

JAN 24 2005

GARY M. BLAIR, Executive Officer

By *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

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
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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.

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18 MICHAEL JOE JACKSON,

19 Defendant.

No. 1133603

PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
COURT'S REVIEW OF
PLAINTIFF'S REPLY TO
DEFENDANT'S OPPOSITION
TO EVIDENCE OF MARTIN
BASHIR DOCUMENTARY
"LIVING WITH MICHAEL
JACKSON," TO DETERMINE
WHETHER SEALING IS
APPROPRIATE; DECLARATION
OF GERALD McC. FRANKLIN;
MEMORANDUM OF POINTS
AND AUTHORITIES

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21 DATE: January 28, 2005
TIME: 9:30 a.m.
DEPT: TBA (Melville)
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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 on January 28, 2005, at 9:30 a.m. or as soon
27 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and
28

1 hereby does, request the Court to review Plaintiff's Reply to Defendant's Opposition to
2 Evidence of Martin Bashir Documentary, "Living with Michael Jackson," filed
3 contemporaneously with this Motion, to determine for itself whether an order directing that the
4 Reply to Opposition to Evidence of Documentary is an appropriate document for sealing., and
5 that the Reply be maintained under conditional seal until further order of court, pursuant to
6 California Rules of Court, rule 243.1 et seq.

7 The motion will be made on the ground that the discussion of facts in Plaintiff's
8 Reply to Defendant's Opposition to Evidence of Martin Bashir Documentary, "Living with
9 Michael Jackson," as established by the accompanying declaration of Gerald McC. Franklin,
10 may not be sufficient to justify sealing the specified motion pursuant to California Rules of
11 Court, rule 243.1 et seq.

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

16 DATED: January 24, 2005

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18 THOMAS W. SNEDDON, JR.
District Attorney

19 By: 
20 Gerald McC. Franklin, Senior Deputy

21 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 Reply to Defendant's Opposition to Evidence of Martin Bashir Documentary, "Living with Michael Jackson," and requesting that the Court determine for itself whether the Reply is appropriate for sealing, is made on the ground that the Reply does not, in the undersigned's opinion, itself reveal any information that would warrant sealing. For that reason, I have not prepared a proposed redacted copy of the Reply.

3. I believe that the interest of each party to a fair trial dictates that Plaintiff's Reply to Defendant's Opposition to Evidence of Martin Bashir Documentary, "Living with Michael Jackson," 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 Reply 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 24, 2005.


Gerald McC. Franklin

MEMORANDUM OF POINTS AND AUTHORITIES

1
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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1 DATED: January 24, 2005

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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3 **PROOF OF SERVICE**

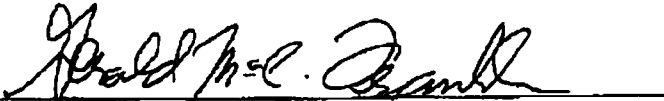
4 STATE OF CALIFORNIA
5 }
6 COUNTY OF SANTA BARBARA } SS

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; 1112 Santa Barbara Street, Santa Barbara,
10 California 93101.

11 On January 18, 2005, I served the within PLAINTIFF'S NOTICE OF MOTION
12 FOR COURT'S REVIEW OF PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO
13 EVIDENCE OF MARTIN BASHIR DOCUMENTARY, "LIVING WITH MICHAEL
14 JACKSON," TO DETERMINE WHETHER SEALING IS APPROPRIATE, ETC. and
15 PROPOSED ORDER on THEODORE BOUTROUS, Media's counsel and on Defendant, by
16 THOMAS A. MESEREAU, JR. and ROBERT SANGER, by personally delivering a true copy
17 to Mr. Sanger's Office and then transmitting a true copy thereof to Mr. Mesereau at (805) 456-
18 0699 and to Mr. Boutrous at (213) 229-6758.

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

20 Executed at Santa Barbara, California on this 24th day of January, 2005.

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22 _____
23 Gerald McC. Franklin
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