

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

NOV 19 2004

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA
SANTA MARIA DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

MICHAEL JOE JACKSON,

Defendant.

No. 1133603.

~~PROPOSED~~
ORDER DIRECTING THAT
PLAINTIFF'S REQUEST THAT
COURT MODIFY ITS *TEAL*
ORDER, ETC. BE MAINTAINED
UNDER CONDITIONAL SEAL
PENDING FURTHER ORDER OF
COURT

It appearing from the Declaration of Gerald McC. Franklin and from the Plaintiff's Request That Court Modify Its *Teal* Order, Etc., that information that hitherto has been sealed is set forth in the Response, disclosure of which may prejudice the right of the parties to a fair trial and the privacy of individuals alleged to be victims in the Indictment, the Court orders as follows:

1. Plaintiff's Request That Court Modify Its *Teal* Order, Etc is conditionally sealed;
2. The motion to maintain that Request under conditional seal until further order of court shall be heard on November 29, 2004, at ~~8:30~~ 10:00 a.m.

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DATED: November 19, 2004

Rodney S Melville

RODNEY S. MELVILLE
Judge of the Superior Court

PROOF OF SERVICE

1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On NOVEMBER 19, 20 04, I served a copy of the attached ORDER DIRECTING THAT PLAINTIFF'S REQUEST THAT COURT MODIFY ITS TEAL ORDER, ETC. BE MAINTAINED UNDER CONDITIONAL SEAL PENDING FURTHER ORDER OF COURT addressed as follows:

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

THOMAS W. SNEDDON, JR.
DISTRICT ATTORNEY'S OFFICE
1112 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

FAX

By faxing true copies thereof to the receiving fax numbers of: (310) 861-1007 (Thomas Mesereau, Jr.); (805) 568-2398 (Thomas Sneddon). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

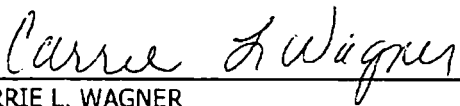
PERSONAL SERVICE

By leaving a true copy thereof at their office with the person having charge thereof or by hand delivery to the above mentioned parties.

EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 19TH day of NOVEMBER, 20 04, at Santa Maria, California.


CARRIE L. WAGNER

DECLARATION OF GERALD McC. FRANKLIN

I, Gerald McC. Franklin, say:

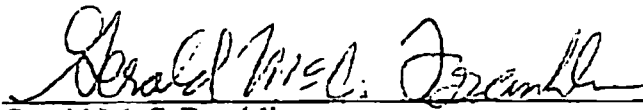
1. I am a lawyer admitted to practice in the State of California. I am a Senior Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for the People, Plaintiff in this action.

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."

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