THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney
1105 Santa Barbara Street
Santa Barbara, CA 93101
Telephone: (805) 568-2300
FAX: (805) 568-2398

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SUPERIOR COURT OF THE COURT OF

AUG 1 6 2009

GARRY M. BLAIR, Executive Officer
BY CAN LE & Chagner
CARRIE L. WACHER, Deficity Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SANTA BARBARA SANTA MARIA DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, No. 1133603 Plaintiff. NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING THAT SEARCH WARRANT NO. SW 5032, ITS MICHAEL JOE JACKSON. SUPPORTING AFFIDAVIT AND ANY RETURN TO BE FILED Defendant. AND MAINTAINED UNDER CONDITIONAL SEAL UNTIL FURTHER ORDER OF COURT: DECLARATION OF GERALD McC. FRANKLIN MEMORANDUM OF POINTS AND AUTHORITIES: -DATE: August 16, 2004 TIME: 10:00 a.m. -DEPT: SM 2 (Melville)

TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, STEVE COCHRAN, and ROBERT SANGER, HIS ATTORNEYS OF RECORD, AND TO THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN & CRUTCHER, LLP:

PLEASE TAKE NOTICE that on August 16, 2004, at 10:00 a.m. or as soon thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does, move for an order directing that the following records be maintained under conditional seal until further order of court, pursuant to California Rules of Court, rule 243.1 et seq:

The warrant for the search of the records of VERIZON NEW

THE MATTER FOR CORP CRAI INC CEARCH WARRANT NO. 5032

YORK, INC., which warrant (no. SW 5032) was issued on May 20, 2004, together with its supporting affidavit (attached to SW 5016) and the return on that warrant.

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 sealing the specified records 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 motion.

DATED: August 13, 2004

THOMAS W. SNEDDON, JR. District Attorney

Gerald McC. Frankin, Senior Deputy

Attorneys for Plaintiff

njfacts.com mjfacts.com

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 warrant no. SW 5032 for the seizure of certain records of Verizon New York, Inc., together with the affidavit supporting the warrant (In SW 5016) and the return thereon. Warrant No. SW 5032 was May 20, 2004 and on June 4, 2004, the return thereon ("One 3.5", 1.44MB computer storage media disk") was filed with the court. The warrant, the supporting affidavit and the return to the warrant, by statute, are not open to public inspection until the return to the warrant has been filed or within 10 days after the warrant was issued. The business of preparing a request for sealing was overlooked, and is being made now after a reminder from the court.
- 3. The information set out in the affidavit in support of SW 45032 expands upon the confidential information gained by investigators in the course of the ongoing investigation and set out in the original warrant for the search of Neverland Ranch, most of which was sealed by order of this Court pending trial in order to preserve the right of both parties to a fair trial. In addition, the affidavit makes reference to information gathered by investigators following execution of the warrant for the Neverland Ranch search, which they regard as confidential and which would be prejudicial to defendant's right to a fair trial if disclosed to the public prior to trial and while the investigation itself is still underway.
- 4. I believe the information set out in the search warrant affidavit 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 therefore believe that the interest in a fair trial overrides the public's prompt access to the search warrant records, and supports the sealing of those records until the

MEMORANDUM OF POINTS AND AUTHORITIES

Penal Code section 1534, subdivision (a) provides:

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

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

Rule 243.1(d) provides that

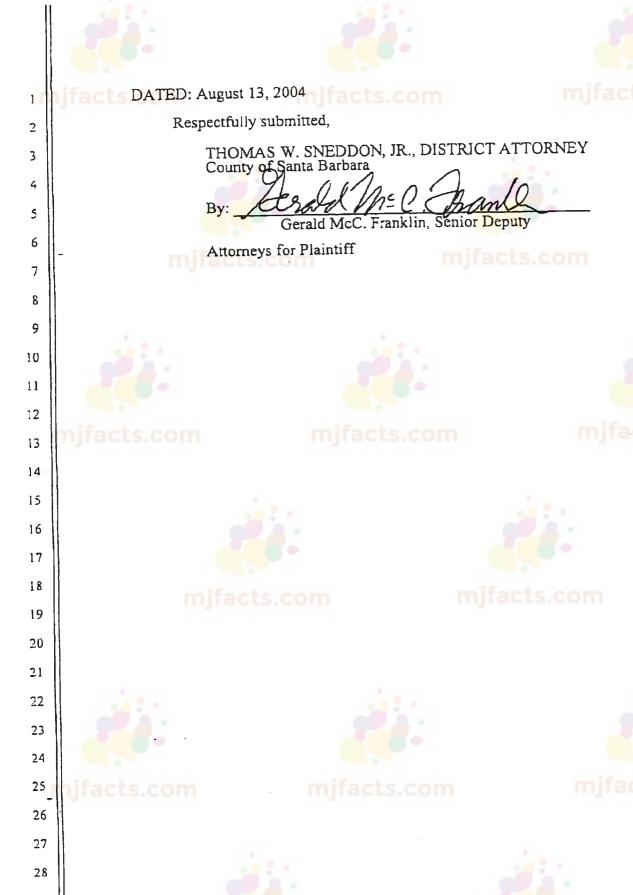
The court may order that a record be filed under seal only if it expressly finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
 - (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
 - (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."



PROOF OF SERVICE

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STATE OF CALIFORNIA

COUNTY OF SANTA BARBARA

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 August 13, 2004, I served the within NOTICE OF MOTION AND MOTION
FOR ORDER DIRECTING THAT SEARCH WARRANT NO. SW 4998, ITS SUPPORTING
AFFIDAVIT AND ITS RETURN BE FILED AND MAINTAINED UNDER CONDITIONAL
SEAL UNTIL FURTHER ORDER OF COURT; DECLARATION OF GERALD McC.
FRANKLIN; MEMORANDUM OF POINTS AND AUTHORITIES on Media's counsel, and
on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, and ROBERT
SANGER, 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 to each counsel
at that address.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Santa Barbara, California on this 13th day of August, 2004.

Gerald McC. Franklin

SERVICE LIST

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3	GIBSON, DUNN & CRUTCHER, LLP
4	Theodore J. Boutrous, Jr., Esq. William E. Thomson, Esq.
5	Julian Poon, Esq. 333 S. Grand Avenue
6	Los Angeles, CA 90071-3197 Attorneys for (collectively) "Media"
7	mjfacts.com
8	THOMAS A. MESEREAU, JR. Collins, Mesereau, Reddock & Yu, LLP
9	1875 Century Park East, No. 700
,	Los Angeles, CA 90067 FAX: (310) 284-3122

STEVE COCHRAN, ESQ. Katten, Muchin, Zavis & Rosenman, Lawyers 2029 Century Park East, Suite 2600 Los Angeles, CA 90067-3012 FAX: (310) 712-8455 Co-counsel for Defendant

Attorney for Defendant Michael Jackson

ROBERT SANGER, ESQ. Sanger & Swysen, Lawyers 233 E. Carrillo Street, Suite C Santa Barbara, CA 93001 FAX: (805) 963-7311 Co-counsel for Defendant