THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY 1 County of Santa Barbara By: RONALD J. ZONEN (State Bar No. 85094) 2 Senior Deputy District Attorney JAN 18 2005 3 J. GORDON AUCHINCLOSS (State Bar No. 150251) Senior Deputy District Attorney
GERALD McC. FRANKLIN (State Bar No. 40171) GARY M. ELAIR, Executive Officer By Carried Wagner 4 Senior Deputy District Attorney 1112 Santa Barbara Street CARRIE L. WAGNER, Debuty Clerk 5 Santa Barbara, CA 93101 Telephone: (805) 568-2300 FAX: (805) 568-2398 6 7 SUPERIOR COURT OF THE STATE OF CALIFORNIA 8 FOR THE COUNTY OF SANTA BARBARA 9 SANTA MARIA DIVISION 10 11 THE PEOPLE OF THE STATE OF CALIFORNIA, No. 1133603 12 Plaintiff, PLAINTIFF'S NOTICE OF 13 REQUEST FOR ORDER DIRECTING THAT PLAINTIFF'S 14 MOTION FOR ADMISSION OF **EVIDENCE OF MARTIN** 15 BASHIR'S "LIVING WITH MICHAEL JACKSON" ETC. BE 16 MAINTAINED UNDER MICHAEL JOE JACKSON 17 CONDITIONAL SEAL DECLARATION OF GERALD Defendant. McC. FRANKLIN IN SUPPORT 18 THEREOF; MEMORANDUM OF POINTS AND AUTHORITIES 19 DATE: January 28, 2005 20 TIME: 9:30 a.m. DEPT: TBA (Melville) 21 22 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 Motion for Admission of Martin

PLAINTIFF'S MOTION FOR ORDER SEALING PLAINTIFF'S MOTION RE-ADMISSION OF RASHIR FILM

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Bashir's Documentary "Living with Michael Jackson," Etc., filed contemporaneously with this Request for Conditional Sealing, be maintained under conditional seal until further order of court, pursuant to California Rules of Court, rule 243.1 et seq.

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

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

DATED: January 18, 2005

THOMAS W. SNEDDON, JR. District Attorney

Gerald McC. Franklin, Senior Deputy

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. Plaintiff's Motion To Conditionally Seal Plaintiff's Motion for Admission of Martin Bashir's Documentary "Living with Michael Jackson," Etc., , filed contemporaneously with this Motion, is made on the ground that the "Bashir Documentary" Motion makes reference to evidentiary facts not yet made public.
- 3. I believe that the interest of each party to a fair trial overrides the public's prompt access to Plaintiff's Objection until the appropriateness of the release of a redacted version of the Bashir Documentary Motion is determined by the Court.
- 4. I believe an order maintaining our "Bashir Documentary" Motion under seal in the interim would avert the probability of prejudice, and that no more narrowly tailored order with respect to that pleading could be drafted to achieve the overriding interest in a fair trial.

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 18, 2005.

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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PLAINTIFF'S MOTION FOR ORDER SEALING PLAINTIFF'S MOTION RE- ADMISSION OF RASHIR FILM

DATED: January 18, 2005 Respectfully submitted, THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY County of Santa Barbara Gerald McC. Franklin, Senior Deputy Attorneys for Plaintiff

PLAINTIFF'S MOTION FOR ORDER SEALING PLAINTIFF'S MOTION RE-ADMISSION OF RASHIR FILM

PROOF OF SERVICE

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STATE OF CALIFORNIA COUNTY OF SANTA BARBARA

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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; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On January 18, 2005, I served the within PLAINTIFF'S MOTION THAT PLAINTIFF'S MOTION FOR ADMISSION OF MARTIN BASHIR'S DOCUMENTARY "LIVING WITH MICHAEL JACKSON," ETC., 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 18th day of January, 2005.

1 SERVICE LIST 2 3 GIBSON, DUNN & CRUTCHER, LLP 4 Theodore J. Boutrous, Jr., Esq. William E. Thomson, Esq. 5 Julian Poon, Esq. 333 S. Grand Avenue Los Angeles, CA 90071-3197 6 FAX: (213) 229-6758 7 Attorneys for (collectively) "Media" 8 THOMAS A. MESEREAU, JR. 9 Collins, Mesereau, Reddock & Yu, LLP 1875 Century Park East, No. 700 Los Angeles, CA 90067 FAX: [CONFIDENTIAL] 10 11 Attorney for Defendant Michael Jackson 12 13 ROBERT SANGER, ESQ. Sanger & Swysen, Lawyers 233 E. Carrillo Street, Suite C 14 15 Santa Barbara, CA 93001 FAX: (805) 963-7311 16 Co-counsel for Defendant 17 BRIAN OXMAN, ESQ. 18 Oxman & Jaroscak, Lawyers 14126 E. Rosecrans Blvd., 19 Santa Fe Springs, CA 90670 20 Co-counsel for Defendant 21 22 23 24 25 26 27 28