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 NOV 0 5 2004 Senior Deputy District Attorney GERALD McC. FRANKLIN (State Bar No. 40171) 4 GARY M. BLAIR, Executive Officer Senior Deputy District Attorney Carrie & Wagner 1112 Santa Barbara Street 5 CARRIE L. WAGNER, Deputy Clerk 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 14 PLAINTIFF'S SUMMARY OF 15 ITEMS SEIZED PURSUANT TO SW 5135 BE MAINTAINED UNDER SEAL UNTIL FURTHER 16 MICHAEL JOE JACKSON ORDER OF COURT: Defendant. DECLARATION OF GERALD 17 McC. FRANKLIN IN SUPPORT OF SEALING; MEMORANDUM 18 OF POINTS AND AUTHORITIES 19 20 DATE: November 5, 2004 21 TIME: 8:30 a.m. DEPT: TBA (Melville) 22 23 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR. AND 24 ROBERT SANGER, HIS ATTORNEYS OF RECORD, AND TO THEODORE J. 25 BOUTROUS, JR., ESQ., GIBSON, DUNN & CRUTCHER, LLP: 26 PLEASE TAKE NOTICE that on November 5, 2004, at 1:30 p.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 Summary of Items Seized Pursuant To SW 5135, Created For Purposes of the Court's Consideration of the Merits of the Pending Suppression Motion, 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: November 5, 2004

THOMAS W. SNEDDON, JR. District Attorney

Attorneys for Plaintiff

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 the Plaintiff's Summary of Items Seized
 Pursuant To SW 5135, Created For Purposes of the Court's Consideration of the Merits of the
 Pending Suppression Motion, is made on the ground that the Summary 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 Summary until the appropriateness of the release of a redacted version of the Summary is determined by the court.
- 4. I believe an order maintaining the Summary 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 Maria, California on November 5, 2004.

Gerald McC. Franklin

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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 scaling 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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DATED: November 5, 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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STATE OF CALIFORNIA

California 93101.

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,

On November 5, 2004, I served the within PLAINTIFF'S SUMMARY OF ITEMS SEIZED PURSUANT TO SW 5135, CREATED FOR PURPOSES OF THE COURT'S CONSIDERATION OF THE MERITS OF THE PENDING SUPPRESSION 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 November 5, 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 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 5th day of November, 2004.

SERVICE LIST GIBSON, DUNN & CRUTCHER, LLP Theodore J. Boutrous, Jr., Esq. William E. Thomson, Esq. Julian Poon, Esq. 333 S. Grand Avenue Los Angeles, CA 90071-3197 Attorneys for (collectively) "Media" THOMAS A. MESEREAU, JR. Collins, Mesercau, Reddock & Yu, LLP 1875 Century Park East, No. 700 Los Angeles, CA 90067 Attorney for Defendant Michael Jackson ROBERT SANGER, ESQ. Sanger & Swysen, Lawyers 233 E. Carrillo Street, Suite C Santa Barbara, CA 93001 Co-counsel for Defendant