

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  
Santa Barbara, CA 93101  
6 Telephone: (805) 568-2300  
7 FAX: (805) 568-2398

**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

JAN 10 2005

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  
15 v.

16  
17 MICHAEL JOE JACKSON,

18 Defendant.

No. 1133603

19  
20 PLAINIFF'S NOTICE OF  
21 MOTION AND MOTION FOR  
22 COURT'S REVIEW OF  
23 PLAINTIFF'S OPPOSITION TO  
24 DEFENDANT'S MOTION THAT  
25 THE HEARING OF PLAINTIFF'S  
26 "EVIDENCE CODE § 1108"  
27 MOTION BE HELD IN CAMERA  
28 TO DETERMINE WHETHER  
SEALING IS APPROPRIATE;  
DECLARATION OF GERALD  
McC. FRANKLIN; MEMORANDUM  
OF POINTS AND AUTHORITIES

DATE: January 12, 2005  
TIME: 8:30 a.m.  
DEPT: TBA (Mcville)

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 January 12, 2005, at 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, request the Court to review Plaintiff's Opposition to Defendant's Motion that


1 Hearing of Plaintiff's "Evidence Code § 1108" Motion Be Held In Camera, filed  
2 contemporaneously with this Motion, to determine for itself whether an order directing that the  
3 Opposition to In Camera Hearing is an appropriate document for sealing., and that the Motion  
4 be maintained under conditional seal until further order of court, pursuant to California Rules  
5 of Court, rule 243.1 et seq.

6 The motion will be made on the ground that the discussion of facts in the  
7 Opposition, as established by the accompanying declaration of Gerald McC. Franklin, may not  
8 be sufficient to justify sealing the specified motion pursuant to California Rules of Court, rule  
9 243.1 et seq.

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

14 DATED: January 10, 2005

15  
16 THOMAS W. SNEDDON, JR.  
District Attorney

17  
18 By:   
Gerald McC. Franklin, Senior Deputy

19 Attorneys for Plaintiff  
20  
21  
22  
23  
24  
25  
26  
27  
28



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(c) 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."

////

////

////

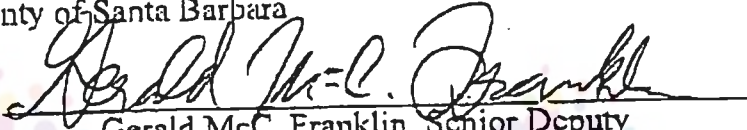
////

////

1 DATED: January 10, 2005

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

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

PROOF OF SERVICE

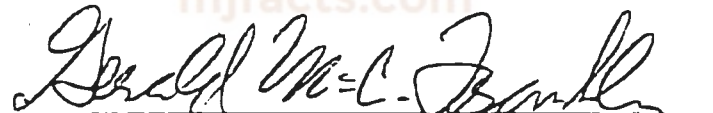
STATE OF CALIFORNIA )  
COUNTY OF SANTA BARBARA ) SS

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 January 10, 2005, I served the within PLAINTIFF'S NOTICE OF MOTION FOR COURT'S REVIEW OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION THAT THE HEARING OF PLAINTIFF'S "EVIDENCE CODE § 1108" MOTION BE HELD IN CAMERA TO DETERMINE WHETHER SEALING IS APPROPRIATE, ETC. and PROPOSED ORDER on THEODORE BOUTROUS, Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, by personally delivering a true copy to Mr. Sanger's Office and then transmitting a true copy thereof to Mr. Mesereau by facsimile, at (310) 284-3122.

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

Executed at Santa Barbara, California on this 10th day of January, 2005.

  
Gerald McC. Franklin

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**SERVICE LIST**

GIBSON, DUNN & CRUTCHER, LLP  
Theodore J. Boutrous, Jr., Esq.  
William E. Thomson, Esq.  
Julian Poon, Esq.  
333 S. Grand Avenue  
Los Angeles, CA 90071-3197  
FAX: (213) 229-6758

Attorneys for (collectively) "Media"

THOMAS A. MESEREAU, JR.  
Collins, Mescreau, Reddock & Yu, LLP  
1875 Century Park East, No. 700  
Los Angeles, CA 90067  
FAX: [CONFIDENTIAL]

Attorney for Defendant Michael Jackson

ROBERT SANGER, ESQ.  
Sanger & Swysen, Lawyers  
233 E. Carrillo Street, Suite C  
Santa Barbara, CA 93001  
FAX: (805) 963-7311

Co-counsel for Defendant

BRIAN OXMAN, ESQ.  
Oxman & Jaroschak, Lawyers  
14126 E. Rosecrans Blvd.,  
Santa Fe Springs, CA 90670

Co-counsel for Defendant