

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
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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 06 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

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 SEARCH
19 WARRANT NO. SW 4912, ITS
20 SUPPORTING AFFIDAVIT
21 AND RETURN BE FILED
22 AND MAINTAINED UNDER
23 CONDITIONAL SEAL UNTIL
24 FURTHER ORDER OF COURT;
25 DECLARATION OF GERALD
26 McC. FRANKLN;
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:

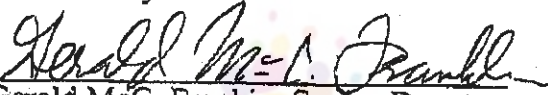
2 That certain warrant for the search of a residence in Los Angeles,
3 which warrant (no. SW 4912) was issued on January 30, 2004,
4 together with its supporting affidavit and the return thereon.

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 specified records 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 motion.

12 DATED: February 6, 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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1 DECLARATION OF GERALD McC. FRANKLIN

2 I, Gerald McC. Franklin, say:

3 1. I am a lawyer admitted to practice in the State of California. I am a Senior
4 Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for
5 the People, Plaintiff in this action.

6 2. This motion to seal records pertains to warrant no. SW 4912 for the search of a
7 particularly-identified residence in Los Angeles, together with the affidavit supporting the
8 warrant and the return thereon. The warrant was executed on January 30, 2004 and the return
9 thereon either has been filed with the court or shortly will be. The warrant, the supporting
10 affidavit and the return to the warrant, by statute, are not open to public inspection until the
11 return to the warrant has been filed or within 10 days after the warrants were issued.


12 3. The information set out in the affidavit in support of SW 4912 expands upon the
13 confidential information gained by investigators in the course of the ongoing investigation and
14 set out in the original warrant for the search of Neverland Ranch, most of which was sealed by
15 order of this Court pending trial in order to preserve the right of both parties to a fair trial. In
16 addition, the affidavit makes reference to information gathered by investigators following
17 execution of the warrant for the Neverland Ranch search, which they regard as confidential and
18 which would be prejudicial to defendant's right to a fair trial if disclosed to the public prior to
19 trial and while the investigation itself is still underway.

20 4. I believe the information set out in the search warrant affidavits, and the
21 information gained by execution of the warrants, is privileged information within the meaning
22 of Evidence Code sections 1040, subdivision (a) and 1042, subdivision (b), and as information
23 relating to the investigation of alleged child molestation offenses, it may also be privileged
24 pursuant to the Child Abuse and Neglect Reporting Act, Penal Code sections 11164 through
25 1117.4. I hereby claim and assert that privilege.

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

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

4 I declare under penalty of perjury under the laws of California that the foregoing is
5 true and correct, except as to matters stated upon my information and belief, and as to such
6 matters I believe it to be true. I execute this declaration at Santa Barbara, California on
7 February 6, 2004.

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9 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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mjfacts.com DATED: February 6, 2004

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Respectfully submitted,

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

By: *Gerald McC. Franklin, Jr.*
Gerald McC. Franklin, Senior Deputy

mj Attorneys for Plaintiff

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(PROPOSED) ORDER

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It appearing from the Declaration of Gerald McC. Franklin and from the supporting affidavit in Santa Barbara Superior Court File No. 4912 that the affidavits contain confidential information, premature disclosure of which may prejudice an ongoing investigation and the constitutional right of both parties to a fair trial, the Court orders as follows:

1. That certain search warrant number SW 4912, its supporting affidavit, and any return to the search warrant presently on file or which may be filed between now and February 13, 2004 in Santa Barbara Superior Court File No. SW 4912 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: FEB 09 2004

Rodney S. Melville

RODNEY S. MELVILLE
Judge of the Superior Court

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3 **PROOF OF SERVICE**

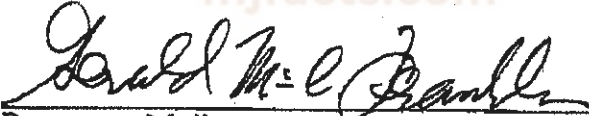
4 STATE OF CALIFORNIA }
5 COUNTY OF SANTA BARBARA } SS

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 February 6, 2004, I served the within NOTICE OF MOTION AND MOTION
11 FOR ORDER DIRECTING THAT SEARCH WARRANT NO. SW 4912, ITS SUPPORTING
12 AFFIDAVIT AND RETURN BE FILED AND MAINTAINED UNDER CONDITIONAL
13 SEAL UNTIL FURTHER ORDER OF COURT on Defendant, by MARK JOHN GERAGOS,
14 and on associated counsel, by faxing a true copy to counsel at the facsimile number shown with
15 the address of each on the attached Service List, and then by causing to be mailed a true copy
16 (two true copies, to Attorney Geragos) to each counsel at that address.

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

18 Executed at Santa Barbara, California on this 6th day of February, 2004.

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20 
21 ~~Rosemary Mohl~~
22 Gerald Franklin



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