

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 24 2005

GARY M. BLAIR, Executive Officer
By *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

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

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 MICHAEL JOE JACKSON,
16

17 Defendant,
18

No. 1133603

PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
COURT'S REVIEW OF
PLAINTIFF'S APPLICATION
TO MAKE A PUBLIC
STATEMENT, TO DETERMINE
WHETHER SEALING
IS APPROPRIATE; DECLARATION
OF GERALD McC. FRANKLIN;
MEMORANDUM OF POINTS
AND AUTHORITIES

19
20 DATE: ~~January 28, 2005~~

TIME: ~~8:30 a.m.~~

DEPT: TBA (Melville)

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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 January 28, 2005, at 8:30 a.m. or as soon
26 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and
27 hereby does, request the Court to review Plaintiff's Application for Order that District
28 Attorney and Sheriff May Make Public Statement, filed contemporaneously with this Motion,

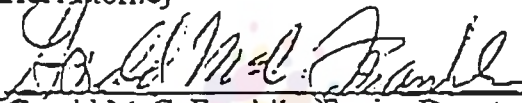
1 to determine for itself whether an order directing that the Application is an appropriate
2 document for sealing, and that the Application be maintained under conditional seal until
3 further order of court, pursuant to California Rules of Court, rule 243.1 et seq.

4 The motion will be made on the ground that the discussion of facts in Plaintiff's
5 Application to Make Public Statement, as established by the accompanying declaration of
6 Gerald McC. Franklin, may not be sufficient to justify sealing the specified motion pursuant to
7 California Rules of Court, rule 243.1 et seq.

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

12 DATED: January 24, 2005

13
14 THOMAS W. SNEDDON, JR.
District Attorney

15 By: 
16 Gerald McC. Franklin, Senior Deputy

17 Attorneys for Plaintiff
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1 DECLARATION OF GERALD McC. FRANKLIN

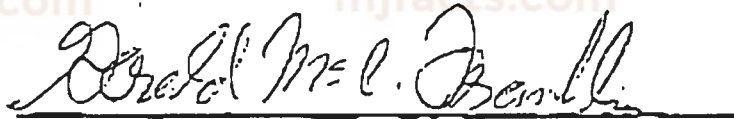
2 I, Gerald McC. Franklin, say:

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 Application to Make Public Statement, and requesting that the Court determine for itself
8 whether the Application is appropriate for sealing, is made on the ground that the Application
9 does not, in the undersigned's opinion, itself reveal any information that would warrant
10 sealing. For that reason I have not prepared a proposed redacted version of the Application.

11 3. I believe that the interest of each party to a fair trial dictates that Plaintiff's
12 Application to Make Public Statement should remain under conditional seal until the
13 appropriateness of sealing the document and, if sealing is ordered, of the release of a redacted
14 version of the Application is determined by the Court.

15 I declare under penalty of perjury under the laws of California that the foregoing is
16 true and correct, except as to matters stated upon my information and belief, and as to such
17 matters I believe it to be true. I execute this declaration at Santa Barbara, California on January
18 24, 2005.

19 
20 _____
21 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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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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2
3 **PROOF OF SERVICE**

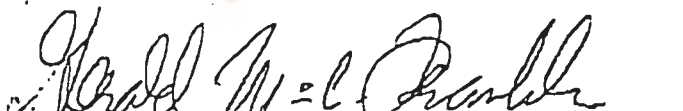
4 STATE OF CALIFORNIA }
5 COUNTY OF SANTA BARBARA } SS

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; 1112 Santa Barbara Street, Santa Barbara,
9 California 93101.

10 On January 24, 2005, I served the within PLAINTIFF'S NOTICE OF MOTION
11 FOR COURT'S REVIEW OF PLAINTIFF'S APPLICATION TO MAKE PUBLIC
12 STATEMENT TO DETERMINE WHETHER SEALING IS APPROPRIATE, ETC. and
13 PROPOSED ORDER on THEODORE BOUTROUS, Media's counsel and on Defendant, by
14 THOMAS A. MESEREAU, JR. and ROBERT SANGER, by personally delivering a true copy
15 to Mr. Sanger's Office and then transmitting a true copy thereof to Mr. Mescreau at his
16 confidential FAX number in Santa Maria and to Mr. Boutrous at (213) 229-6758.

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

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

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20 
21 Gerald McC. Franklin