THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY County of Santa Barbara By: RONALD J. ZONEN (State Bar No. 85094) Senior Deputy District Attorney
J. GORDON AUCHINCLOSS (State Bar No. 150251) 3 CALSTALPLANT, EX count of south Senior Deputy District Attorney GERALD McC. FRANKLIN (State Bar No. 40171) IN THIS E WASHED LABOUR CONT 4 Senior Deputy District Attorney 1112 Santa Barbara Street 5 Santa Barbara, CA 93101 Telephone: (805) 568-2300 FAX: (805) 568-2398 6 7 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA 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 STIPULATION RE: CERTAIN SEIZED ITEMS BE MAINTAINED 14 15 UNDER SEAL UNTIL FURTHER MICHAEL JOE JACKSON ORDER OF COURT: 16 Defendant. DECLARATION OF GERALD 17 Mc<mark>C. FRANKLIN IN SUPPORT</mark> OF SEALING; MEMORANDUM OF POINTS AND AUTHORITIES 18 19 UNDER SEAL DATE: September 17, 2004 20 TIME: 8:30 a.m. DEPT: TBA (Melville) 21 22 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR., 23 STEVE COCHRAN, ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF 24 RECORD, AND TO THEODORE J. BOUTROUS, JR., ESO., GIBSON, DUNN & 25 CRUTCHER, LLP: 26 PLEASE TAKE NOTICE that on September 17, 2004, at 8:30 a.m. or as soon 27 thereafter as the matter may be heard, in the Department to be assigned. Plaintiff will, and 28

PLAINTIFF'S REQUEST TO SEAL STIPULATION RE CERTAIN ITEMS OF EVIDENCE

hereby does, move for an order directing that the Stipulation of Plaintiff and Defendant That Certain Seized Items May Be Removed From Defendant's Motion To Suppress For Purposes of the Court's Consideration of the Merits of the Pending Motion, to be filed September 16, 2004 under seal, 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 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: September 15, 2004

THOMAS W. SNEDDON, JR.

District Attorney

Gerald McC. Franklin. Senior Deputy

Attorneys for Plaintiff

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- 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 the Stipulation of Plaintiff and Defendant That Certain Seized Items May Be Removed From Defendant's Motion To Suppress For Purposes of the Court's Consideration of the Merits of the Pending Motion, to be filed September 16, 2004 is made on the ground that the stipulation makes reference to evidence not yet made public and the names of certain potential witnesses.
- 3. I believe that the interest of each party to a fair trial overrides the public's prompt access to the Stipulation until the appropriateness of the release of a redacted version of the opposition is determined by the court.
- 4. I believe an order maintaining the Stipulation 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 15, 2004.

Gerald McC. Franklin

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.

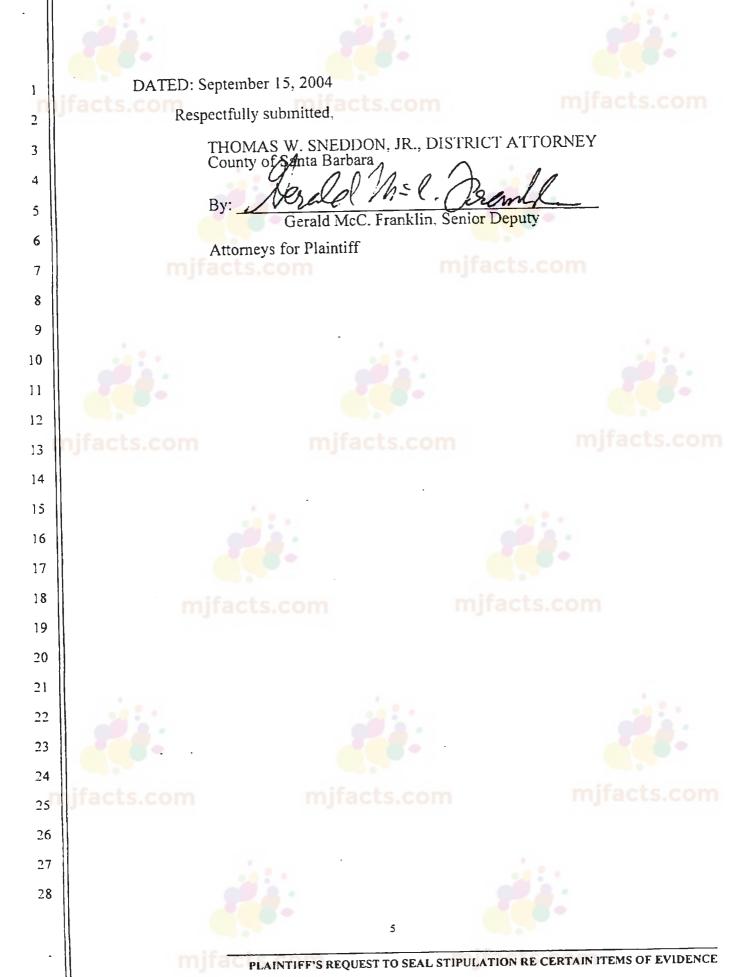
Rule 243.1(e) provides, in pertinent part:

(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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PROOF OF SERVICE

STATE OF CALIFORNIA
) SS
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 September 15, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR ORDER DIRECTING THAT STIPULATION OF PLAINTIFF AND DEFENDANT THAT CERTAIN SEIZED ITEMS MAY BE REMOVED FROM DEFENDANT'S MOTION TO SUPPRESS FOR PURPOSES OF THE COURT'S CONSIDERATION OF THE MERITS OF THE PENDING MOTION BE MAINTAINED UNDER SEAL on Gibson, Dunn & Crutcher, Media's counsel by faxing a true copy to counsel at the facsimile number shown with the address for that firm on the attached Service List, and then by causing to be mailed a true copy to counsel at that address.

On September 16, 2004, I personally served defendant's several counsel with a true copy of the within Motion to Seal by handing a copy to Mssrs. Mesereau, Cochran and Sanger a copy in open court.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Santa Maria, California on this 16th day of September, 2004.

Gerald McC. Franklin

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8	Julian Poon, I 333 S. Grand	esq.	
9		(collectively) "Media"	
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11	Collins, Mese	MESEREAU. JR. Preau, Reddock & Yu, LLP Park East, No. 700	
13	Los Angeles,	CA 90067 TIDENTIAL]	
14	Attorney for 1	Defendant Michael Jackson	
15	STEVE COC	HRAN, ESQ.	
16	Katten, Much	in, Zavis & Rosenman, Lawyers Park East, Suite 2600	
17	Los Angeles, FAX: (310) 7	CA 90067-3012 12-8455	
18	Co-counsel for	or Defendant	
19	ROBERT SA	NGEŖ, ESQ.	
20	Sanger & Sw 233 E. Carrill Santa Barbara FAX: (805) 9	ysen, Lawyers lo Street, Suite C a, CA 93001	
21	FAX: (805) 9 Co-counsel fo		
22	Co-counsel it	of Defendant	
23	BRIAN OXN Oxman & Jar	IAN, ESQ.	
24	14126 E. Ros Santa Fe Spri	oscak, Lawyers ecrans Blvd., ngs, CA 90670	
25	Co-counsel fo	mjracts.com	
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