

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)  
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4 1105 Santa Barbara Street  
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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

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 SEARCH  
19 WARRANT NO. SW 4915, 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. 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:

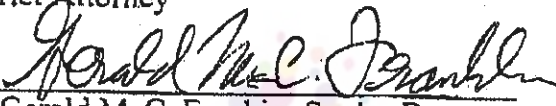
2 That certain warrant for the search of a residence in Calabasas,  
3 which warrant (no. SW 4915) was issued on January 31, 2004,  
4 together with its supporting affidavit and the return thereon.

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

13  
14 THOMAS W. SNEDDON, JR.  
District Attorney

15 By:   
16 Gerald McC. Franklin, Senior Deputy  
17 Attorneys for Plaintiff

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 4915 for the search of a  
7 particularly-identified residence in Calabasas, together with the affidavit supporting the warrant  
8 and the return thereon. The warrant was executed on January 31, 2004 and the return thereon  
9 either has been filed with the court or shortly will be. The warrant, the supporting affidavit and  
10 the return to the warrant, by statute, are not open to public inspection until the return to the  
11 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 4915 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 in the course of  
17 searches at two other locations within the preceding two days, which they regard as  
18 confidential and which would be prejudicial to defendant's right to a fair trial if disclosed to the  
19 public prior to 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 facts.com 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.

8  
9 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.”

27 ////

28 ////

1 facts. DATED: February 6, 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

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~~(PROPOSED)~~ ORDER

It appearing from the Declaration of Gerald McC. Franklin and from the supporting affidavit in Santa Barbara Superior Court File No. 4915 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 4915, 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 4915 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  
Judge of the Superior Court



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PROOF OF SERVICE

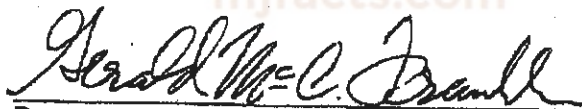
STATE OF CALIFORNIA  
COUNTY OF SANTA BARBARA } SS

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 6, 2004, I served the within NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING THAT SEARCH WARRANT NO. SW 4915, ITS SUPPORTING AFFIDAVIT AND RETURN BE FILED AND MAINTAINED UNDER CONDITIONAL SEAL UNTIL FURTHER ORDER OF COURT on Defendant, by MARK JOHN GERAGOS, 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 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 6th day of February, 2004.

  
\_\_\_\_\_  
Rosemary Moll  
Gerald Franklin



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**SERVICE LIST**

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