THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY 1 County of Santa Barbara By: RONALD J. ZONEN (State Bar No. 85094) 2 Senior Deputy District Attorney J. GORDON AUCHINCLOSS (State Bar No. 150251) 3 Senior Deputy District Attorney GERALD McC. FRANKLIN (State Bar No. 40171) 4 Senior Deputy District Attorney 5 1112 Santa Barbara Street Santa Barbara, CA 93101 Telephone: (805) 568-2300 6 FAX: (805) 568-2398 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 MOTION FOR ORDER DIRECTING THAT PLAINTIFF'S 14 MEMORANDUM RE: AN APPROPRIATE LIMIT TO 15 CROSS-EXAMINATION, ETC. BE MICHAEL JOE JACKSON MAINTAINED UNDER SEAL 16 UNTIL FURTHER ORDER OF Defendant. COURT: DECLARATION OF 17 GERALD McC. FRANKLIN IN SUPPORT OF SEALING: 18 MEMORANDUM OF POINTS AND AUTHORITIES 19 **LYDER STAT** 20 DATE: September 16, 2004 21 TIME: 8:30 a.m. DEPT: TBA (Melville) 22 23 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR., 24 STEVE COCHRAN, ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF 25 RECORD, AND TO THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN & 26 CRUTCHER, LLP: 27 PLEASE TAKE NOTICE that on September 16, 2004, at 8:30 a.m. or as soon 28

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PLAINTIFF'S REQUEST TO SEAL OPPOSITION TO MOTION TO TRAVERSE, ETC.

thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and hereby does, move for an order directing that Plaintiff's Memorandum Re: An Appropriate Limit To Cross-Examination Of Witness Called By The Defense On A Limited Issue Relevant To Search Of Bradley Miller's Office, filed September 7, 2004 under seal upon the assurance that this Request for Conditional Sealing would follow, 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 sealing the specified motion pursuant to California Rules of Court, rule 243.1 et seg.

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: September 8, 2004

THOMAS W. SNEDDON, JR. District Autornev Gerald McC. Franklin, Senior Deputy

Attorneys for Plaintiff

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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. This motion to conditionally seal Plaintiff's Memorandum Re: An Appropriate Limit To Cross-Examination Of Witness Called By The Defense On A Limited Issue Relevant To Search Of Bradley Miller's Office, filed September 7, 2004, is made on the ground that the pending motion makes reference to evidentiary facts not yet made public, the names of certain witnesses, and information that would tend to identify them. It also makes arguments concerning the legal and factual merits of other motions which are currently under seal, in whole or in part.
- 3. I believe that the interest of each party to a fair trial overrides the public's prompt access to Plaintiff's Memorandum until the appropriateness of the release of a redacted version of the Memorandum is determined by the court.
- 4. I believe an order maintaining our Memorandum 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 September 8, 2004.

Gerald McC Franklin

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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 projudiced 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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DATED: September 8, 2004 Respectfully submitted, THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY County of Santa Barbara Gerald McC. Franklin, Senior Deputy Attorneys for Plaintiff 

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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 September 8, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR ORDER DIRECTING THAT PLAINTIFF'S MEMORANDUM RE: AN APPROPRIATE LIMIT TO CROSS-EXAMINATION OF WITNESS CALLED BY THE DEFENSE ON A LIMITED ISSUE RELEVANT TO SEARCH OF BRADLEY MILLER'S OFFICE BE MAINTAINED UNDER SEAL on Media's counsel and on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER and BRIAN OXMAN, by faxing a true copy to Media's counsel at the facsimile number shown with the address for counsel on the attached Service List, and then personally serving defense counsel in open court.

> I declare under penalty of perjury that the foregoing is true and correct. Executed at Santa Barbara, California on this 8th day of September, 2004.

PLAINTIFF'S REQUEST TO SAL OPPOSITION THOTIO