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County of Santa Barbara
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Senior Deputy District Attorney
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Senior Deputy District Attorney
4 GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney
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Santa Barbara, CA 93101
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 24 2005

GARY M. BLAIR, Executive Officer
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,

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15 v.

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17 MICHAEL JOE JACKSON,

18 Defendant.

No. 1133603

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PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
COURT'S REVIEW OF
PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO
EXCLUDE REFERENCE TO
HIS COLLECTION OF SEXUALLY
EXPLICIT MATERIAL, TO
DETERMINE WHETHER SEALING
IS APPROPRIATE; DECLARATION
OF GERALD McC. FRANKLIN;
MEMORANDUM OF POINTS
AND AUTHORITIES

DATE: January 28, 2005
TIME: 9:30 a.m.
DEPT: TBA (Melville)

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 28, 2005, at 9:30 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 Response to Defendant's Motion For An

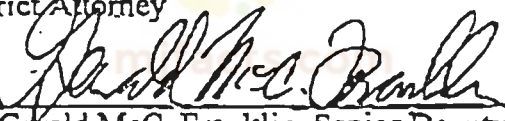
1 Order Excluding Reference To His Collection Of Sexually Explicit Materials, filed
2 contemporaneously with this Motion, to determine for itself whether an order directing that the
3 Response re: Sexually Explicit Materials is an appropriate document for sealing., and that the
4 Response be maintained under conditional seal until further order of court, pursuant to
5 California Rules of Court, rule 243.1 et seq.

6 The motion will be made on the ground that the discussion of facts in Plaintiff's
7 Response to Defendant's Motion For An Order Excluding Reference To His Collection Of
8 Sexually Explicit Materials, as established by the accompanying declaration of Gerald McC.
9 Franklin, may not be sufficient to justify sealing the specified motion pursuant to California
10 Rules of Court, rule 243.1 et seq.

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

15 DATED: January 24, 2005

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17 THOMAS W. SNEDDON, JR.
District Attorney

18 By: 
19 Gerald McC. Franklin, Senior Deputy

20 Attorneys for Plaintiff
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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.

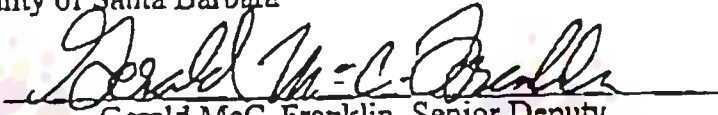
Rule 243.2(b) provides, in pertinent part, that "Pending the determination of the motion [of a party to file a record under seal], the lodged record will be conditionally under seal."

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1 DATED: January 24, 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

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3 **PROOF OF SERVICE**

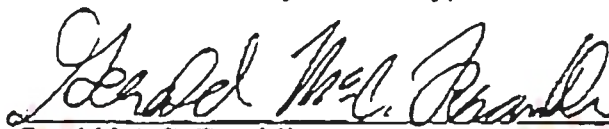
4 STATE OF CALIFORNIA
5 }
6 COUNTY OF SANTA BARBARA } SS

7 I am a citizen of the United States and a resident of the County aforesaid; I am over
8 the age of eighteen years and I am not a party to the within-entitled action. My business
9 address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara,
10 California 93101.

11 On January 18, 2005, I served the within PLAINTIFF'S NOTICE OF MOTION
12 FOR COURT'S REVIEW OF PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION
13 FOR AN ORDER EXCLUDING REFERENCE TO HIS COLLECTION OF SEXUALLY
14 EXPLICIT MATERIALS TO DETERMINE WHETHER SEALING IS APPROPRIATE,
15 ETC. and PROPOSED ORDER on THEODORE BOUTROUS, Media's counsel and on
16 Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, by personally
17 delivering a true copy to Mr. Sanger's Office and then transmitting a true copy thereof to Mr.
18 Mesereau at (805) 456-0699 and to Mr. Boutrous at (213) 229-6758.

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

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

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22 _____
23 Gerald McC. Franklin