

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 31 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 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14 MICHAEL JOE JACKSON,

15 Defendant.

No. 1133603

16 PLAINTIFF'S NOTICE OF  
17 MOTION THAT MOTION TO  
18 EXCLUDE REFERENCE TO  
19 JANE DOE'S REFUSAL TO  
20 WAIVE THE CONFIDENTIALITY  
21 OF HER CONVERSATIONS WITH  
22 ATTORNEY [REDACTED] BE  
23 MAINTAINED UNDER  
24 CONDITIONAL SEAL;  
25 DECLARATION OF GERALD  
26 McC. FRANKLIN IN SUPPORT  
27 THEREOF; MEMORANDUM  
28 OF POINTS AND AUTHORITIES

DATE: February 10, 2005

TIME: 8:30 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 February 10, 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, move for an order directing that Plaintiff's Motion to Exclude Reference to Jane

1 Doe's Refusal to Waive the Confidentiality of Her Conversations With Attorney [REDACTED]  
2 [REDACTED] Etc., filed contemporaneously with this Request for Conditional Sealing, be  
3 maintained under conditional seal until further order of court, pursuant to California Rules of  
4 Court, rule 243.1 et seq.

5 The Request will be made on the ground that the facts, as established by the  
6 accompanying declaration of Gerald McC. Franklin, are sufficient to justify sealing the  
7 Response pursuant to 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 31, 2005

13  
14 THOMAS W. SNEDDON, JR.  
District Attorney

15 By:   
16 Gerald McC. Franklin, Senior Deputy  
17 Attorneys for Plaintiff

DECLARATION OF GERALD McC. FRANKLIN

I, Gerald McC. Franklin, say:

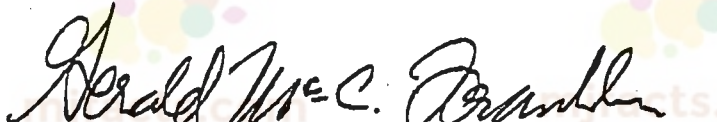
1. I am a lawyer admitted to practice in the State of California. I am a Senior Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for the People, Plaintiff in this action.

2. Plaintiff's Motion to Exclude Reference to Jane Doe's Refusal to Waive the Confidentiality of Her Conversations With Attorney [REDACTED] Etc., filed contemporaneously with this Request, is made on the ground that the Motion To Exclude Reference to Assertion of Attorney Privilege makes reference to evidentiary facts not yet made public, and to the names of potential witnesses.

3. I believe that the interest of each party to a fair trial overrides the public's prompt access to Plaintiff's Motion to Exclude Reference to Assertion of Attorney Privilege until the appropriateness of the release of a redacted version of the Motion is determined by the Court.

4. I believe an order maintaining Plaintiff's Motion to Exclude Reference to Jane Doe's Refusal to Waive the Confidentiality of Her Conversations With Attorney [REDACTED] Etc. 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 January 31, 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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1 DATED: January 31, 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 **PROOF OF SERVICE**

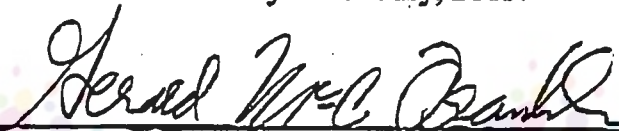
3 STATE OF CALIFORNIA  
4 COUNTY OF SANTA BARBARA } SS

5  
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 31, 2005, I served the within PLAINTIFF'S REQUEST THAT  
11 PLAINTIFF'S MOTION TO EXCLUDE REFERENCE TO JANE DOE'S REFUSAL TO  
12 WAIVE THE CONFIDENTIALITY OF HER CONVERSATIONS WITH ATTORNEY  
13 [REDACTED] ETC. BE MAINTAINED UNDER SEAL on Media's counsel and  
14 on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN,  
15 by serving a true copy thereof on defendant's counsel in open court and by transmitting a true  
16 copy there of by facsimile to to Media's counsel at the facsimile number shown with the  
17 address for counsel on the attached Service List .

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

19 Executed at Santa Barbara, California on this 31st day of January, 2005.

20  
21   
22 Gerald McC. Franklin

1  
2  
3 **SERVICE LIST**

4 **GIBSON, DUNN & CRUTCHER, LLP**

5 Theodore J. Boutrous, Jr., Esq.

6 William E. Thomson, Esq.

7 Julian Poon, Esq.

8 333 S. Grand Avenue

9 Los Angeles, CA 90071-3197

10 FAX: (213) 229-6758

11 Attorneys for (collectively) "Media"

12 **THOMAS A. MESEREAU, JR.**

13 Collins, Mesereau, Reddock & Yu, LLP

14 1875 Century Park East, No. 700

15 Los Angeles, CA 90067

16 FAX: [SANTA MARIA - CONFIDENTIAL]

17 Attorney for Defendant Michael Jackson

18 **ROBERT SANGER, ESQ.**

19 Sanger & Swysen, Lawyers

20 233 E. Carrillo Street, Suite C

21 Santa Barbara, CA 93001

22 FAX: (805) 963-7311

23 Co-counsel for Defendant

24 **BRIAN OXMAN, ESQ.**

25 Oxman & Jaroscak, Lawyers

26 14126 E. Rosecrans Blvd.,

27 Santa Fe Springs, CA 90670

28 Co-counsel for Defendant