

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
7 FAX: (805) 568-2398

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

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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16
17 MICHAEL JOE JACKSON,

18 Defendant.

No. 1133603

PLAINTIFF'S NOTICE OF
REQUEST FOR ORDER
DIRECTING THAT PLAINTIFF'S
RESPONSE TO DEFENDANT'S
MOTION IN LIMINE TO
EXCLUDE ANY REFERENCE
TO CIVIL SETTLEMENTS
BE MAINTAINED UNDER
CONDITIONAL SEAL;
DECLARATION OF GERALD
McC. FRANKLIN IN SUPPORT
THEREOF; MEMORANDUM
OF POINTS AND AUTHORITIES

19
20 DATE: January 28, 2005
21 TIME: 9:30 a.m.
22 DEPT: TBA (Melville)

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 hereby does, move for an order directing that Plaintiff's Response to Defendant's Motion In

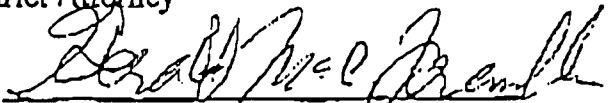
1 Limine To Exclude Any Reference To Civil Settlements And Amounts, filed
2 contemporaneously with this Request for Conditional Sealing, bc maintained under conditional
3 seal until further order of court, pursuant to California Rules of Court, rule 243.1 et seq.

4 The motion will be made on the ground that the facts, as established by the
5 accompanying declaration of Gerald McC. Franklin, are sufficient to justify sealing the
6 Response pursuant to California Rules of Court, rule 243.1 et seq.

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

11 DATED: January 24, 2005

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13 THOMAS W. SNEDDON, JR.
District Attorney

14 By: 
15 Gerald McC. Franklin, Senior Deputy

16 Attorneys for Plaintiff
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1 DECLARATION OF GERALD McC. FRANKLIN

2 I, Gerald McC. Franklin, say:

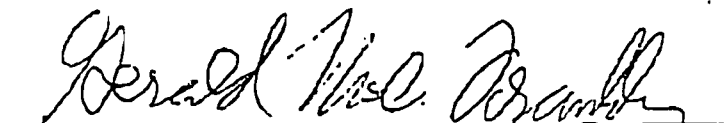
3 1. I am a lawyer admitted to practice in the State of California. I am a Senior
4 Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for
5 the People, Plaintiff in this action.

6 2. Plaintiff's Motion to Conditionally Seal Plaintiff's Response to Defendant's
7 Motion In Limine To Exclude Any Reference To Civil Settlements And Amounts, filed
8 contemporaneously with this Motion, is made on the ground that the Response to Civil
9 Settlements Motion makes reference to evidentiary facts not yet made public and to names of
10 potential witnesses.

11 3. I believe that the interest of each party to a fair trial overrides the public's prompt
12 access to Plaintiff's Response until the appropriateness of the release of a redacted version of
13 the Response is determined by the Court.

14 4. I believe an order maintaining our Plaintiff's Response to Defendant's Motion In
15 Limine To Exclude Any Reference To Civil Settlements And Amounts under seal in the
16 interim would avert the probability of prejudice, and that no more narrowly tailored order with
17 respect to that 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 January
21 24, 2005.

22 
23 Gerald McC. Franklin

MEMORANDUM OF POINTS AND AUTHORITIES

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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.

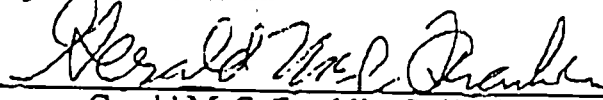
Rule 243.2(b) provides, in pertinent part, that "Pending the determination of the motion [of a party to file a record under seal], the lodged record will be conditionally under seal."

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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: 
6 Gerald McC. Franklin, Senior Deputy

7 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA)
) SS
COUNTY OF SANTA BARBARA

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 24, 2005, I served the within PLAINTIFF'S MOTION THAT PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE ANY REFERENCE TO CIVIL SETTLEMENTS AND AMOUNTS, BE MAINTAINED UNDER SEAL on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by causing a true copy to be transmitted to Defendant's co-counsel and to Media's counsel at the facsimile number shown with the address for counsel on the attached Service List, and then causing that copy to be mailed to each at the address shown on the Service List.

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

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


Gerald McC. Franklin

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2 **SERVICE LIST**

3
4 **GIBSON, DUNN & CRUTCHER, LLP**
5 Theodore J. Boutrous, Jr., Esq.
6 William E. Thomson, Esq.
7 Julian Poon, Esq.
8 333 S. Grand Avenue
9 Los Angeles, CA 90071-3197
10 FAX: (213) 229-6758

11 Attorneys for (collectively) "Media"

12
13 **THOMAS A. MESEREAU, JR.**
14 Collins, Mesereau, Reddock & Yu, LLP
15 1875 Century Park East, No. 700
16 Los Angeles, CA 90067
17 FAX: [CONFIDENTIAL]

18 Attorney for Defendant Michael Jackson

19
20 **ROBERT SANGER, ESQ.**
21 Sanger & Swysen, Lawyers
22 233 E. Carrillo Street, Suite C
23 Santa Barbara, CA 93001
24 FAX: (805) 963-7311

25 Co-counsel for Defendant

26
27 **BRIAN OXMAN, ESQ.**
28 Oxman & Jaroscak, Lawyers
14126 E. Rosecrans Blvd.,
Santa Fe Springs, CA 90670

Co-counsel for Defendant