

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
FAX: (805) 568-2398
7

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 17 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 MICHAEL JOE JACKSON,

17
18 Defendant.
19
20

No. 1133603

PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
COURT'S REVIEW OF
PLAINTIFF'S RESPONSE TO
REPLY TO OPPOSITION TO
DEFENDANT'S REQUEST
THAT PLAINTIFF INCLUDE THE
"FOOTAGE" VIDEO AS PART OF
IT'S CASE IN CHIEF TO
DETERMINE WHETHER
SEALING IS APPROPRIATE;
DECLARATION OF GERALD
McC. FRANKLIN;
MEMORANDUM OF POINTS
AND AUTHORITIES

21 DATE: TBA
22 TIME: 8:30 a.m.
23 DEPT: TBA (Melville)

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

27 PLEASE TAKE NOTICE that on the date fixed by the court for hearing pending
28 Evidence Code section 402 motions, in the Department to be assigned, Plaintiff will, and

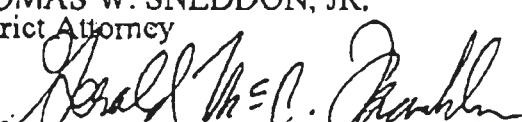
1 hereby does, request the Court to review Plaintiff's Response to Reply to Plaintiff's
2 **Opposition to Defendant's Request That Plaintiff Be Required To Present The Hearsay**
3 **Evidence of Defendant's "Living With Michael Jackson" As Part of its Case in Chief,** filed
4 contemporaneously with this Motion, to determine for itself whether an order directing that the
5 Response is an appropriate document for scaling, and that the Response be maintained under
6 conditional seal until further order of court, pursuant to California Rules of Court, rule 243.1 et
7 seq.

8 The motion will be made on the ground that the discussion of law in Plaintiff's
9 Response to Reply to Plaintiff's Opposition to Defendant's Request That Plaintiff Be Required
10 To Present The Hearsay Evidence of Defendant's "Living With Michael Jackson" As Part of its
11 Case in Chief, as established by the accompanying declaration of Gerald McC. Franklin, may
12 not be sufficient to justify scaling the specified motion pursuant to California Rules of Court,
13 rule 243.1 et seq.

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

18 DATED: February 17, 2005

19
20 THOMAS W. SNEDDON, JR.
District Attorney

21 By: 
22 Gerald McC. Franklin, Senior Deputy
23 Attorneys for Plaintiff
24
25
26
27
28

DECLARATION OF GERALD McC. FRANKLIN

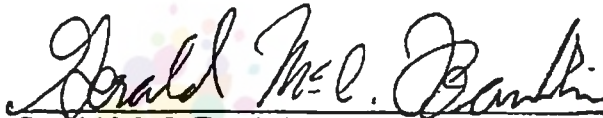
I, Gerald McC. Franklin, say:

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 Response to Reply to Plaintiff's Opposition to Defendant's Request That Plaintiff Be Required To Present The Hearsay Evidence of Defendant's "Living With Michael Jackson" As Part of its Case in Chief, and requesting that the Court determine for itself whether the Response is appropriate for sealing, is made on the ground that the Response 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 version of the Response.

3. I believe that the interest of each party to a fair trial dictates that Plaintiff's Response to Reply to Plaintiff's Opposition to Defendant's Request That Plaintiff Be Required To Present The Hearsay Evidence of Defendant's "Living With Michael Jackson" As Part of its Case in Chief 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 Response 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 February 17, 2005.



Gerald McC. Franklin

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 The procedure for sealing records under California Rules of Court, rule 243.1 et seq.
3 applies only to records that are deemed public. (*Id.*, rule 243.1(a)(2).) Motions and responsive
4 pleadings in criminal cases are, ordinarily, "public" records of the court.

5 Rule 243.1(d) provides that

6 The court may order that a record be filed under seal only if it
7 expressly finds facts that establish:

- 8 (1) There exists an overriding interest that overcomes the right of
9 public access to the record;
- 10 (2) The overriding interest supports sealing the record;
- 11 (3) A substantial probability exists that the overriding interest will
12 be prejudiced if the record is not sealed;
- 13 (4) The proposed sealing is narrowly tailored; and
- 14 (5) No less restrictive means exist to achieve the overriding interest.

15 Rule 243.1(e) provides, in pertinent part:

16 (1) An order sealing the record must (i) specifically set forth the
17 facts findings that support the findings and (ii) direct the sealing of
18 only those documents and pages, or, if reasonably practicable,
19 portions of those documents and pages, that contain the material that
20 needs to be placed under seal. All other portions of each documents
or page must be included in the public file.

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

24 ////

25 ////

26 ////

27 ////

28 ////

1 DATED: February 17, 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 **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 RESPONSE TO REPLY TO PLAINTIFF'S
12 OPPOSITION TO DEFENDANT'S REQUEST THAT PLAINTIFF BE REQUIRED TO
13 PRESENT THE HEARSAY EVIDENCE OF DEFENDANT'S "LIVING WITH MICHAEL
14 JACKSON" AS PART OF ITS CASE IN CHIEF TO DETERMINE WHETHER SEALING IS
15 APPROPRIATE, ETC. and PROPOSED ORDER on THEODORE BOUTROUS, Media's
16 counsel and on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, by
17 transmitting a true copy thereof to Mr. Mesereau at his confidential FAX number in Santa
18 Maria 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 17th day of February, 2005.

21
22 
23 Gerald McC. Franklin