

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

NOV 18 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

11
12 THE PEOPLE OF THE STATE OF CALIFORNIA,)

13 Plaintiff,

14 v.

15
16 MICHAEL JOE JACKSON,

17 Defendant.)

No. 1133603

PLAINTIFF'S NOTICE OF
MOTION FOR ORDER
DIRECTING THAT PLAINTIFF'S
REQUEST THAT COURT
MODIFY ITS *TEAL* ORDER AND
EXERCISE JUDICIAL
OVERSIGHT REGARDING THE
SCOPE OF SUBPOENAS DUCES
TECUM; DECLARATION OF
GERALD McC. FRANKLIN IN
SUPPORT OF SEALING;
MEMORANDUM OF POINTS
AND AUTHORITIES

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21 DATE: November 29, 2004
22 TIME: ~~8:30 am~~ 10:06
23 DEPT: TBA (Melville)

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

27 PLEASE TAKE NOTICE that on November 29, 2004, at ~~8:30 am~~ ^{10:00 AM} or as soon

28 thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does.

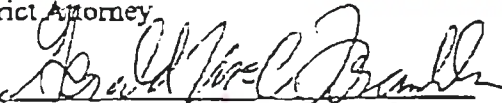
1 move for an order directing that "Plaintiff's Request That Court Modify Its *Teal* Order And
2 Exercise Judicial Oversight Regarding The Scope Of Subpoenas Duces Tecum Issued By
3 Defendant For Records Of Third Parties," etc., filed under seal contemporaneously with this
4 Request for Conditional Sealing, be maintained under conditional seal until further order of
5 court, pursuant to 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 hercin, and on such evidence as may be presented at the hearing of the
12 motion.

13 DATED: November 17, 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. This motion to conditionally seal the contemporaneously-filed "Plaintiff's
7 Request That Court Modify Its *Teal* Order And Exercise Judicial Oversight Regarding The
8 Scope Of Subpoenas Duces Tecum Issued By Defendant For Records Of Third Parties," etc., is
9 made on the ground that the pending motion makes reference to matters not yet made public,
10 including the names of certain witnesses and facts that would tend to identify them.

11 3. I believe that the interest of each party to a fair trial overrides the public's prompt
12 access to "Plaintiff's Request That Court Modify Its *Teal* Order And Exercise Judicial
13 Oversight Regarding The Scope Of Subpoenas Duces Tecum Issued By Defendant For Records
14 Of Third Parties," etc. until the appropriateness of the release of a redacted version of the
15 motion 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
22 November 17, 2004.

23 
24 _____
25 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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DATED: November 17, 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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3 **PROOF OF SERVICE**

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

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

11 On November 17, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION
12 FOR ORDER DIRECTING THAT PLAINTIFF'S MOTION TO QUASH CERTAIN
13 SUBPOENAS, ETC. on Media's counsel and on Defendant, by THOMAS A. MESEREAU,
14 JR., ROBERT SANGER and BRIAN OXMAN, by personally delivering a true copy thereof to
15 Mr. Sanger's office in Santa Barbara, by faxing a true copy to other counsel at the facsimile
16 number shown with the address of each on the attached Service List, and then by causing to be
17 mailed a true copy to each counsel at that address.

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

19 Executed at Santa Barbara, California on this 17th day of November, 2004.

20 151
21 Gerald McC. Franklin

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, LLP

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