

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara  
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Senior Deputy District Attorney  
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Senior Deputy District Attorney  
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Senior Deputy District Attorney  
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**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

OCT 01 2004

GARY M. BLAIR, Executive Officer  
*Carrie L. Wagner*  
CARRIE L. WAGNER, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA BARBARA  
10 SANTA MARIA DIVISION

11  
12 THE PEOPLE OF THE STATE OF CALIFORNIA, )

13 Plaintiff, )

14 v. )

15  
16 MICHAEL JOE JACKSON, )

17 Defendant. )

No. 1133603

18 PLAINTIFF'S NOTICE OF  
19 MOTION AND MOTION FOR  
20 ORDER SEALING PLAINTIFF'S  
21 *SANCHEZ* MOTION FOR ORDER  
22 DIRECTING DEFENDANT TO  
23 LODGE INCULPATORY  
24 EVIDENCE WITH COURT;  
25 DECLARATION OF GERALD  
26 McC. FRANKLIN;  
27 MEMORANDUM OF POINTS  
28 AND AUTHORITIES

DATE: October 14, 2004  
TIME: 8:30 a.m.  
DEPT: TBA (Melville)

**UNDER SEAL**

23 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR., STEVE  
24 COCHRAN, ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF RECORD,  
25 AND TO THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN & CRUTCHER, LLP:

26 PLEASE TAKE NOTICE that on October 14, 2004, at 8:30 a.m. or as soon thereafter  
27 as the matter may be heard, in the Department to be assigned, Plaintiff will, and hereby docs,  
28 move for an order directing that Plaintiff's *Sanchez* Motion For Order Directing Defendant To

1 Lodge Inculpatory Evidence With Court, filed October 1, 2004 under seal, be maintained under  
2 conditional seal until further order of court, pursuant to California Rules of Court, rule 243.1 et  
3 seq.

4 The motion will be made on the ground that the facts, as established by the  
5 accompanying declaration of Gerald McC. Franklin, are sufficient to justify sealing the specified  
6 motion pursuant to California Rules of Court, rule 243.1 et seq.

7 The motion will be based on this notice of motion, on the declaration of Gerald McC.  
8 Franklin and the memorandum of points and authorities served and filed herewith, on the records  
9 and the file herein, and on such evidence as may be presented at the hearing of the motion.

10 DATED: October 1, 2004

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12 THOMAS W. SNEDDON, JR.  
District Attorney

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14 By: 

Gerald McC. Franklin, Senior Deputy

15 Attorneys for Plaintiff  
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1 DECLARATION OF GERALD McC. FRANKLIN

2 I, Gerald McC. Franklin, say:

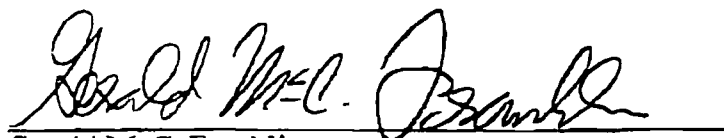
3 1. I am a lawyer admitted to practice in the State of California. I am a Senior Deputy  
4 of the District Attorney of Santa Barbara County. I am one of the lawyers of record for the  
5 People, Plaintiff in this action.

6 2. This motion to conditionally seal the contemporaneously-filed Plaintiff's *Sanchez*  
7 Motion For Order Directing Defendant To Lodge Inculpatory Evidence With Court is made on  
8 the ground that the pending motion makes reference to evidentiary facts not yet made public and  
9 information that would tend to identify the parties' right to a fair trial before an unbiased jury.

10 3. I believe that the interest of each party to a fair trial overrides the public's prompt  
11 access to Plaintiff's *Sanchez* Motion For Order Directing Defendant To Lodge Inculpatory  
12 Evidence With Court in an unredacted form until the appropriateness of the release of a redacted  
13 version of the opposition is determined by the court.

14 4. I believe an order maintaining this motion under seal in the interim would avert  
15 the probability of prejudice, and that no more narrowly tailored order with respect to that  
16 pleading could be drafted to achieve the overriding interest in a fair trial.

17 I declare under penalty of perjury under the laws of California that the foregoing is  
18 true and correct, except as to matters stated upon my information and belief, and as to such  
19 matters I believe it to be true. I execute this declaration at Santa Barbara, California on October  
20 1, 2004.

21   
22 \_\_\_\_\_  
23 Gerald McC. Franklin

MEMORANDUM OF POINTS AND AUTHORITIES

1  
2           The procedure for sealing records under California Rules of Court, rule 243.1 et seq.  
3 applies only to records that are deemed public. (*Id.*, rule 243.1(a)(2).) Motions and responsive  
4 pleadings in criminal cases are, ordinarily, “public” records of the court.

5           Rule 243.1(d) provides that

6                   The court may order that a record be filed under seal only if it  
7 expressly finds facts that establish:

8                   (1) There exists an overriding interest that overcomes the right of  
9 public access to the record;

10                   (2) The overriding interest supports sealing the record;

11                   (3) A substantial probability exists that the overriding interest will  
12 be prejudiced if the record is not sealed;

13                   (4) The proposed sealing is narrowly tailored; and

14                   (5) No less restrictive means exist to achieve the overriding interest.

15           Rule 243.1(e) provides, in pertinent part:

16                   (1) An order sealing the record must (i) specifically set forth the  
17 facts findings that support the findings and (ii) direct the sealing of  
18 only those documents and pages, or, if reasonably practicable, portions  
19 of those documents and pages, that contain the material that needs to  
20 be placed under seal. All other portions of each documents or page  
must be included in the public file.

21           Rule 243.2(b) provides, in pertinent part, that “Pending the determination of the  
22 motion [of a party to file a record under seal], the lodged record will be conditionally under  
23 seal.”

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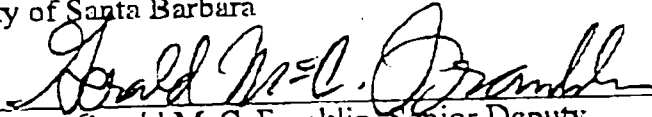
27 // // // //

28 // // // //

1 DATED: October 1, 2004

2 Respectfully submitted,

3 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
4 County of Santa Barbara

5 By:   
6 Gerald McC. Franklin, Senior Deputy

7 Attorneys for Plaintiff  
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PROOF OF SERVICE


STATE OF CALIFORNIA            }  
COUNTY OF SANTA BARBARA    } 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; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On October 1, 2004, I served the within PLAINTIFF'S NOTICE OF MOTION FOR ORDER SEALING PLAINTIFF'S *SANCHEZ* MOTION FOR ORDER DIRECTING DEFENDANT TO LODGE INCU LPATORY EVIDENCE WITH COURT 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 counsel (except Mr. Oxman) 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 1st day of October, 2004.

  
Gerald McC. Franklin

SERVICE LIST

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Co-counsel for Defendant