

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  
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**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY OF SANTA BARBARA

APR 23 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

NOTICE OF MOTION AND  
MOTION FOR ORDER  
DIRECTING THAT SEARCH  
WARRANT NOS. SW 4977 AND  
4977A, THEIR SUPPORTING  
AFFIDAVITS 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;  
PROPOSED ORDER THEREON  
(Cal. Rules of Ct., rule 243.1 et  
seq.)

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

9 *Am*

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

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

BY CLERK'S MOTION FOR ORDER SEALING SEARCH WARRANT NOS. 4977 AND 4977A, ETC.

1 order directing that the following records be maintained under conditional seal until further  
2 order of court, pursuant to California Rules of Court, rule 243.1 et seq:

3 Those certain warrants for the search of the records of Verizon  
4 California, Inc., which warrants (nos. SW 4977 and SW 4977A)  
5 were issued, respectively, on April 2nd and April 21, 2004, together  
6 with their supporting affidavits and the return, if any, on SW 4977A.

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

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

14 DATED: April 22, 2004

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16 THOMAS W. SNEDDON, JR.  
District Attorney

17 By:   
18 Gerald McC. Frankin, Senior Deputy

19 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 nos. SW 4977 and SW 4977A for  
7 the seizure of certain records of Verizon California, Inc. and its subsidiaries, together with the  
8 affidavits supporting the warrants and the returns thereon. Warrant No. SW 4977 was executed  
9 on April 2, 2004 and the return thereon was not filed because Verizon California, Inc. had  
10 issues with the phrasing of the description of the records sought by that warrant. Warrant No.  
11 SW 4977A was executed on April 21, 2004 and the return to that warrant has not yet been filed  
12 with the court. The warrant, the supporting affidavit and the return to the warrant, by statute,  
13 are not open to public inspection until the return to the warrant has been filed or within 10 days  
14 after the warrants were issued.

15 3. The information set out in the affidavits in support of SW 4977 and SW 4977A  
16 expand upon the confidential information gained by investigators in the course of the ongoing  
17 investigation and set out in the original warrant for the search of Neverland Ranch, most of  
18 which was sealed by order of this Court pending trial in order to preserve the right of both  
19 parties to a fair trial. In addition, the affidavit makes reference to information gathered by  
20 investigators following execution of the warrant for the Neverland Ranch search, which they  
21 regard as confidential and which would be prejudicial to defendant's right to a fair trial if  
22 disclosed to the public prior to trial and while the investigation itself is still underway.

23 4. I believe the information set out in the search warrant affidavits, and the  
24 information gained by execution of warrant no. SW 4977A, is privileged information within the  
25 meaning of Evidence Code sections 1040, subdivision (a) and 1042, subdivision (b), and as  
26 information relating to the investigation of alleged child molestation offenses, it may also be  
27 privileged pursuant to the Child Abuse and Neglect Reporting Act, Penal Code sections 11164  
28 through 1117.4. I hereby claim and assert that privilege.

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

7 I declare under penalty of perjury under the laws of California that the foregoing is  
8 true and correct, except as to matters stated upon my information and belief, and as to such  
9 matters I believe it to be true. I execute this declaration at Santa Barbara, California on April  
10 22, 2004.

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12 Gerald McC. Franklin  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 Penal Code section 1534, subdivision (a) provides:

3 (a) A search warrant shall be executed and returned within 10 days  
4 after date of issuance. A warrant executed within the 10-day period  
5 shall be deemed to have been timely executed and no further  
6 showing of timeliness need be made. After the expiration of 10  
7 days, the warrant, unless executed, is void. The documents and  
8 records of the court relating to the warrant need not be open to the  
9 public until the execution and return of the warrant or the expiration  
10 of the 10-day period after issuance. Thereafter, if the warrant has  
11 been executed, the documents and records shall be open to the public  
12 as a judicial record.

13 In *PSC Geothermal Services Co. v. Superior Court* (1994) 25 Cal.4th 1697, our  
14 Supreme Court noted:

15 “Section 1534 provides that the documents associated with the  
16 warrant are public documents 10 days after its execution. Typically  
17 after the search, arrests are made. There is no exception in the  
18 statute for instances, such as that here, where the search is used to  
19 further an ongoing investigation. Such information, however, may  
20 be privileged as official information under Evidence Code sections  
21 1040, subdivision (a) and 1042, subdivision (b).” (*Id.*, at p. 1714.)

22 Evidence Code section 1040, subdivision (a) provides: “As used in this section,  
23 ‘official information’ means information acquired in confidence by a public employee in the  
24 course of his or her duty and not open, or officially disclosed, to the public prior to the time the  
25 claim of privilege is made.”

26 Evidence Code section 1042, subdivision (b) provides: “Notwithstanding  
27 subdivision (a) [requiring a court to make adverse findings adverse to the public entity upon  
28 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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DATED: April 22, 2004

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Respectfully submitted,

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

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

mjfa Attorneys for Plaintiff

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(PROPOSED) ORDER

It appearing from the Declaration of Gerald McC. Franklin and from the supporting affidavits in Santa Barbara Superior Court Search Warrant File Nos. SW 4977 and SW 4977A 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 numbers SW 4977 and SW 4977A, their supporting affidavits, and any return to SW 4977A presently on file or which may be filed between now and February 13, 2004 in Santa Barbara Superior Court File Nos. SW 4977 and 4977A are conditionally sealed;
2. The motion to maintain those documents under conditional seal until further order of court shall be heard on April 30, 2004, at 8:30 a.m.

DATED: April \_\_, 2004

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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 April 22, 2004, I served the within NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING THAT SEARCH WARRANT NOS. SW 4977 AND 4977A, THEIR SUPPORTING AFFIDAVITS AND ANY 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 22nd day of April, 2004.

  
Gerald McC. Franklin

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