achieve the overriding interest in a fair trial.

15              I declare under penalty of perjury under the laws of California that the foregoing is  
16 true and correct, except as to matters stated upon my information and belief, and as to such  
17 matters I believe it to be true. I execute this declaration at Santa Barbara, California on  
18 October 18, 2004.

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20   \_\_\_\_\_  
21   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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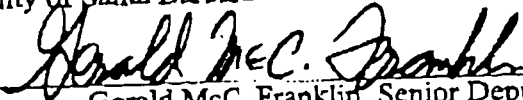
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1 DATED: October 18, 2004

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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### 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 18, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR ORDER DIRECTING THAT PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO OUR MOTION TO QUASH CERTAIN SUBPOENAS, ETC. on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by faxing a true copy to counsel 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 18th day of October, 2004.

  
\_\_\_\_\_  
Gerald McC. Franklin

SERVICE LIST

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