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County of Santa Barbara
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Senior Deputy District Attorney
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

AUG 16 2004

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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,)

13 Plaintiff,)

14 v.)

16 MICHAEL JOE JACKSON,)

17 Defendant.)

No. 1133603

18 PLAINTIFF'S NOTICE OF
19 MOTION FOR ORDER
20 DIRECTING THAT PLAINTIFF'S
21 OPPOSITION TO DEFENDANT'S
22 MOTION TO TRAVERSE
23 AFFIDAVITS, ETC. BE
24 MAINTAINED UNDER SEAL
25 UNTIL FURTHER ORDER OF
26 COURT; DECLARATION OF
27 GERALD McC. FRANKLIN IN
28 SUPPORT OF SEALING;
MEMORANDUM OF POINTS
AND AUTHORITIES

~~UNDER SEAL~~

DATE: August 16, 2004
TIME: 10:00 a.m.
DEPT: TBA (Melville)

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

28 PLEASE TAKE NOTICE that on August 16, 2004, at 10:00 a.m. or as soon


1 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and
2 hereby does, move for an order directing that Plaintiff's Opposition To Defendant's Motion To
3 Travers Affidavits, To Quash Warrants And To Suppress Evidence, filed August 9, 2004 under
4 seal upon the assurance that this Request for Conditional Sealing would follow, 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: August 9, 2004

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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 1. 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 Opposition to Defendant's Motion to Traverse Affidavits, Etc. is made on the ground that the
8 pending motion makes reference to evidentiary facts not yet made public, the names of certain
9 witnesses, and information that would tend to identify them. It also makes arguments
10 concerning the legal and factual merits of other motions which are currently under seal, in
11 whole or in part.

12 3. I believe that the interest of each party to a fair trial overrides the public's prompt
13 access to Plaintiff's opposition to Defendant's motion to traverse the affidavits and quash
14 certain search warrants until the appropriateness of the release of a redacted version of the
15 opposition is determined by the court.

16 4. I believe an order maintaining this motion under seal in the interim would avert
17 the probability of prejudice, and that no more narrowly tailored order with respect to that
18 pleading 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 August
22 9, 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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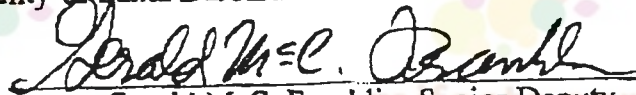
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DATED: August 9, 2004

Respectfully submitted,

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

By: 
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 August 9, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR ORDER DIRECTING THAT PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO TRAVERSE AFFIDAVITS, ETC. BE MAINTAINED UNDER SEAL on Media's counsel & proposed order + proposed redacted opposition and on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER and BRIAN OXMAN, by faxing a true copy to counsel (except Mr. Oxman) 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 9th day of August, 2004.

Gerald McC. Franklin
Gerald McC. Franklin

SERVICE LIST

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