

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara  
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Senior Deputy District Attorney  
3 J. GORDON AUCHINCLOSS (State Bar No. 150251)  
Senior Deputy District Attorney  
4 GERALD McC. FRANKLIN (State Bar No. 40171)  
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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

OCT 19 2004

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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15 MICHAEL JOE JACKSON,

16 Defendant.

No. 1133603

PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
COURT'S REVIEW OF  
PLAINTIFF'S MOTION FOR  
DISCOVERY TO DETERMINE  
WHETHER SEALING IS  
APPROPRIATE; DECLARATION  
OF GORDON AUCHINCLOSS;  
MEMORANDUM OF POINTS  
AND AUTHORITIES

~~CONFIDENTIAL~~

19 DATE: November 5, 2004  
20 TIME: 8:30 a.m.  
21 DEPT: TBA (Mcville)

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 November 5, 2004, at 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 Motion for Discovery, filed  
28 contemporaneously with this Motion, to determine for itself whether an order directing that the

1 Motion for Discovery is an appropriate document for sealing., and that the Motion be  
2 maintained under conditional seal until further order of court, pursuant to California Rules of  
3 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 Gordon Auchincloss, may not be sufficient to justify sealing the  
6 specified motion 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 Gordon  
8 Auchincloss 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: October 19, 2004

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13 THOMAS W. SNEDDON, JR.  
District Attorney

14 By:   
15 Gordon Auchincloss, Senior Deputy  
16 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(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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1 DATED: October 19, 2004

2 Respectfully submitted,

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

5 By:  \_\_\_\_\_  
6 Gordon Auchincloss, Senior Deputy

7 Attorneys for Plaintiff  
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