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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 28 2004

GARY M. BLAIR, EXEC. OFFICER
By: Alicia Alcocer
ALICIA ALCOCER, Deputy Clerk

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,

12 Plaintiff,

13 v.

14 MICHAEL JOE JACKSON,

15 Defendant.

No. 1133603

16 NOTICE OF MOTION AND
17 MOTION FOR ORDER
18 DIRECTING THAT CERTAIN
19 SEARCH WARRANTS,
20 SUPPORTING AFFIDAVITS
21 AND RETURNS BE FILED
22 AND MAINTAINED UNDER
23 CONDITIONAL SEAL UNTIL
24 FURTHER ORDER OF COURT;
25 DECLARATION OF GERALD
26 McC. FRANKLIN;
27 MEMORANDUM OF POINTS
28 AND AUTHORITIES;
PROPOSED ORDER THEREON
(Cal. Rules of Ct., rule 243.1 et
seq.)

DATE: February 13, 2004

TIME: 8:30 a.m.

DEPT: SM 2 (Melville)

23 TO: MICHAEL JOE JACKSON, AND TO MARK J. GERAGOS, ROBERT
24 SANGER, STEVE COCHRAN and BENJAMIN BRAFMAN, HIS ATTORNEYS OF
25 RECORD:

26 PLEASE TAKE NOTICE that on February 13, 2004, at 8:30 a.m. or as soon
27 thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does,
28 move for an order directing that the following records be maintained under conditional seal

1 until further order of court, pursuant to California Rules of Court, rule 243.1 et seq:


2 Each of those seven warrants for the search of the toll and billing
3 records of certain telephone service providers, which warrants (nos.
4 SW 4896, SW 4897, SW 4898, SW 4899, SW 4900, SW 4901 and
5 SW 4902) were issued on January 22, 2004, together with the
6 supporting affidavit for each warrant, and the return to each warrant
7 to be filed when the warrants have been executed and the records
8 sought by them have been obtained in obedience thereto.

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

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

16 DATED: January 28, 2004

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18 THOMAS W. SNEDDON, JR.
District Attorney

19 By: 
20 Gerald McC. Franklin, Senior Deputy

21 Attorneys for Plaintiff
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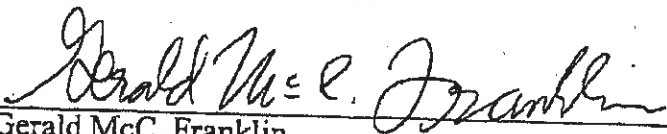
1 investigating officers. I believe Plaintiff's interest in a fair trial would be prejudiced if access
2 to those witnesses was frustrated by premature disclosure of their identities. I believe that
3 disclosure of the telephone numbers listed by Investigator Zelis will allow the subscribers to
4 those numbers to avoid contact by investigators, and will allow those with interests inimical to
5 Plaintiff to call the subscribers and discourage them from cooperating with investigators who
6 may contact them.

7 6. I therefore believe that the interest in a fair trial overrides the public's prompt
8 access to the search warrant records, and supports the sealing of those records until the
9 investigation has been concluded.

10 7. I believe there is a substantial probability that Plaintiff's due process right to a
11 fair trial will be prejudiced if the search warrant documents are not sealed until the conclusion
12 of the investigation.

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

16 I declare under penalty of perjury under the laws of California that the foregoing is
17 true and correct, except as to matters stated upon my information and belief, and as to such
18 matters I believe it to be true. I execute this declaration at Santa Barbara, California on January
19 28, 2004.

20
21 
22 Gerald McC. Franklin

MEMORANDUM OF POINTS AND AUTHORITIES

Penal Code section 1534, subdivision (a) provides:

(a) A search warrant shall be executed and returned within 10 days after date of issuance. A warrant executed within the 10-day period shall be deemed to have been timely executed and no further showing of timeliness need be made. After the expiration of 10 days, the warrant, unless executed, is void. The documents and records of the court relating to the warrant need not be open to the public until the execution and return of the warrant or the expiration of the 10-day period after issuance. Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record.

In *PSC Geothermal Services Co. v. Superior Court* (1994) 25 Cal.4th 1697, our Supreme Court noted:

“Section 1534 provides that the documents associated with the warrant are public documents 10 days after its execution. Typically after the search, arrests are made. There is no exception in the statute for instances, such as that here, where the search is used to further an ongoing investigation. Such information, however, may be privileged as official information under Evidence Code sections 1040, subdivision (a) and 1042, subdivision (b).” (*Id.*, at p. 1714.)

Evidence Code section 1040, subdivision (a) provides: “As used in this section, ‘official information’ means information acquired in confidence by a public employee in the course of his or her duty and not open, or officially disclosed, to the public prior to the time the claim of privilege is made.”

Evidence Code section 1042, subdivision (b) provides: “Notwithstanding subdivision (a) [requiring a court to make adverse findings adverse to the public entity upon any issue in a court proceeding to which privileged information is material], where a search is made pursuant to a warrant valid on its face, the public entity bringing a criminal proceeding is not required to reveal to the defendant *official information* or the identity of an informer in

1 order to establish the legality of the search or the admissibility of any evidence obtained as a
2 result of it.” (Emphasis added.)

3 The procedure for sealing records under California Rules of Court, rule 243.1 et seq.
4 applies only to records that are deemed public. (*Id.*, rule 243.1(a)(2).) Search warrants, their
5 supporting affidavits and the returns thereto are open to the public within 10 days of issuance
6 or until the warrant is executed and returned, whichever is earlier. (Pen. Code, § 1534, subd.
7 (a).)

8 Rule 243.1(d) provides that

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

- 11 (1) There exists an overriding interest that overcomes the right of
12 public access to the record;
- 13 (2) The overriding interest supports sealing the record;
- 14 (3) A substantial probability exists that the overriding interest will
15 be prejudiced if the record is not sealed;
- 16 (4) The proposed sealing is narrowly tailored; and
- 17 (5) No less restrictive means exist to achieve the overriding interest.

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

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

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

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1 DATED: January 28, 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

(PROPOSED) ORDER

It appearing from the Declaration of Gerald McC. Franklin and from the supporting affidavits in Santa Barbara Superior Court Files Nos. SW 4896, SW 4897, SW 4898, SW 4899, SW 4900, SW 4901 and SW 4902 that the affidavits contain confidential information, premature disclosure of which may prejudice an ongoing investigation and Plaintiff's due right to a fair trial, the Court orders as follows:

1. Those certain search warrants, their supporting affidavits, and any return to the search warrants presently on file or which may be filed between now and February 13, 2004 in Santa Barbara Superior Court Files Nos. SW 4896, SW 4897, SW 4898, SW 4899, SW 4900, SW 4901 and SW 4902 are conditionally sealed;

2. The motion to maintain those documents under conditional seal until further order of court shall be heard on February 13, 2004, at 8:30 a.m.

DATED: _____

RODNEY S. MELVILLE
Judge of the Superior Court

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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 January 28, 2004, I served the within NOTICE OF MOTION AND MOTION
11 FOR ORDER DIRECTING THAT CERTAIN SEARCH WARRANTS, ETC. BE FILED
12 AND MAINTAINED UNDER CONDITIONAL SEAL on Defendant, by MARK JOHN
13 GERAGOS, and on associated counsel, by faxing a true copy to counsel at the facsimile
14 number shown with the address of each on the attached Service List, and then by causing to be
15 mailed a true copy (two true copies, to Attorney Geragos) to each counsel at that address.

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

17 Executed at Santa Barbara, California on this 28th day of January, 2004.

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20 Rosmary Mion



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SERVICE LIST

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