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

THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

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County of Santa Barbara By: RONALD J. ZONEN (State Bar No. 85094)

Senior Deputy District Attorney
J. GORDON AUCHINCLOSS (State Bar No. 150251)

Senior Deputy District Attorney

GERALD McC. FRANKLIN (State Bar No. 40171)

Senior Deputy District Attorney

1105 Santa Barbara Street Santa Barbara, CA 93101 Telephone: (805) 568-2300

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

SANTA MARIA DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA. No. 1133603

Plaintiff.

MICHAEL JOE JACKSON,

Defendant.

APPLICATION TO SEAL "PLAINTIFF'S OPPOSITION TO DEFENDANT'S 'MOTION

TO SUPPRESS' ON STATUTORY AND NON-

STATUTORY GROUNDS" AND TO MAINTAIN THAT

OPPOSITION UNDER CONDITIONAL SEAL UNTIL

FURTHER ORDER OF COURT; DECLARATION OF GERALD

McC. FRANKLIN; MEMORANDUM OF POINTS

AND AUTHORITIES

(Cal. Rules of Ct., rule 243.1 et seq.)

DATE: , 2004 TIME: 8:30 a.m.

DEPT: SM 2 (Melville)

TO: THE CLERK OF THE COURT, AND TO MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR., STEVE COCHRAN, AND ROBERT SANGER, HIS ATTORNEYS OF RECORD: AND TO GIBSON, DUNN & CRUTCHER, ATTORNEYS

FOR (COLLECTIVELY) THE MEDIA:

Plaintiff requests that the Court maintain under conditional seal the accompanying "Plaintiff's Opposition to Defendant's 'Motion To Suppress' On Statutory And Non-Statutory Grounds," etc. This request is based upon the orders of Judge Melville in this case regarding the need to file motions of a potentially sensitive nature under seal. Dated: June 30, 2004. THOMAS W. SNEDDON, JR. District Artorney

Attorneys for Plaintiff

## 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. Pursuant to the Court's instructions, Plaintiff submits this request that the accompanying PLAINTIFF'S OPPOSITION TO DEFENDANT'S 'MOTION TO SUPPRESS' ON STATUTORY AND NON-STATUTORY GROUNDS," etc., be maintained under conditional seal until further order of the court following its receipt of the views of defense counsel and the lawyers for the Media.
- 3. The accompanying Opposition makes references to statements of witnesses, documents, evidence presented to the grand jury and potential evidence at the trial of this matter, and discusses the evidentiary significance thereof, that would appear to bring the motion within the pretrial rule regarding the documents under seal.
- 4. I believe, and so allege, that publication of the accompanying motion will prejudice the right of both sides to a fair trial before an unbiased jury. I believe that nothing short of a severely redacted version of the motion will avert that prejudice, and a motion so redacted would afford the public no newsworthy or useful information concerning the pending case.

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 June 30, 2004.

Gerald McC. Franklin

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## 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).)

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."

Pursuant to the Court's prior instructions, including instructions reiterated on May 28, 2004, the People are submitting this APPLICATION TO SEAL PLAINTIFF'S MOTION FOR RELEASE OF CERTAIN EVIDENCE CURRENTLY IN THE POSSESSION OF THE COURT, etc. As set forth in the accompanying Declaration of the undersigned, the accompanying motion makes references to statements of witnesses, documents, evidence

presented to the grand jury and potential evidence at the trial of this matter, and discusses the evidentiary significance thereof, that would appear to bring the motion within the pretrial rule regarding the documents under seal, and that publication of the accompanying motion will prejudice the right of both sides to a fair trial before an unbiased jury.

DATED: June 30, 2004

Respectfully submitted.

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

Attorneys for Plaintiff

## PROOF OF SERVICE

STATE OF CALIFORNIA

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

On June 30, 2004, I served the within APPLICATION TO SEAL "PLAINTIFF'S OLPPOSITION TO DEFENDANT'S 'MOTION TO SUPPRESS' ON STATUTORY AND NON-STATUTORY GROUNDS" AND TO MAINTAIN THAT OPPOSITION UNDER CONDITIONAL SEAL," etc., on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, and ROBERT SANGER, his counsel, and on other interested parties in this action, by faxing a true copy to counsel at the facsimile number shown with the address of each on the attached Service List, and then by causing to be mailed a true copy (two true copies, to Attorney Mesereau) to each counsel at that address.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Santa Barbara, California on this 30th day of June, 2004.

Gerald McC. Franklin

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## 1 2 SERVICE LIST 3 4 COLLINS, MESEREAU, REDDOCK & YU Thomas A. Mesereau, Jr., Esq. 5 Susan Yu, Esq. 1875 Century Park East, 7th Floor 6 Los Angeles, CA 90067 FAX: [Confidential] 7 Attorney for Defendant Michael Jackson 8 KATTEN, MUCHIN, ZAVIS & ROSENMAN, Lawyers 9 Steve Cochran, Esq. 2029 Century Park East, Suite 2600 Los Angeles, CA 90067-3012 FAX: (310) 712-8455 10 11 Co-counsel for Defendant 12 SANGER & SWYSEN, Lawyers 13 Robert M. Sanger, Esq. 233 E. Carrillo Street, Suite C 14 Santa Barbara, CA 93001 FAX: (805) 963-7311 15 Co-counsel for Defendant 16 GIBSON, DUNN & CRUTCHER Theodore Boutrous, Esq. 17 William E. Thomson, Esq. 18 Julian Poon, Esq. 333 South Grand Avenue Los Angeles, CA 90071 FAX: (213) 229-6758 19 20 Counsel for (collectively) "Media" 21 22 23 24 25 26 27 28