

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JUN 23 2004

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
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Senior Deputy District Attorney
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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.

16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

PLAINTIFF'S NOTICE OF
MOTION FOR ORDER
DIRECTING THAT PLAINTIFF'S
REQUEST THAT DEFENDANT'S
CERTAIN MOTION, FILED JUNE
21, 2004 UNDER SEAL, BE
TAKEN "OFF CALENDAR"
LIKEWISE BE SEALED AND
REMAIN UNDER CONDITIONAL
SEAL PENDING FURTHER
ORDER OF COURT;
DECLARATION OF GERALD
McC. FRANKLIN IN SUPPORT
THEREOF; MEMORANDUM OF
POINTS AND AUTHORITIES

~~UNDER SEAL~~

DATE: June 25, 2004
TIME: 8:30 a.m.
DEPT: SM 2 (Melville)

25 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR.,
26 STEVE COCHRAN, and ROBERT SANGER, HIS ATTORNEYS OF RECORD, AND TO
27 THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN & CRUTCHER, LLP:

28 PLEASE TAKE NOTICE that on June 25, 2004, at 8:30 a.m. or as soon thereafter

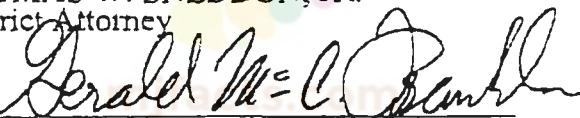
1 as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does, move for an
2 order directing that "Plaintiff's Request That Defendant's Certain Motion Filed June 21, 2004
3 Under Seal Likewise Be Conditionally Filed Under Seal Pending Further Order Of Court," etc.
4 filed contemporaneously with this Request for Conditional Sealing, likewise be maintained
5 under conditional seal until further order of court, pursuant to California Rules of Court, rule
6 243.1 et seq.

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

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

14 DATED: June 23, 2004

15
16 THOMAS W. SNEDDON, JR.
District Attorney

17 By: 
18 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 conditionally seal the contemporaneously-filed Plaintiff's
7 Request that Defendant's Certain Motion Filed June 21, 2004 Be Taken Off Calendar is made
8 on the ground that Defendant's pending motion was filed under seal, and that it makes
9 reference to matters not yet made public, and that in the interests of consistency, Plaintiff's
10 interim response to that certain motion ought also to be conditionally filed under seal pending
11 the court's own determination whether, and to what extent, Defendant's motion and Plaintiff's
12 interim response may be unsealed.

13 3. I believe that the interest of each party to a fair trial overrides the public's prompt
14 access to Defendant's certain motion and Plaintiff's interim response thereto until the
15 appropriateness of the release of a redacted form of each is determined by the court.

16 4. I believe an order maintaining these motions under seal in the interim would
17 avert the probability of prejudice, and that no more narrowly tailored order with respect to
18 those pleadings could be drafted to achieve the overriding interest in a fair trial.

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

23 
24 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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DATED: June 23, 2004

Respectfully submitted.

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

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

Attorneys for Plaintiff



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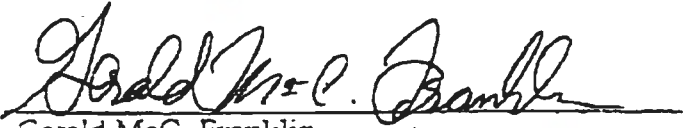
PROOF OF SERVICE

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 June 23, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR ORDER DIRECTING THAT DEFENDANT'S CERTAIN MOTION, FILED JUNE 21, 2004 UNDER SEAL, BE TAKEN OFF CALENDAR LIKEWISE BE SEALED, ETC. on Media's counsel, and on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, and ROBERT SANGER, 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 23rd day of June, 2004.


Gerald McC. Franklin



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SERVICE LIST

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