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County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
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Senior Deputy District Attorney
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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 10 2005

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
15 v.

16
17 MICHAEL JOE JACKSON,

18 Defendant.

No. 1133603

19
20 PLAINIFF'S NOTICE OF
21 MOTION AND MOTION FOR
22 COURT'S REVIEW OF
23 PLAINTIFF'S OPPOSITION TO
24 DEFENDANT'S MOTION THAT
25 THE HEARING OF PLAINTIFF'S
26 "EVIDENCE CODE § 1108"
27 MOTION BE HELD IN CAMERA
28 TO DETERMINE WHETHER
SEALING IS APPROPRIATE;
DECLARATION OF GERALD
McC. FRANKLIN; MEMORANDUM
OF POINTS AND AUTHORITIES

20
21 DATE: January ¹² 2005
22 TIME: 8:30 a.m.
23 DEPT: TBA (Mcville)

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 on January 12, 2005, 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, request the Court to review Plaintiff's Opposition to Defendant's Motion that

1 Hearing of Plaintiff's "Evidence Code § 1108" Motion Be Held In Camera, filed
2 contemporaneously with this Motion, to determine for itself whether an order directing that the
3 Opposition to In Camera Hearing is an appropriate document for sealing., and that the Motion
4 be maintained under conditional seal until further order of court, pursuant to California Rules
5 of Court, rule 243.1 et seq.

6 The motion will be made on the ground that the discussion of facts in the
7 Opposition, as established by the accompanying declaration of Gerald McC. Franklin, may not
8 be sufficient to justify sealing the specified motion pursuant to California Rules of Court, rule
9 243.1 et seq.

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

14 DATED: January 10, 2005

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16 THOMAS W. SNEDDON, JR.
District Attorney

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18 By: 

Gerald McC. Franklin, Senior Deputy

19 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 Opposition to Defendant's Motion that Hearing of Plaintiff's "Evidence Code § 1108" Motion Be Held In Camera, and requesting that the Court determine for itself whether the Opposition is appropriate for sealing, is made on the ground that the Opposition to In-Camera Hearing does not, in the undersigned's opinion, itself reveal any information that would warrant sealing.

3. I believe that the interest of each party to a fair trial dictates that the Opposition to In-Camera Hearing should remain under conditional seal until the appropriateness of sealing the document and, if sealing is ordered, of the release of a redacted version of the opposition 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 January 10, 2005.



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(c) 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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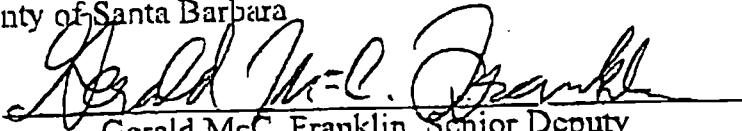
27 ////

28 ////

1 DATED: January 10, 2005

2 Respectfully submitted,

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

5 By: 
6 Gerald McC. Franklin, Senior Deputy

7 Attorneys for Plaintiff
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3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA)
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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; 1112 Santa Barbara Street, Santa Barbara, California 93101.

On January 10, 2005, I served the within PLAINTIFF'S NOTICE OF MOTION FOR COURT'S REVIEW OF PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION THAT THE HEARING OF PLAINTIFF'S "EVIDENCE CODE § 1108" MOTION BE HELD IN CAMERA TO DETERMINE WHETHER SEALING IS APPROPRIATE, ETC. 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) 284-3122.

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

Executed at Santa Barbara, California on this 10th day of January, 2005.


Gerald McC. Franklin

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SERVICE LIST

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