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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

NOV 05 2004

GARY M. BLAIR, Executive Officer
By *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
19 MOTION FOR ORDER
20 DIRECTING THAT
21 PLAINIFF'S SUMMARY OF
22 ITEMS SEIZED PURSUANT TO
23 SW 5135 BE MAINTAINED
24 UNDER SEAL UNTIL FURTHER
25 ORDER OF COURT;
26 DECLARATION OF GERALD
27 McC. FRANKLIN IN SUPPORT
28 OF SEALING; MEMORANDUM
OF POINTS AND AUTHORITIES

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

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

26 PLEASE TAKE NOTICE that on November 5, 2004, at 1:30 p.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 Plaintiff's Summary of Items Seized Pursuant

1 To SW 5135, Created For Purposes of the Court's Consideration of the Merits of the Pending
2 Suppression Motion, be maintained under conditional seal until further order of court, pursuant
3 to California Rules of Court, rule 243.1 et seq.

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

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

11 DATED: November 5, 2004

12 THOMAS W. SNEDDON, JR.
13 District Attorney

14 By: *Gerald McC. Franklin*
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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1 DATED: November 5, 2004

2 Respectfully submitted,

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

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

7 Attorneys for Plaintiff



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