

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
5 1112 Santa Barbara Street
Santa Barbara, CA 93101
6 Telephone: (805) 568-2300
FAX: (805) 568-2398
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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

OCT 18 2004

GARY M. BLAIR, Executive Officer
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**

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 REVISED NOTICE
OF MOTION FOR ORDER
DIRECTING THAT
19 STIPULATION RE: CERTAIN
SEIZED ITEMS BE MAINTAINED
UNDER SEAL UNTIL FURTHER
ORDER OF COURT;
20 DECLARATION OF GERALD
McC. FRANKLIN IN SUPPORT
OF SEALING; MEMORANDUM
OF POINTS AND AUTHORITIES

~~UNDER SEAL~~

21 DATE: November 5, 2004
TIME: 8:30 a.m.
DEPT: TBA (Melville)

22
23 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR.,
24 ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF RECORD, AND TO
25 THEODORE J. BOUTROUS, JR., F.SQ., GIBSON, DUNN & CRUTCHER, LLP:

26 PLEASE TAKE NOTICE that on November 5, 2004, at 8:30 a.m. or as soon
27 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and
28 hereby does, move for an order directing that the Stipulation of Plaintiff and Defendant That

1 hereby does, move for an order directing that the Stipulation of Plaintiff and Defendant That
2 Certain Seized Items May Be Removed From Defendant's Motion To Suppress For Purposes
3 of the Court's Consideration of the Merits of the Pending Motion, filed September 16, 2004
4 under seal, be maintained under conditional seal until further order of court, pursuant to
5 California Rules of 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: October 15, 2004

14 THOMAS W. SNEDDON, JR.
15 District Attorney

16 By: 

17 Gerald McC. Franklin, Senior Deputy

18 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. A motion to conditionally seal the Stipulation of Plaintiff and Defendant That
7 Certain Seized Items May Be Removed From Defendant's Motion To Suppress For Purposes
8 of the Court's Consideration of the Merits of the Pending Motion, to be filed September 16,
9 2004 was prepared on September 15th, because the stipulation makes reference to evidence not
10 yet made public and the names of certain potential witnesses. The stipulation was filed but,
11 due my oversight, the motion to conditionally seal that document did not find its way to the
12 Court's clerk. On October 14, 2004, the Court directed Plaintiff's attention to that oversight
13 and again ordered a motion to conditionally seal the Stipulation pending the next calendared
14 hearing.

15 3. I believe that the interest of each party to a fair trial overrides the public's prompt
16 access to the Stipulation until the appropriateness of the release of a redacted version of the
17 opposition is determined by the court.

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

21 I declare under penalty of perjury under the laws of California that the foregoing is
22 true and correct, except as to matters stated upon my information and belief, and as to such
23 matters I believe it to be true. I execute this declaration at Santa Barbara, California on
24 October 15, 2004.

25 
26 Gerald McC. Franklin

MEMORANDUM OF POINTS AND AUTHORITIES

1
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).) Motions and responsive
4 pleadings in criminal cases are, ordinarily, “public” records of the court.

5 Rule 243.1(d) provides that

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

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

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

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

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

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

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

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

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

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DATED: October 15, 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 October 15, 2004, I served the within PLAINTIFF'S REVISED NOTICE OF MOTION FOR ORDER DIRECTING THAT STIPULATION OF PLAINTIFF AND DEFENDANT THAT CERTAIN SEIZED ITEMS MAY BE REMOVED FROM DEFENDANT'S MOTION TO SUPPRESS FOR PURPOSES OF THE COURT'S CONSIDERATION OF THE MERITS OF THE PENDING MOTION BE MAINTAINED UNDER SEAL on counsel for Defendant and on Gibson, Dunn & Crutcher, Media's counsel, by faxing a true copy to counsel at the facsimile number shown with the address for that firm on the attached Service List, and then by causing to be mailed a true copy to counsel at that address.

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

Executed at Santa Maria, California on this 15th day of October, 2004.


Gerald McC. Franklin

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SERVICE LIST

GIBSON, DUNN & CRUTCHER, LLP

Theodore J. Boutros, Jr., Esq.

William E. Thomson, Esq.

Julian Poon, Esq.

333 S. Grand Avenue

Los Angeles, CA 90071-3197

Attorneys for (collectively) "Media"

THOMAS A. MESEREAU, JR.

Collins, Mesereau, Reddock & Yu, I.I.P.

1875 Century Park East, No. 700

Los Angeles, CA 90067

FAX: [CONFIDENTIAL]

Attorney for Defendant Michael Jackson

ROBERT SANGER, ESQ.

Sanger & Swysen, Lawyers

233 E. Carrillo Street, Suite C

Santa Barbara, CA 93001

FAX: (805) 963-7311

Co-counsel for Defendant

BRIAN OXMAN, ESQ.

Oxman & Jaroscak, Lawyers

14126 E. Rosecrans Blvd.,

Santa Fe Springs, CA 90670

Co-counsel for Defendant