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County of Santa Barbara
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Senior Deputy District Attorney
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA
DEC 15
3
Gerald McC. Franklin, District Attorney
Santa Barbara, California

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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,
13 Plaintiff,
14
15 v.
16 MICHAEL JOE JACKSON,
17 Defendant.

No. 1133603
PLAINTIFF'S NOTICE OF
MOTION FOR ORDER
DIRECTING THAT PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION TO CONTINUE TRIAL
BE MAINTAINED UNDER SEAL
UNTIL FURTHER ORDER OF
COURT; DECLARATION OF
GERALD McC. FRANKLIN IN
SUPPORT OF SEALING;
MEMORANDUM OF POINTS
AND AUTHORITIES

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20 DATE: December 20, 2004
21 TIME: ~~8:30 a.m.~~ 9:30 AM
DEPT: TBA (Melville)

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

26 PLEASE TAKE NOTICE that on December 20, 2004, at ^{9:30}~~8:30~~ a.m. or as soon
27 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and
28 hereby does, move for an order directing that the People's Opposition to Defendant's Motion to

PLAINTIFF'S REQUEST TO SEAL OPPOSITION TO MOTION TO CONTINUE

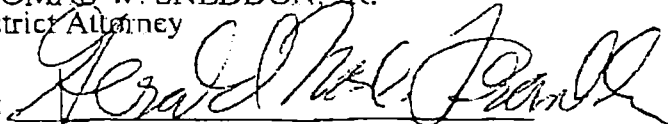
1 Continue, filed under seal, be maintained under conditional seal until further order of court,
2 pursuant to California Rules of Court, rule 243.1 et seq.

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: December 15, 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

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 Plaintiff's Opposition to Defendant's Motion to Continue is made on the ground that the Opposition makes reference to evidentiary facts not yet made public. It also makes arguments concerning the legal and factual merits of motions that are currently under seal, in whole or in part.

3. I believe that the interest of each party to a fair trial overrides the public's prompt access to Plaintiff's Opposition until the appropriateness of the release of a redacted version of the Opposition is determined by the court.

4. I believe an order maintaining our Opposition 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 December 15, 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: December 15, 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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3 **PROOF OF SERVICE**

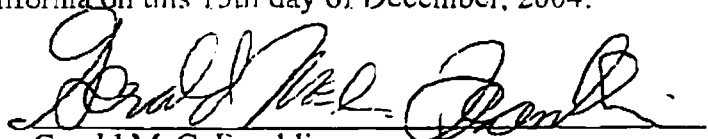
4 STATE OF CALIFORNIA }
5 COUNTY OF SANTA BARBARA } SS

6 I am a citizen of the United States and a resident of the County aforesaid; I am over
7 the age of eighteen years and I am not a party to the within-entitled action. My business
8 address is: District Attorney's Office; Courthouse; 1114 Santa Barbara Street, Santa Barbara,
9 California 93101.

10 On December 14, 2004, I served the within PLAINTIFF'S MOTION FOR ORDER
11 DIRECTING THAT PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO
12 CONTINUE BE MAINTAINED UNDER SEAL on Media's counsel and on Defendant, by
13 THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by personally
14 delivering a true copy thereof to the Attorney Robert SANGER, and by faxing a true copy to
15 Media's counsel and Mr. Sanger's co-counsel (except Mr. Oxman) at the facsimile number
16 shown with the address for counsel on the attached Service List.

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed at Santa Barbara, California on this 15th day of December, 2004.

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20 Gerald McC. Franklin
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