

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 30 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**

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

PLAINTIFF'S NOTICE OF
MOTION FOR ORDER
DIRECTING THAT PLAINTIFF'S
PROPOSED PROTOCOL FOR
EXPERTS' EXAMINATION OF
EnCase COMPUTER HARD
DRIVES; DECLARATION OF
GERALD McC. FRANKLIN IN
SUPPORT OF SEALING;
MEMORANDUM OF POINTS
AND AUTHORITIES

19 DATE: November 29, 2004
20 TIME: 10:00 a.m.
21 DEPT: TBA (Mcville)

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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., ESQ., GIBSON, DUNN & CRUTCHER, LLP:

26 PLEASE TAKE NOTICE that Plaintiff hereby moves for an order directing that
27 "Plaintiff's Proposed Protocol For Experts' Examination Of EnCase Computer Harddrives,"
28 filed under seal on November 29, 2004, be maintained under conditional seal until further order

1 of court, pursuant to California Rules of Court, rule 243.1 et seq.

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

5 The motion is made on this notice of motion, on the declaration of Gerald McC.
6 Franklin and the memorandum of points and authorities served and filed herewith, on the
7 records and the file herein, and on such evidence as may be presented at the hearing of the
8 motion on the next calendared appearance in this matter.

9 DATED: November 30, 2004

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11 THOMAS W. SNEDDON, JR.
District Attorney

12 By: 
13 Gerald McC. Franklin, Senior Deputy

14 Attorneys for Plaintiff
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DECLARATION OF GERALD McC. FRANKLIN

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2 I, Gerald McC. Franklin, say:

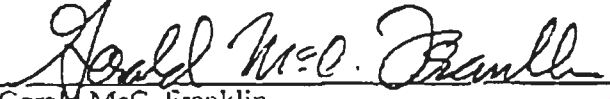
3 1. I am a lawyer admitted to practice in the State of California. I am a Senior
4 Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for
5 the People, Plaintiff in this action.

6 2. This motion to conditionally seal the contemporaneously-filed "Plaintiff's
7 Proposed Protocol For Experts' Examination Of EnCase Computer Harddrives," is made on
8 the ground that the pending Proposed Protocol makes oblique reference to matters not yet
9 made public, including the names of certain witnesses and facts that would tend to identify
10 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 Proposed Protocol For Experts' Examination Of EnCase Computer
13 Harddrives," until the appropriateness of the release of a redacted version of the motion is
14 determined by the court.

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

18 I declare under penalty of perjury under the laws of California that the foregoing is
19 true and correct, except as to matters stated upon my information and belief, and as to such
20 matters I believe it to be true. I execute this declaration at Santa Barbara, California on
21 November 30, 2004.

22 
23 _____
24 Gerald McC. Franklin

MEMORANDUM OF POINTS AND AUTHORITIES

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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: November 30, 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 November 30, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR ORDER DIRECTING THAT "PLAINTIFF'S PROPOSED PROTOCOL FOR EXPERTS' EXAMINATION OF ENCASE COMPUTER HARDDRIVES." on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by faxing a true copy to other counsel at the facsimile number shown with the address of each on the attached Service List, and then by causing to be mailed a true copy to each counsel at that address.

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

Executed at Santa Barbara, California on this 30th day of November, 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, 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

RICKY BRIAN OXMAN, ESQ.

Oxman & Jaroscak, Lawyers

14126 E. Roscrans Blvd.,

Santa Fe Springs, CA 90670

FAX: (562) 921-2298

Co-counsel for Defendant