

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 1112 Santa Barbara Street  
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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

NOV 18 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 FOR ORDER  
DIRECTING THAT PLAINTIFF'S  
REQUEST THAT COURT  
MODIFY ITS *TEAL* ORDER AND  
EXERCISE JUDICIAL  
OVERSIGHT REGARDING THE  
SCOPE OF SUBPOENAS DUCES  
TECUM; DECLARATION OF  
GERALD McC. FRANKLIN IN  
SUPPORT OF SEALING;  
MEMORANDUM OF POINTS  
AND AUTHORITIES

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19  
20  
21 DATE: November 29, 2004  
22 TIME: ~~8:30 am~~ 10:06  
23 DEPT: TBA (Melville)

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

27 PLEASE TAKE NOTICE that on November 29, 2004, at ~~8:30 am~~ <sup>10:00 AM</sup> or as soon  
28 thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does.

1 move for an order directing that "Plaintiff's Request That Court Modify Its *Teal* Order And  
2 Exercise Judicial Oversight Regarding The Scope Of Subpoenas Duces Tecum Issued By  
3 Defendant For Records Of Third Parties," etc., filed under seal contemporaneously with this  
4 Request for Conditional Sealing, be maintained under conditional seal until further order of  
5 court, pursuant 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 hereto, and on such evidence as may be presented at the hearing of the  
12 motion.

13 DATED: November 17, 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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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 Request That Court Modify Its *Teal* Order And Exercise Judicial Oversight Regarding The Scope Of Subpoenas Duces Tecum Issued By Defendant For Records Of Third Parties," etc., is made on the ground that the pending motion makes reference to matters not yet made public, including the names of certain witnesses and facts that would tend to identify them.

3. I believe that the interest of each party to a fair trial overrides the public's prompt access to "Plaintiff's Request That Court Modify Its *Teal* Order And Exercise Judicial Oversight Regarding The Scope Of Subpoenas Duces Tecum Issued By Defendant For Records Of Third Parties," etc. until the appropriateness of the release of a redacted version of the motion is determined by the court.

4. I believe an order maintaining this motion 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 November 17, 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."

24 ////

25 ////

26 ////


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1 DATED: November 17, 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 November 17, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR ORDER DIRECTING THAT PLAINTIFF'S MOTION TO QUASH CERTAIN SUBPOENAS, ETC. on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by faxing a true copy to other 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 17th day of November, 2004.

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Gerald McC. Franklin

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GIBSON, DUNN & CRUTCHER, LLP  
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Attorney for Defendant Michael Jackson

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