

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara  
2 By: RONALD J. ZONEN (State Bar No. 85094)  
Senior Deputy District Attorney  
3 GERALD McC. FRANKLIN (State Bar No. 40171)  
Senior Deputy District Attorney  
4 1105 Santa Barbara Street  
Santa Barbara, CA 93101  
5 Telephone: (805) 568-2300  
FAX: (805) 568-2398  
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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

SEP 28 2004

GARY M. BLAIR, Executive Officer  
BY *Carrie L. Wagner*  
CARRIE L. WAGNER, Deputy Clerk

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF SANTA BARBARA**  
9 **SANTA MARIA DIVISION**

11 THE PEOPLE OF THE STATE OF CALIFORNIA,  
12 Plaintiff,

13 v.

14 MICHAEL JOE JACKSON,

15 Defendant.

No. 1133603

NOTICE OF MOTION AND  
MOTION FOR ORDER  
DIRECTING THAT SEARCH  
WARRANT NOS. SW 5141-5152,  
THE SUPPORTING AFFIDAVIT  
FOR EACH, AND ANY RETURN  
BE FILED AND MAINTAINED  
UNDER CONDITIONAL SEAL  
UNTIL FURTHER ORDER OF  
COURT; DECLARATION OF  
GERALD McC. FRANKLIN;  
MEMORANDUM OF POINTS  
AND AUTHORITIES;

DATE: October 14, 2004  
TIME: 8:30 a.m.  
DEPT: SM 2 (Melville)

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

24 PLEASE TAKE NOTICE that on October 14, 2004, at 8:30 a.m. or as soon  
25 thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does,  
26 move for an order directing that the following records be maintained under conditional seal  
27 until further order of court, pursuant to California Rules of Court, rule 243.1 et seq:

28 The warrants for the search of the records of American Express

1 (warrant no. SW 5141), Citicorp Credit Services (SW 5142), Bank of  
2 America (SW 5143), Bergdorf Goodman/Nieman Marcus (SW  
3 5144), Capital One Bank (SW 5145), Chevron/Standard Oil (SW  
4 5146), Federated Dept. Stores (Bloomingdales/Macys) (SW 5147),  
5 Bank One/First USA Bank (SW 5148), Fleet Credit Card Svcs (SW  
6 5149), MBNA America (SW 5150), GE Consumer Card Svcs  
7 (Mobil) (SW 5151), and Nordstroms Card Svcs (SW 5152) were  
8 issued on September 23, 2004, together with the supporting affidavit  
9 for SW 5141-5152 and the return, if any, on each warrant.

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

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

17 DATED: September 27, 2004

18 THOMAS W. SNEDDON, JR.  
19 District Attorney

20 By:   
21 Gerald McC. Franklin, Senior Deputy

22 Attorneys for Plaintiff  
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1 Penal Code sections 11164 through 1117.4. I hereby claim and assert that privilege.

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

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

8 I declare under penalty of perjury under the laws of California that the foregoing is  
9 true and correct, except as to matters stated upon my information and belief, and as to such  
10 matters I believe it to be true. I execute this declaration at Santa Barbara, California on  
11 September 27, 2004.

12   
13 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

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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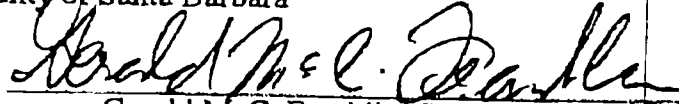
28 ////

1 DATED: September 27, 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

1 **PROOF OF SERVICE**

2  
3 STATE OF CALIFORNIA  
4 COUNTY OF SANTA BARBARA } SS

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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 September 27, 2004, I served the within NOTICE OF MOTION AND MOTION  
11 FOR ORDER DIRECTING THAT SEARCH WARRANT NOS. SW 5141-5152, THE  
12 SUPPORTING AFFIDAVIT FOR ALL OF THEM AND ANY RETURN TO BE FILED BE  
13 FILED AND MAINTAINED UNDER CONDITIONAL SEAL UNTIL FURTHER ORDER  
14 OF COURT; DECLARATION OF GERALD McC. FRANKLIN; MEMORANDUM OF  
15 POINTS AND AUTHORITIES on Media's counsel, and on Defendant, by THOMAS A.  
16 MESEREAU, JR., STEVE COCHRAN, and ROBERT SANGER, by causing to be mailed a  
17 true copy to each counsel at the address shown on the attached Service List.

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

19 Executed at Santa Barbara, California on this 27th day of September, 2004.

20   
21 Gerald McC. Franklin  
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**SERVICE LIST**

1  
2 GIBSON, DUNN & CRUTCHER, LLP  
3 Theodore J. Boutrous, Jr., Esq.  
4 William E. Thomson, Esq.  
5 Julian Poon, Esq.  
6 333 S. Grand Avenue  
7 Los Angeles, CA 90071-3197  
8 Attorneys for (collectively) "Media"

7 THOMAS A. MESEREAU, JR.  
8 Collins, Mesereau, Reddock & Yu, LLP  
9 1875 Century Park East, No. 700  
10 Los Angeles, CA 90067  
11 FAX: (310) 284-3122  
12 Attorney for Defendant Michael Jackson

11 STEVE COCHRAN, ESQ.  
12 Katten, Muchin, Zavis & Rosenman, Lawyers  
13 2029 Century Park East, Suite 2600  
14 Los Angeles, CA 90067-3012  
15 FAX: (310) 712-8455  
16 Co-counsel for Defendant

15 ROBERT SANGER, ESQ.  
16 Sanger & Swysen, Lawyers  
17 233 E. Carrillo Street, Suite C  
18 Santa Barbara, CA 93001  
19 FAX: (805) 963-7311  
20 Co-counsel for Defendant