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County of Santa Barbara
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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 PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR COURT'S REVIEW OF PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO EVIDENCE OF MARTIN BASHIR DOCUMENTARY "LIVING WITH MICHAEL JACKSON," TO DETERMINE WHETHER SEALING IS APPROPRIATE; DECLARATION OF GERALD McC. FRANKLIN; MEMORANDUM OF POINTS AND AUTHORITIES DATE: January 28, 2005 TIME: 8:30 a.m. DEPT: TBA (Melville)

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

PLEASE TAKE NOTICE that on January 28, 2005, at 8:30 a.m. or as soon thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and

hereby does, request the Court to review Plaintiff's Reply to Defendant's Opposition to Evidence of Martin Bashir Documentary, "Living with Michael Jackson," filed contemporaneously with this Motion, to determine for itself whether an order directing that the Reply to Opposition to Evidence of Documentary is an appropriate document for sealing., and that the Reply be maintained under conditional seal until further order of court, pursuant to California Rules of Court, rule 243.1 et seq.

The motion will be made on the ground that the discussion of facts in Plaintiff's Reply to Defendant's Opposition to Evidence of Martin Bashir Documentary, "Living with Michael Jackson," as established by the accompanying declaration of Gerald McC. Franklin, may not be sufficient to justify sealing the specified motion pursuant to California Rules of Court, rule 243.1 et seq.

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

DATED: January 24, 2005

THOMAS W. SNEDDON, JR.
District Attorney

By: _____
Gerald McC. Franklin, Senior Deputy

Attorneys for Plaintiff

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 Reply to Defendant's Opposition to Evidence of Martin Bashir Documentary, "Living with Michael Jackson," and requesting that the Court determine for itself whether the Reply is appropriate for sealing, is made on the ground that the Reply does not, in the undersigned's opinion, itself reveal any information that would warrant sealing. For that reason, I have not prepared a proposed redacted copy of the Reply.

3. I believe that the interest of each party to a fair trial dictates that Plaintiff's Reply to Defendant's Opposition to Evidence of Martin Bashir Documentary, "Living with Michael Jackson," should remain under conditional seal until the appropriateness of sealing the document and, if sealing is ordered, of the release of a redacted version of the Reply is determined by the court.

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 January 24, 2005.

Gerald McC. Franklin

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: January 24, 2005

Respectfully submitted,

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

By: _____
Gerald McC. Franklin, Senior Deputy

Attorneys for Plaintiff

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 18, 2005, I served the within PLAINTIFF'S NOTICE OF MOTION FOR COURT'S REVIEW OF PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO EVIDENCE OF MARTIN BASHIR DOCUMENTARY, "LIVING WITH MICHAEL JACKSON," 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 at (805) 456-0699 and to Mr. Boutrous at (213) 229-6758.

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

Executed at Santa Barbara, California on this 24th day of January, 2005.

Gerald McC. Franklin