THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY County of Santa Burbura
By: RONALD J. ZONEN (State Bar No. 85094) SUPERIOR COURT OF CALIFORNIA COUNTY OF SANTA BARBARA Senior Deputy District Attorney
J. GORDON AUCHINCLOSS (State Bar No. 150251) JAN 25 2005 Senior Deputy District Attorney GERALD McC, FRANKLIN (State Bar No. 40171) 4 GARY M. BLAIR, Executive Officer Senior Deputy District Attorney arine of wagner 5 1112 Santa Barbara Street Sunta Barbara, CA 93101 Telephone: (805) 568-2300 FAX: (805) 568-2398 CARRIE L. WAGNER. Deputy Clork 6 7 SUPERIOR COURT OF THE STATE OF CALIFORNIA õ a FOR THE COUNTY OF SANTA BARBARA SANTA MARIA DIVISION 18 11 12 No. 1133503 13 THE PEOPLE OF THE STATE OF CALIFORNIA PLAINTIFF'S NOTICE OF 14 Plaintiff. MOTION AND MOTION 19 FOR REVIEW OF COURT TO DETERMINE IF 16 MICHAEL JOE JACKSON. SEALING OF PLAINTIFF'S 17 REPLY TO DEFENDANT'S Defendant. OPPOSITION RE: MOTION 15 TO CLOSE THE COURTROOM PURSUANT 19 TO PENAL CODE §859.1 IS 20 APPROPRIATE 21 Date: January 28, 2005 22 Time: 8:30 a.m. Dept.: SM2 (Melville) 23 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 I. BOUTROUS, JR., ESQ., GIBSON, DUNN & CRUTCHER, LLP: 27 PLEASE TAKE NOTICE that on January 28, 2005, at \$30 a.m. of as seen 25 PLAINTIFF'S REQUEST THAT COURT DETERMINE APPROPRIATENING OF SLALING MOTION FOR CEOSED COURTROOM

thereafter as the matter may be heard, in the Department to be assigned. Plaintiff will, and hereby does, request the Court to review PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION RE: MOTION TO CLOSE THE COURTROOM PURSUANT TO PENAL CODE §859.1, filed contemporaneously with this Motion, to determine for itself whether an order directing that the PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION RE: MOTION TO CLOSE THE COURTROOM PURSUANT TO PENAL CODE §859.1 is an appropriate document for scaling., and that the Motion be maintained under conditional scal 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 Gordon Auchineloss, may not be sufficient to justify scaling the specified motion pursuant to California Rules of Court, rule 243.1 et sea.

The motion will be based on this notice of motion, on the declaration of Gordon Auchineloss 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 25, 2005

THOMAS W. SNEDDON, JR. District Attorney

By:

Gordon Auchincloss, Senior Deputy

Attorneys for Plaintiff

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# DECLARATION OF GORDON AUCHINCLOSS

- I. Gordon Auchineloss, sav:
- 1. I am a lawver admitted to practice in the State of California. I am a Senior Deputy of the District Attorney of Santa Barbara County. 1 aro one of the lawyers of record for the Paople, Plaintiff in this action.
- 2. This motion to conditionally seal the contemporaneously-filed PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION RE: MOTION TO CLOSE THE COURTROOM PURSUANT TO PENAL CODE §859.1, and requesting that the Court determine for itself whether the motion is appropriate for scaling, is made on the ground that the PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION RE: MOTION TO CLOSE THE COURTROOM PURSUANT TO PENAL CODE §859.1 does not, in the undersigned's opinion, itself reveal any information that would warrant scaling.
- 3. I believe that the interest of each party to a fair trial dictates that the Motion to Close the Courtroom During Testimony of Child Witnesses 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 opposition is determined by the court,

I declare under penalty of penjury 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 25, 2005,

Gordon Anchincloss





### 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 scaled;
  - (4) The proposed scaling 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 scaling the record must (i) specifically set forth the facts findings that support the findings and (ii) direct the scaling 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 scal. 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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DATED: January 25, 2005 Respectfully submitted, THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY County of Santa Barbara ĵ Auchincloss, Senior Deputy ó m | a Attorneys for Paintiff 

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### 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 25, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR REVIEW OF COURT TO DETERMINE IF SEALING OF PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION RE: MOTION TO CLOSE THE COURTROOM PURSUANT TO PENAL CODE §859.1 IS APPROPRIATE on THEODORE BOUTROUS, Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, by personally delivering a true copy to Mr. Sanger's Office and then transmitting a true copy thereof to Mr. Mesereau by facscimile, at (310) 284-3122.

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

Executed at Santa Barbara, California on this 25th day of January, 2005.

Gortion Auchincloss

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1 2 SERVICE LIST 3 4 THOMAS A. MESEREAU, JR. Collins, Mesereau, Reddock & Yu, LLP 5 1875 Century Park East. No. 700 Los Angeles, CA 90067 5 FAX: (310) 284-3133 Attorney for Defendant Michael Jackson 7 3 OXMAN & JAROSCAK Brian Oxman State Bar Number 072172 9 14126 East Rosecrans 10 Santa Fe Springs, CA 90670 Tel.:(562)921-5058, Fax: (562) 921-2298 11 Co-counsel for Defendant 12 ROBERT SANGER, ESQ. Sanger & Swysen, Lawyers 13 233 E. Carrillo Street, Suite C 14 Santa Barbara, CA 93001 FAX: (805) 963-7311 15 Co-counsel for Defendant 16 GIBSON, DUNN & CRUTCHER, LLP Theodore J. Bourous, Jr., Esq. Julian W. Poon, Esq. 17 18 333 S. Grand Avenue Los Angeles. CA 90071-3917 19 FAX: (213) 229-6758 20 Counsel for, collectively, "Media" 21 22 23 24 25 26 27

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