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County of Santa Barbara

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Senior Deputy District Attorney

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Senior Deputy District Attorney

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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

DEC 16 2004

GARY M. BLAIR, Executive Officer
Gary M. Blair
CARRIEL 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 AND MOTION FOR
COURT'S REVIEW OF
PLAINTIFF'S AGREEMENT
WITH DEFENSE MOTION
TO DETERMINE WHETHER
SEALING IS APPROPRIATE;
DECLARATION OF GERALD
McC. FRANKLIN; MEMORANDUM
OF POINTS AND AUTHORITIES

19 DATE: December 23, 2004
20 TIME: ~~8:30 a.m.~~ 9:30 AM
DEPT: TBA (Melville)

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

25 PLEASE TAKE NOTICE that on December 23, 2004, at ⁹³⁰~~8:30~~ a.m. or as soon
26 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and
27 hereby does, request the Court to review Plaintiff's Agreement With Defense Motion For Jury
28 Questionnaire, filed contemporaneously with this Motion, to determine for itself whether an

PLAINTIFF'S REQUEST THAT COURT DETERMINE APPROPRIATENESS OF SEALING MOTION FOR JURY
QUESTIONNAIRE AND AGREEMENT THERETO

1 order directing that the Agreement (and, by extension, defendant's Motion for Jury
2 Questionnaire) is an appropriate document for sealing, and that defendant's Motion and our
3 Agreement 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
9 McC. Franklin and the memorandum of points and authorities served and filed herewith, on the
10 records and the file herein, and on such evidence as may be presented at the hearing of the
11 motion.

12 DATED: December 16, 2004

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14 THOMAS W. SNEDDON, JR.
District Attorney

15 By: 
16 Gerald McC. Franklin, Senior Deputy

17 Attorneys for Plaintiff
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DECLARATION OF GERALD McC. FRANKLIN

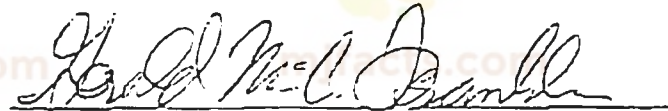
I, Gerald McC. Franklin, say:

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

2. This motion to conditionally seal the contemporaneously-filed Plaintiff's Agreement With Defense Motion For Jury Questionnaire, and requesting that the Court determine for itself whether Plaintiff's Agreement and the Motion itself are appropriate for sealing, is made on the ground that neither the Motion for Jury Questionnaire nor our Agreement thereto do not, in the undersigned's opinion, themselves reveal any information that would warrant sealing.

3. I believe that the interest of each party to a fair trial dictates that the Motion for Jury Questionnaire and our Agreement thereto should remain under conditional seal until the appropriateness of sealing the documents and, if sealing is ordered, of the release of a redacted version of the documents is determined by the court.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, except as to matters stated upon my information and belief, and as to such matters I believe it to be true. I execute this declaration at Santa Barbara, California on December 16, 2004.


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(c) 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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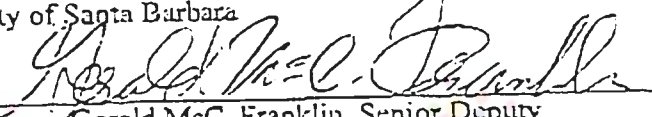
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DATED: October 19, 2004

Respectfully submitted,

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

By: 
Gerald McC. Franklin, Senior Deputy

Attorneys for Plaintiff

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PROOF OF SERVICE

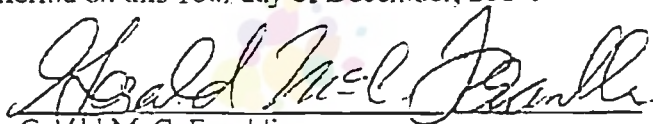
STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA } SS

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 December 16, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR COURT'S REVIEW OF PLAINTIFF'S AGREEMENT WITH DEFENDANT'S MOTION FOR JURY QUESTIONNAIRE and PROPOSED ORDER on THEODORE BOUTROUS, Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, by personally delivering a true copy to Mr. Sanger's Office and then transmitting a true copy thereof to Mr. Mesereau by facsimile, at (310) 861-1007.

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

Executed at Santa Barbara, California on this 16th day of December, 2004.


Gerald McC. Franklin