

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
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Santa Barbara, CA 93101
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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

OCT 08 2004

GARY M. BLAIR, Executive Officer

Carrie L. Wagner
CARRIE L. WAGNER, Deputy Clerk

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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 PLAINIFF'S NOTICE OF
MOTION AND MOTION FOR
COURT'S REVIEW OF
PEOPLE'S RESPONSE TO
DEFENDANT'S MOTION TO
COMPEL DISCOVERY, TO
DETERMINE WHETHER SEALING
IS APPROPRIATE; DECLARATION
OF GERALD McC. FRANKLIN;
MEMORANDUM OF POINTS AND
AUTHORITIES

UNDER SEAL

19
20 DATE: September 16, 2004

21 TIME: 8:30 a.m.

22 DEPT: TBA (Melville)

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

26 PLEASE TAKE NOTICE that on October 14, 2004, at 8:30 a.m. or as soon thereafter as
27 the matter may be heard, in the Department to be assigned, Plaintiff will, and hereby does, request
28 the Court to review Plaintiff's Response To Defendant's Motion To Compel Discovery, filed

1 contemporaneously with this Motion, to determine for itself whether an order directing that the
2 Response To Defendant's Motion To Compel Discovery is an appropriate document for sealing.,
3 and that the Request be maintained under conditional seal until further order of court, pursuant to
4 California Rules of Court, rule 243.1 et seq.

5 The motion will be made on the ground that the facts, as established by the
6 accompanying declaration of Gerald McC. Franklin, may not be sufficient to justify sealing the
7 specified motion 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 McC.
9 Franklin and the memorandum of points and authorities served and filed herewith, on the records
10 and the file herein, and on such evidence as may be presented at the hearing of the motion.

11 DATED: October 14, 2004

12
13 THOMAS W. SNEDDON, JR.
District Attorney

14 By: 

15 Gerald McC. Franklin, Senior Deputy

16 Attorneys for Plaintiff
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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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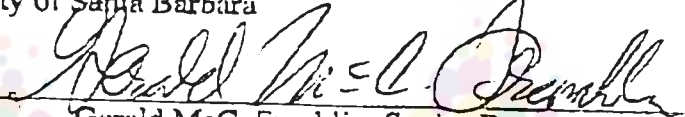
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1 DATED: October 8, 2004

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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3 **PROOF OF SERVICE**

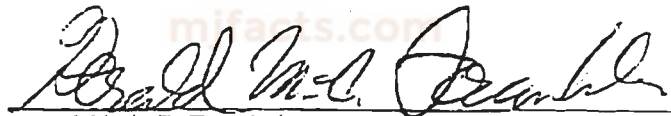
4 STATE OF CALIFORNIA }
5 COUNTY OF SANTA BARBARA } SS

6 I am a citizen of the United States and a resident of the County aforesaid; I am over the
7 age of eighteen years and I am not a party to the within-entitled action. My business address is:
8 District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara, California
9 93101.

10 On October 8, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR
11 COURT'S REVIEW OF PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO
12 COMPEL DISCOVERY on THEODORE BOUTROUS, Media's counsel and on Defendant, by
13 THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER and BRIAN OXMAN,
14 by causing a true copy thereof to be transmitted by facsimile to each counsel at the Fax number
15 shown on the attached Service List.

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

17 Executed at Santa Barbara, California on this 8th day of October, 2004.

18 
19 Gerald McC. Franklin
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3 **SERVICE LIST**

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17 Attorney for Defendant Michael Jackson

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Co-counsel for Defendant

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