

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

SEP 16 2004

GARY M. BLAIR, Clerk of Court
Gary M. Blair
CARRIE L. WHEELER, Deputy Clerk

7
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 v.

15
16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

18 PLAINTIFF'S NOTICE OF
19 MOTION FOR ORDER
20 DIRECTING THAT PLAINTIFF'S
21 REPLY TO DEFENDANT'S
22 SUPPLEMENTAL BRIEF TO
23 TRAVERSE AFFIDAVITS, ETC.
24 BE 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: September 16, 2004
TIME: 8:30 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, I.L.P:

28 PLEASE TAKE NOTICE that on September 16, 2004, at 8:30 a.m. or as soon

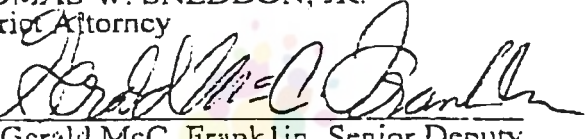
1 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and
2 hereby does, move for an order directing that the People's Reply to Defendant's Supplemental
3 Brief To Traverse Affidavits, Quash Warrants and Suppress Evidence, filed under seal, be
4 maintained under conditional seal until further order of court, pursuant to California Rules of
5 Court, rule 243.1 et seq.

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

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

13 DATED: September 10, 2004

14 THOMAS W. SNEDDON, JR.
15 District Attorney

16 By: 
17 Gerald McC. Franklin, Senior Deputy

18 Attorneys for Plaintiff

1 DECLARATION OF GERALD McC. FRANKLIN

2 I, Gerald McC. Franklin, say:

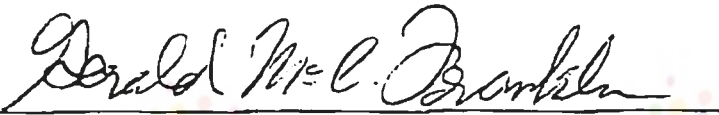
3 1. I am a lawyer admitted to practice in the State of California. I am a Senior
4 Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for
5 the People, Plaintiff in this action.

6 2. This motion to conditionally seal Reply to Defendant's Supplemental Brief To
7 Traverse Affidavits, Quash Warrants and Suppress Evidence is made on the ground that the
8 Reply makes reference to evidentiary facts not yet made public, the names of certain witnesses,
9 and information that would tend to identify them. It also makes arguments concerning the
10 legal and factual merits of motions that are currently under seal, in whole or in part.

11 3. I believe that the interest of each party to a fair trial overrides the public's prompt
12 access to Plaintiff's Reply until the appropriateness of the release of a redacted version of the
13 Memorandum is determined by the court.

14 4. I believe an order maintaining our Reply under seal in the interim would avert
15 the probability of prejudice, and that no more narrowly tailored order with respect to that
16 pleading could be drafted to achieve the overriding interest in a fair trial.

17 I declare under penalty of perjury under the laws of California that the foregoing is
18 true and correct, except as to matters stated upon my information and belief, and as to such
19 matters I believe it to be true. I execute this declaration at Santa Barbara, California on
20 September 10, 2004.

21 
22 _____
23 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(c) 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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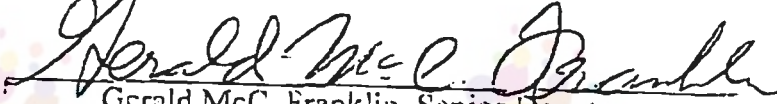
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1 DATED: September 10, 2004

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

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

10 On September 8, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION
11 FOR ORDER DIRECTING THAT PLAINTIFF'S REPLY TO DEFENDANT'S
12 SUPPLEMENTAL BRIEF TO TRAVERSE AFFIDAVITS, QUASH WARRANTS AND
13 SUPPRESS EVIDENCE BE MAINTAINED UNDER SEAL on Media's counsel and on
14 Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER and
15 BRIAN OXMAN, by personally delivering a true copy thereof to the Attorney Robert SANGER,
16 and by faxing a true copy to Media's counsel and Mr. Sanger's co-counsel (except Mr. Oxman)
17 at the facsimile number shown with the 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 10th day of September, 2004.

20 
21 _____
22 Gerald McC. Franklin

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2
3 **SERVICE LIST**

4 GIBSON, DUNN & CRUTCHER, LLP
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15 FAX: [CONFIDENTIAL]

16 Attorney for Defendant Michael Jackson

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28 Co-counsel for Defendant

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Co-counsel for Defendant