THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY 1 County of Santa Earbara By: RONALD J. ZONEN (State Bar No. 85094) 2 Senior Deputy District Attorney J. GORDON AUCHINCLOSS (State Bar No. 150251) 550 fr 3 Senior Deputy District Attorney in Build, exception of GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney
1112 Santa Barbara Street 4 : M. 5 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 OPPOSITION TO DEFENDANT MOTION TO CONTINUE TRIAL BE MAINTINED UNDER SEAL v. 15 MICHAEL JOE JACKSON. UNTIL FURTHER ORDER OF 16 COURT: DECLARATION OF Defendant. GERALD McC. FRANKLIN IN 17 SUPPORT OF SEALING: MEMORANDUM OF POINTS 18 AND AUTHORITIES 19 DATE: December 20, 2004 TIME: 8:30 a.m. 930 Am 20 DEPT: TBA (Melville) 21 22 23 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR., 24 ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF RECORD, AND TO 25 THEODORE J. BOUTROUS. JR., ESQ., GIBSON, DUNN & CRUTCHER. LLP: 26 PLEASE TAKE NOTICE that on December 20, 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 hereby does, move for an order directing that the People's Opposition to Defendant's Motion to

PLAINTIFF'S REQUEST TO SEAL OPPOSITION TO MOTION TO CONTINUE

Continue, filed 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: December 15, 2004

By: Gerald McC. Franklin, Senior Deputy

Attorneys for Plaintiff

facts.com

mjfacts.com

facts.com mjfa

mjfacts.com

mjfacts.com

PLAINTIFF'S REQUEST TO SEAL OPPOSITION TO MOTION TO CONTINUE

mjfacts.com

mjfacts.com

I. Gerald McC. Franklin, say:

l

6

11

18 19

20

21 22

23

24 25

26

27

28

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 Opposition to Defendant's Motion to Continue is made on the ground that the Opposition makes reference to evidentiary facts not yet made public. It also makes arguments concerning the legal and factual merits of motions that 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 Opposition until the appropriateness of the release of a redacted version of the Opposition is determined by the court.
- 4. I believe an order maintaining our Opposition 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 December 15, 2004.

Gerald McC. Franklin

3

PLAINTIFF'S REQUEST TO SEAL OPPOSITION TO MOTION TO CONTINUE

mifacts.com

MEMORANDUM OF POINTS AND AUTHORITIES

The procedure for scaling 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."

1111

1////

26 ////

١

2

3

17

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

27 || ////

28 ////

mjfacts.com

n mjra

4

PLAINTIFF'S REQUEST TO SEAL OPPOSITION TO MOTION TO CONTINUE

mjfacts.com

mjfacts.com

DATED: December 15, 2004 Respectfully submitted, THOMAS W. SNEDDON, IR., DISTRICT ATTORNEY County of Santa Barbara By: O Gerald McC. Franklin, Senior Deputy б Attorneys for Plaintiff . 24 PLAINTIFF'S REQUEST TO SEAL OPPOSITION TO MOTION TO CONTINUE

9.9

Dec 17 04 02:07p

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

3

1

2

5 6

7

8

10

11 12

13

14 15

16

17

18

19

20 21

22

23 24

25

26 27

28

SS

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; 1114 Santa Barbara Street, Santa Barbara, California 93101.

On December 14, 2004, I served the within PLAINTIFF'S MOTION FOR ORDER DIRECTING THAT PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO CONTINUE BE MAINTAINED UNDER SEAL on Media's counsel and on Defendant, by THOMAS A. MESEREAU, IR., ROBERT SANGER and BRIAN OXMAN, by personally delivering a true copy thereof the Attorney Robert SANGER, and by faxing a true copy to Media's counsel and Mr. Sanger's co-counsel (except Mr. Oxman) at the facsimile number shown with the address for counsel on the attached Service List.

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

Executed at Santa Barbara, California on this 15th day of December, 2004.

Gerald McC. Franklin

б

PLAINTIFF'S REQUEST TO SEAL OPPOSITION TO MOTION TO CONTINUE