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2 County of Santa Barbara
3 By: RONALD J. ZONEN (State Bar No. 85094)
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6 Senior Deputy District Attorney
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FILED
SANTA BARBARA
SUPERIOR COURT

MAY 06 2004

GARY M. BLAIR
Executive Officer
By: *Loana Frey*
LOANA FREY Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15 MICHAEL JOE JACKSON,

16 Defendant.

No. 1133603

17 NOTICE OF MOTION AND
18 MOTION FOR ORDER
19 DIRECTING THAT A CERTAIN
20 REQUEST FOR AN ORDER TO
21 SHOW CAUSE RE: CONTEMPT
22 BE MAINTAINED UNDER SEAL
23 UNTIL FURTHER ORDER OF
24 COURT; DECLARATION OF
25 GERALD McC. FRANKLIN;
26 MEMORANDUM OF POINTS
27 AND AUTHORITIES;

(Cal. Rules of Ct., rule 243.1 et seq.)

28 DATE: May 28, 2004
TIME: 8:30 a.m.
DEPT: SM 2 (Melville)

23 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR.,
24 STEVE COCHRAN, AND ROBERT SANGER, HIS ATTORNEYS OF RECORD, AND TO
25 GIBSON, DUNN & CRUTCHER, LLP, ATTORNEYS FOR "MEDIA":

26 PLEASE TAKE NOTICE that on May 28, 2004, at 8:30 a.m. or as soon thereafter
27 as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does, move for an
28 order directing that the following records be maintained under conditional seal until further

1 order of court, pursuant to California Rules of Court, rule 243.1 et seq;

2 That certain "Plaintiff's Request for Order to Show Cause re: Contempt of Court's
3 Protective Order by Persons Subject To That Order; Declaration of Thomas W. Sneddon, Jr.,"
4 lodged March 22, 2004 and provisionally sealed by court order on March 24th.

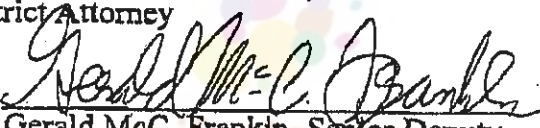
5 The motion will be made on the ground that the facts, as established by the
6 accompanying declaration of Gerald McC. Franklin, are sufficient to justify sealing the
7 specified records pursuant to California Rules of Court, rule 243.1 et seq.

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 A proposed redacted version of the Request for Order to Show Cause and
13 supporting Declaration is submitted, under seal, with this request for sealing.

14 DATED: May 6, 2004

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16 THOMAS W. SNEDDON, JR.
District Attorney

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18 By: 
Gerald McC. Franklin, Senior Deputy

19 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 seal records pertains to "Plaintiff's Request for Order to Show
7 Cause re: Contempt of Court's Protective Order by Persons Subject To That Order; Declaration
8 of Thomas W. Sneddon, Jr.," lodged March 22, 2004 and provisionally sealed on March 24th.

9 3. I believe some of the information set out in the application for the orders to show
10 cause should remain confidential, because it discloses the names of other persons whose
11 identities have been kept confidential throughout the public proceedings in this matter.

12 4. I believe the interests of both parties in a fair trial by a jury would be enhanced if
13 the identities of such persons were disclosed and publicized prematurely.

14 5. I therefore believe that the interest in a fair trial overrides the public's access to
15 an unredacted version of plaintiff's request and its supporting declaration, and supports the
16 sealing of those documents until further order of court.

17 6. I believe an order maintaining the Request and supporting Declaration under seal
18 in the interim would avert the probability of prejudice, and that no more narrowly tailored order
19 with respect to that request could be drafted to achieve the overriding interest in a fair trial.

20 I declare under penalty of perjury under the laws of California that the foregoing is
21 true and correct, except as to matters stated upon my information and belief, and as to such
22 matters I believe it to be true. I execute this declaration at Santa Barbara, California on May 6,
23 2004.

24 
25 Gerald McC. Franklin

1 MEMORANDUM OF POINTS AND AUTHORITIES

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).)

4 Rule 243.1(d) provides that

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

7 (1) There exists an overriding interest that overcomes the right of
8 public access to the record;

9 (2) The overriding interest supports sealing the record;

10 (3) A substantial probability exists that the overriding interest will
11 be prejudiced if the record is not sealed;

12 (4) The proposed sealing is narrowly tailored; and

13 (5) No less restrictive means exist to achieve the overriding interest.

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

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

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

23 DATED: May 6, 2004

24 Respectfully submitted,

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

27 By: Gerald McC. Franklin
Gerald McC. Franklin, Senior Deputy

28 Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

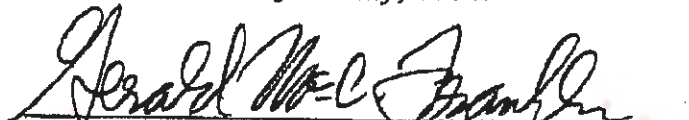
} SS

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; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On May 6, 2004, I served the within NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING THAT A CERTAIN REQUEST FOR AN ORDER TO SHOW CAUSE RE: CONTEMPT BE MAINTAINED UNDER SEAL UNTIL FURTHER ORDER OF COURT; DECLARATION OF GERALD McC. FRANKLIN; MEMORANDUM OF POINTS AND AUTHORITIES and separate PROPOSED ORDER THEREON on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, and GIBSON, DUNN & CRUTCHER, LLP, by faxing a true copy to counsel at the facsimile number shown with the address of each on the attached Service List, and then by causing to be mailed a true copy to each counsel at that address.

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

Executed at Santa Barbara, California on this 6th day of May, 2004.


Gerald McC. Franklin

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