

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  
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FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

NOV 3 1 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  
16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
COURT'S REVIEW OF  
PLAINTIFF'S SUPPLEMENT TO  
PEOPLE'S REPLY TO  
DEFENDANT'S MOTION TO  
COMPEL DISCOVERY

~~UNDER SEAL~~

18  
19 DATE: November 4, 2004  
20 TIME: 8:30 a.m.  
21 DEPT: TBA (Mcville)

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

25 PLEASE TAKE NOTICE that on November 4, 2004, at 8:30 a.m. or as soon  
26 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and  
27 hereby does, request the Court to review Plaintiff's Supplement to People's Reply to  
28 Defendant's Motion To Compel Discovery, filed contemporaneously with this Motion, to

1 detenninc for itself whether an order directing that the Supplement to Reply is an appropriate  
2 document for sealing., and that the Supplement to Reply be maintained under conditional seal  
3 until further order of court, pursuant to California Rules of Court, rule 243.1 et seq.

4 The motion will be made on the ground that the facts, as established by the  
5 accompanying declaration of Gerald McC. Franklin, may not be sufficient to justify sealing the  
6 specified motion pursuant to California Rules of Court, rule 243.1 et seq.

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

11 DATED: October 29, 2004

12 THOMAS W. SNEDDON, JR.  
13 District Attorney

14 By:   
15 Gerald McC. Franklin, Senior Deputy

16 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 the contemporaneously-filed Plaintiff's Supplement to People's Reply to Defendant's Motion to Compel Discovery requests that the Court determine for itself whether the Supplement to Reply does not, in its opinion, itself reveal any information that would warrant sealing.

3. I believe that the interest of each party to a fair trial dictates that the Ex Parte Supplement to People's Reply re Discovery should remain under conditional seal until the appropriateness of sealing the document and, if sealing is ordered, of the release of a redacted version of the opposition is determined by the court.

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 29, 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: October 29, 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; 1112 Santa Barbara Street, Santa Barbara, California 93101.

On October 29, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR COURT'S REVIEW OF PLAINTIFF'S SUPPLEMENT TO PEOPLE'S REPLY TO DEFENDANT'S MOTION TO COMPEL DISCOVERY and PROPOSED ORDER on THEODORE BOUTROUS, Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., and ROBERT SANGER, by transmitting a true copy to each counsel at the facsimile number shown on the attached Service List.

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

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Gerald McC. Franklin

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2 **SERVICE LIST**

3  
4 **COLLINS, MESEREAU, REDDOCK & YU**  
5 Thomas A. Mesereau, Jr., Esq.  
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17 Co-counsel for Defendant

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19 **GIBSON, DUNN & CRUTCHER**  
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27 Counsel for (collectively) "Media"  
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