

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 24 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  
 OPPOSITION TO DEFENDANT'S  
 MOTION FOR MENTAL  
 EXAMINATIONS BE SEALED;  
 DECLARATION OF GERALD  
 McC. FRANKLIN IN SUPPORT  
 OF SEALING; MEMORANDUM  
 OF POINTS AND AUTHORITIES

18  
 19 DATE: November 29, 2004  
 20 TIME: 10:00 a.m.  
 21 DEPT: TBA (Melville)

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 29, 2004, at 10:0 a.m. or as soon  
 26 thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby docs,  
 27 move for an order directing that "Plaintiff's Opposition to Defendant's Motion for Mental  
 28 Examinations for [Complaining Witnesses]," filed under seal contemporaneously with this

PLAINTIFF'S REQUEST TO SEAL OPPOSITION TO MOTION FOR MENTAL EXAMS

1 Request for Conditional Sealing, be maintained under conditional seal until further order of  
2 court, pursuant to California Rules of Court, rule 243.1 et seq.

3 The motion will be made on the ground that the facts, as established by the  
4 accompanying declaration of Gerald McC. Franklin, are sufficient to justify sealing the  
5 specified motion pursuant to California Rules of Court, rule 243.1 et seq.

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

10 DATED: November 24, 2004

11 THOMAS W. SNEDDON, JR.  
12 District Attorney

13 By:   
14 Gerald McC. Franklin, Senior Deputy

15 Attorneys for Plaintiff  
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DECLARATION OF GERALD McC. FRANKLIN

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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 the contemporaneously-filed "Plaintiff's  
7 Opposition to Defendant's Motion for Mental Examinations for [Complaining Witnesses]," is  
8 made on the ground that the pending Opposition makes reference to matters not yet made  
9 public, including the names of certain witnesses and facts that would tend to identify them.

10 3. I believe that the interest of each party to a fair trial overrides the public's prompt  
11 access to "Plaintiff's Opposition to Defendant's Motion for Mental Examinations for  
12 [Complaining Witnesses]" until the appropriateness of the release of a redacted version of the  
13 motion is determined by the court.

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

17 I declare under penalty of perjury under the laws of California that the foregoing is  
18 true and correct, except as to matters stated upon my information and belief, and as to such  
19 matters I believe it to be true. I execute this declaration at Santa Barbara, California on  
20 November 24, 2004.

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22 \_\_\_\_\_  
23 Gerald McC. Franklin  
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MEMORANDUM OF POINTS AND AUTHORITIES

The procedure for sealing records under California Rules of Court, rule 243.1 et seq. applies only to records that are deemed public. (*Id.*, rule 243.1(a)(2).) Motions and responsive pleadings in criminal cases are, ordinarily, "public" records of the court.

Rule 243.1(d) provides that

The court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

Rule 243.1(e) provides, in pertinent part:

(1) An order sealing the record must (i) specifically set forth the facts findings that support the findings and (ii) direct the sealing of only those documents and pages, or, if reasonably practicable, portions of those documents and pages, that contain the material that needs to be placed under seal. All other portions of each documents or page must be included in the public file.

Rule 243.2(b) provides, in pertinent part, that "Pending the determination of the motion [of a party to file a record under seal], the lodged record will be conditionally under seal."

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DATED: November 24, 2004

Respectfully submitted,

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

By: *Gerald McC. Franklin*  
Gerald McC. Franklin, Senior Deputy

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 OPPOSITION TO DEFENDANT'S MOTION FOR MENTAL EXAMINATIONS FOR [COMPLAINING WITNESSES]" 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 24th day of November, 2004.

Gerald McC. Franklin
Gerald McC. Franklin

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SERVICE LIST

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Co-counsel for Defendant