

FEB 05 2004

GARY M. BLAIR, EXEC. OFFICER

By J. Ann Erickson  
JO ANN ERICKSON, Deputy Clerk

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

MICHAEL JOE JACKSON,

Defendant.

No. 1133603

NOTICE OF MOTION AND  
MOTION FOR ORDER  
DIRECTING THAT THAT  
CERTAIN WARRANT FOR  
FURTHER SEARCH OF HARD  
DRIVES; SUPPORTING  
AFFIDAVIT AND RETURN BE  
FILED AND MAINTAINED  
UNDER SEAL UNTIL FURTHER  
ORDER OF COURT;  
DECLARATION OF GERALD  
McC. FRANKLIN; POINTS 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)

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

PLEASE TAKE NOTICE that on February 13, 2004, at 8:30 a.m. or as soon  
thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does,

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PLAINTIFF'S MOTION FOR ORDER SEALING CERTAIN SEARCH WARRANTS, ETC.

1 move for an order directing that the following records be sealed pursuant to California Rules of  
2 Court, rule 243.1 et seq:

3 The warrant for the inspection of hard drives from three computers seized on  
4 November 18, 2003 in the course of a search of Neverland Ranch in obedience to a search  
5 authorized by SW No. 4914, which warrant was issued on February 2, 2004, together with its  
6 supporting affidavit, and the return thereto when the warrant has been executed and the records  
7 sought by it has been obtained in obedience thereto.

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

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

15 DATED: February 5, 2004

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17 THOMAS W. SNEDDON, JR.  
District Attorney

18 By:   
19 Gerald McC. Franklin, Senior Deputy

20 Attorneys for Plaintiff  
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DECLARATION OF GERALD McC. FRANKLIN

I, Gerald McC. Franklin, say:

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 seal records pertains to search warrant no. SW 4914 for the further inspection, with the aide of government technicians who are not California peace officers, of 12 hard drives obtained from computers seized on November 18 from Neverland Ranch in Los Olivos and from the residence at (Los Angeles County) on November 18, 2003 in obedience to warrant no. SW 884686, together with the affidavit supporting the warrant and, when the further search of the hard drives is completed, the return to the warrant. The affidavit in support of the warrants have been filed with the court and, by statute, is not open to public inspection until the return to the warrant has been filed or within 10 days after the warrants were issued. The authorized further inspection of the hard drives has not yet been undertaken, and no return has been filed.

3. I believe the information set out in the search warrant affidavit, and the information which may be gained upon execution of the warrants, is privileged information within the meaning of Evidence Code sections 1040, subdivision (a) and 1042, subdivision (b), and as information relating to the investigation of alleged child molestation offenses, it may also be privileged pursuant to the Child Abuse and Neglect Reporting Act, Penal Code sections 11164 through 1117.4. I hereby claim and assert that privilege.

5. I believe the interests of both parties to a fair trial before jurors who are able to consider the evidence introduced at trial without having to consciously set aside information they may have gained from media reports of "evidence" that may not be put before them would be enhanced if the court were to require that most of the search warrant and virtually all of the supporting affidavit be sealed until further order of the Court and thus kept from inspection by the public until that time.

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

4 7. I believe there is a substantial probability that the rights of both parties to a fair  
5 trial will be prejudiced if the search warrant documents are not sealed until the conclusion of  
6 the investigation.

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

10 I declare under penalty of perjury under the laws of California that the foregoing is  
11 true and correct, except as to matters stated upon my information and belief, and as to such  
12 matters I believe it to be true. I execute this declaration at Santa Barbara, California on  
13 February 5, 2004.

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16 Gerald McC. Franklin

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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

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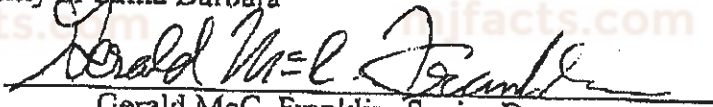
1 order to establish the legality of the search or the admissibility of any evidence obtained as a  
2 result of it.”

3  
4 DATED: February 5, 2004

5 Respectfully submitted,

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

8 By:



9 Gerald McC. Franklin, Senior Deputy

10 Attorneys for Plaintiff

(PROPOSED) ORDER

1  
2 It appearing from the Declaration of Gerald McC. Franklin and from the supporting  
3 affidavit in Santa Barbara Superior Court File No. SW 4914 that the affidavit contains  
4 confidential information, premature disclosure of which may prejudice an ongoing  
5 investigation and the right of both parties to a fair trial, the Court orders as follows:

6 1. That certain search warrant, its supporting affidavit, and any return to the search  
7 warrant which may be filed between now and February 13, 2004 in Santa Barbara Superior  
8 Court File No. SW 4914 is conditionally sealed;

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

11  
12 DATED: \_\_\_\_\_

13 RODNEY S. MELVILLE  
14 Judge of the Superior Court

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

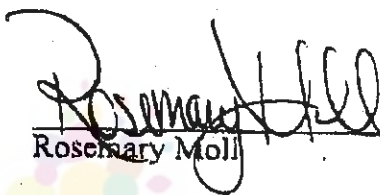
} SS

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 February 5, 2004, I served the within NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING THAT THAT CERTAIN WARRANT FOR FURTHER SEARCH OF HARD DRIVES, SUPPORTING AFFIDAVIT AND RETURN BE FILED AND MAINTAINED UNDER SEAL PENDING FURTHER ORDER OF COURT; DECLARATION OF GERALD McC. FRANKLIN; POINTS AND AUTHORITIES; PROPOSED ORDER THEREON on Defendant, by MARK JOHN GERAGOS, his counsel in this action, and on associated counsel, by faxing a true copy to counsel 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 (two true copies, to Attorney Geragos) to counsel at that address.

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

Executed at Santa Barbara, California on this 5th day of February, 2004.

  
Rosemary Moll





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SERVICE LIST

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