

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

13 Plaintiff,

14 v.

15
16 MICHAEL JOE JACKSON,

17 Defendant.
18

No. 1133603

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

UNDER SEAL

19
20 DATE: November 4, 2004
TIME: 8:30 a.m.
21 DEPT: TBA (Melville)

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 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

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14 THOMAS W. SNEDDON, JR.
District Attorney

15 By: 
16 Gerald McC. Franklin, Senior Deputy

17 Attorneys for Plaintiff
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MEMORANDUM OF POINTS AND AUTHORITIES

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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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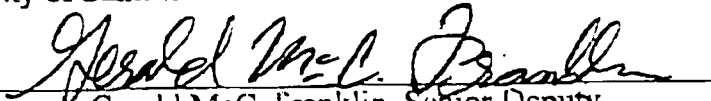
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1 DATED: October 29, 2004

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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3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA
5 COUNTY OF SANTA BARBARA } SS

6 I am a citizen of the United States and a resident of the County aforesaid; I am over
7 the age of eighteen years and I am not a party to the within-entitled action. My business
8 address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara,
9 California 93101.

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

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

18 Executed at Santa Barbara, California on this 29th day of October, 2004.

19
20 
21 Gerald McC. Franklikn

SERVICE LIST

1
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15 Attorney for Defendant Michael Jackson

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21 Co-counsel for Defendant
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