THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY County of Santa Barbara 2 By: RONALD J. ZONEN (State Bar No. 85094) Schior Deputy District Attorney J. GORDON AUCHINCLOSS (State Bar No. 150251) 3 Senior Deputy District Attorney
GERALD McC. FRANKLIN (State Bar No. 40171) 4 GARY M. SLAHI, Expenses Officer. Senior Deputy District Attorney Comment of the road 5 1112 Santa Barbara Street CARRIVE 11/34 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 AND MOTION FOR ORDER DIRECTING THAT v. 14 PLAINTIFF'S MEMORANDUM RE: DEFENDANT'S SANCHEZ 15 OBLIGATION TO LODGE CERTAIN TAPES WITH COURT: 16 MICHAEL JOE JACKSON. DECLARATION OF GERALD McC. FRANKLIN IN SUPPORT 17 THEREOF; MEMORANDUM OF Defendant. POINTS AND AUTHORITIES 18 UNDERSEAL 19 DATE: November 4, 2004 20 TIME: 8:30 a.m. DEPT: TBA (Melville) 21 22 23 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR., ROBERT SANGER AND BRIAN OXMAN, HIS ATTORNEYS OF RECORD, AND TO 24 25 THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN & CRUTCHER, LLP: PLEASE TAKE NOTICE that on November 4, 2004, at 8:30 a.m. or as soon 26 thereafter as the matter may be heard, in the Department to be assigned, Plaintiff will, and 27 28 hereby does, move for an order directing that Plaintiff's Memorandum Regarding Defendant's

PLAINTIFF'S MOTION FOR ORDER SEALING MEMO RE: DEFENDANT'S SANCHEZ OBLIGATION

Obligation, Pursuant to People v. Sanchez, to Lodge With The Court Certain Tape Cassettes of Interviews filed contemporaneously with this Request for Conditional Sealing, 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 scaling the Response 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 pending discovery motions to which the Memorandum relates.

DATED: October 29, 2004

THOMAS W. SNEDDON, JR. District Attorney

Gerald McC. Franklin, Senior Deputy

Attomeys for Plaintiff

- 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 Memorandum Regarding Defendant's Obligation, Pursuant to People v. Sanchez, to Lodge With The Court Certain Tape Cassettes of Interviews, filed contemporaneously with this Motion, is made on the ground that the Memorandum makes reference to evidentiary facts not yet made public and the name of certain potential witnesses.
- 3. I believe that the interest of each party to a fair trial overrides the public's prompt access to Plaintiff's Response until the appropriateness of the release of a redacted version of the Memorandum is determined by the Court.
- 4. I believe an order maintaining our Memorandum 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 October 29, 2004.

Gerald McC. Franklin

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MEMORANDUM OF POINTS AND AUTHORITIES

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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 scaled;
 - (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: October 29, 2004 Respectfully submitted, THOMAS W. SNEDDON, IR., DISTRICT ATTORNEY County of Santa Barbara Gerald McC. Franklin, Senior Deputy Attorneys for Plaintiff

PLAINTIFF'S MOTION FOR ORDER SEALING MEMO RE: DEFENDANT'S SANCHEZ OBLIGATION

PROOF OF SERVICE

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STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

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l 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 29, 2004, I served the within PLAINTIFF'S MEMORANDUM REGARDING DEFENDANT'S OBLIGATION, PURSUANT TO PEOPLE V. SANCHEZ, TO LODGE WITH THE COURT CERTAIN TAPE CASSETTES OF INTERVIEWS BE MAINTAINED UNDER SEAL on Media's counsel and on Defendant, by THOMAS A. MESEREAU, IR., and ROBERT SANGER, by transmitting a true copy to each of them at the facsimile number shown with the address for counsel on the attached Service List, and then causing that copy to be mailed to each at the address shown on the Service List.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Santa Barbara, California on this 29th day of October, 2004.

Gerald McC. Franklikn

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SERVICE LIST

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