

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 24 2005

GARY M. BLAIR, Executive Officer
Carrie L. Wagner
CARRIE L. WAGNER, Deputy Clerk

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

17 MICHAEL JOE JACKSON,)

18 Defendant.)

No. 1133603

PLAINTIFF'S NOTICE OF
MOTION FOR ORDER
DIRECTING THAT PLAINTIFF'S
RESPONSE TO MARTIN
BASHIR'S MOTION FOR
PROTECTIVE ORDER
PRECLUDING HIM FROM
TESTIFYING BE MAINTAINED
UNDER SEAL UNTIL FURTHER
ORDER OF COURT;
DECLARATION OF GERALD
McC. FRANKLIN IN SUPPORT
OF SEALING; MEMORANDUM
OF POINTS AND AUTHORITIES

DATE: January 28, 2005
TIME: 8:30 a.m.
DEPT: TBA (Melville)

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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 January 28, 2005, at 8:30 a.m. 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 Response to Martin Bashir's Motion for Protective
2 Order, Etc., filed contemporaneously with this Request for Conditional Sealing, be maintained
3 under conditional seal pending further Order of Court, pursuant to California Rules of Court,
4 rule 245.1 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, are 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: January 24, 2005

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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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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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1 DATED: January 24, 2005

2 Respectfully submitted.

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

5 By: Gerald M. C. Franklin
6 Gerald McC. Franklin, Senior Deputy

7 Attorneys for Plaintiff
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SERVICE LIST

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