the matter may be heard, in Department SM 2, Plaintiff will, and hereby does, move for an

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order directing that the following records be maintained under conditional seal until further order of court, pursuant to California Rules of Court, rule 243.1 et seq: "PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE THE INDICTMENT" filed July 6, 2004.

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 records 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.

A proposed redacted version of the Request for Order to Show Cause and supporting Declaration is submitted, under seal, with this request for sealing.

DATED: July 7, 2004

THOMAS W. SNEDDON, JR.

District Attorney

Gerald McC. Franklin, Senior Deputy

Attorneys for Plaintiff

- I. 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 seal records pertains to "PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE THE INDICTMENT" filed July 6, 2004.
- 3. I believe most of the information set out in the Opposition to Defendant's motion to set aside the indictment should remain confidential, because it (like defendant's motion itself) discloses the names of persons whose identities have been kept confidential throughout the public proceedings in this matter, and it discloses a large number of pertinent facts concerning the testimony of witnesses and exhibits introduced during the grand jury proceedings which have previously been placed under seal by this Court.
- 4. I believe the interests of both parties in a fair trial by a jury would be enhanced if the identities of such persons were disclosed and publicized prematurely.
- 5. I therefore believe that the interest in a fair trial overrides the public's access to an unredacted version of plaintiff's Opposition, and supports the sealing of that document until further order of court.
- 6. I believe an order maintaining the Opposition to Defendant's Motion to set aside the indictment under seal in the interim would avert the probability of prejudice, and that no more narrowly tailored order with respect to that request 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 July 6, 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).)

Rule 243.1(d) provides that

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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:

(I) An order scaling the record must (i) specifically set forth-the facts findings that support the findings and (ii) direct the scaling 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 scal. 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."

DATED: July 6, 2004

Respectfully submitted,

THO	MAS W. SNEDDON, JK	., DISTRICT	ALLONNEL
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Gerald McC. Franklin, Senior Deputy

Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA SS

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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 July 7, 2004, I served the within NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING THAT THE PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE THE INDICTMENT BE MAINTAINED UNDER SEAL UNTIL FURTHER ORDER OF COURT; DECLARATION OF GERALD McC. FRANKLIN; on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, STEVE COCHRAN, and GIBSON, DUNN & CRUTCHER, LLP, 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 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 7th day of July, 2004.

Gerald McC. Franklin

] SERVICE LIST 2 3 THOMAS A. MESEREAU, JR. Collins, Mesereau, Reddock & Yu, LLP 1875 Century Park East, No. 700 Los Angeles, CA 90067 4 FAX: (310) 284-3133 5 Attorney for Defendant Michael Jackson 6 STEVE COCHRAN, ESQ. Katten, Muchin, Zavis & Rosenman, Lawyers 2029 Century Park East, Suite 2600 Los Angeles, CA 90067-3012 FAX: (310) 712-8455 7 8 9 Co-counsel for Defendant 10 ROBERT SANGER, ESQ. Sanger & Swysen, Lawyers 233 E. Carrillo Street, Suite C 11 12 Santa Barbara, CA 93001 FAX: (805) 963-7311 13 Co-counsel for Defendant 14 GIBSON, DUNN & CRUTCHER, LLP 15 Theodore J. Boutrous, Jr., Esq. Julian W. Poon, Esq. 16 333 S. Grand Avenue Los Angeles, CA 90071-3917 FAX: (213) 229-6758 17 18 Counsel for, collectively, "Media" 19 20 21

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