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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

NOV 04 2004

GARY M. SLASH, Executive Officer
Gary M. Slash
CARRIE W. BROWN, County 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,

No. 1133603

13 Plaintiff,

14 PLAINTIFF'S NOTICE OF
MOTION AND MOTION FOR
ORDER DIRECTING THAT
15 PLAINTIFF'S MEMORANDUM
RE: DEFENDANT'S *SANCHEZ*
OBLIGATION TO LODGE
16 CERTAIN TAPES WITH COURT;
DECLARATION OF GERALD
McC. FRANKLIN IN SUPPORT
17 THEREOF; MEMORANDUM OF
POINTS AND AUTHORITIES

14 v.

16 MICHAEL JOE JACKSON,

17 Defendant.

18
19 UNDER SEAL

20 DATE: November 4, 2004
21 TIME: 8:30 a.m.
22 DEPT: TBA (Melville)

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 November 4, 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 Plaintiff's Memorandum Regarding Defendant's

1 Obligation, Pursuant to *People v. Sanchez*, to Lodge With The Court Certain Tape Cassettes of
2 Interviews filed contemporaneously with this Request for Conditional Sealing, be maintained
3 under conditional seal until further order of court, pursuant to California Rules of Court, rule
4 243.1 et seq.

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

8 The motion will be based on this notice of motion, on the declaration of Gerald
9 McC. Franklin and the memorandum of points and authorities served and filed herewith, on the
10 records and the file herein, and on such evidence as may be presented at the hearing of the
11 pending discovery motions to which the Memorandum relates.

12 DATED: October 29, 2004

13 THOMAS W. SNEDDON, JR.
14 District Attorney

15 By: 
16 Gerald McC. Franklin, Senior Deputy
17 Attorneys for Plaintiff

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,
19 portions of those documents and pages, that contain the material that
20 needs to 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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25 ////
26 ////
27 ////
28 ////

1 DATED: October 29, 2004

2 Respectfully submitted,

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

5 By: Gerald McC. Franklin
6 Gerald McC. Franklin, Senior Deputy

7 Attorneys for Plaintiff

SERVICE LIST

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