

JUN 01 2004

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

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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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.
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No. 1133603

NOTICE OF MOTION AND
MOTION FOR ORDER
DIRECTING THAT SEARCH
WARRANT NO. SW 4976, ITS
SUPPORTING AFFIDAVIT AND
ANY RETURN TO BE FILED
AND MAINTAINED UNDER
CONDITIONAL SEAL UNTIL
FURTHER ORDER OF COURT;
DECLARATION OF GERALD
McC. FRANKLIN;
MEMORANDUM OF POINTS
AND AUTHORITIES;

DATE: June 25, 2004
TIME: 8:30 a.m.
DEPT: SM 2 (Melville)

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21 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, STEVE
22 COCHRAN, and ROBERT SANGER, HIS ATTORNEYS OF RECORD, AND TO
THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN & CRUTCHER, LLP:
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24 PLEASE TAKE NOTICE that on June 25, 2004, at 8:30 a.m. or as soon thereafter
25 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 warrant for the search of the records of RCN Internet, which

1 warrant (no. SW 4976) was issued on April 2, 2004, together with its
2 supporting affidavit and the return, if any, on that warrant.

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

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

10 DATED: June 1, 2004

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12 THOMAS W. SNEDDON, JR.
District Attorney

13 By: *Gerald McC. Franklin*
14 Gerald McC. Frankin, Senior Deputy

15 Attorneys for Plaintiff
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DECLARATION OF GERALD McC. FRANKLIN

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 4976** for the seizure of certain records of RCN Internet, together with the affidavit supporting the warrant and the return thereon. Warrant No. **SW 4976** was executed on April 2, 2004 and on April 30, the return thereon ("no records available") 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.

3. The information set out in the affidavit in support of **SW 4976** 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 investigation has been concluded.

6. I believe an order maintaining those records under seal in the interim would avert

1 the probability of prejudice, and that no more narrowly tailored order with respect to those
2 records could be drafted to achieve the overriding interest in a fair trial.

3 I declare under penalty of perjury under the laws of California that the foregoing is
4 true and correct, except as to matters stated upon my information and belief, and as to such
5 matters I believe it to be true. I execute this declaration at Santa Barbara, California on June 1,
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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1 DATED: June 1, 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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PROOF OF SERVICE

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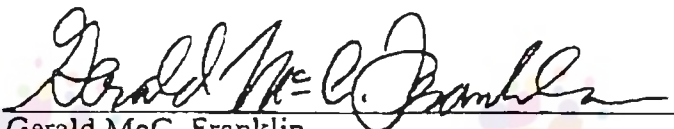
STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

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 June 1, 2004, I served the within NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING THAT SEARCH WARRANT NO. SW 4976, ITS SUPPORTING AFFIDAVIT AND ANY RETURN TO 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 1st day of June, 2004.


Gerald McC. Franklin

SERVICE LIST

GIBSON, DUNN & CRUTCHER, LLP

Theodore J. Boutrous, Jr., Esq.

William E. Thomson, Esq.

Julian Poon, Esq.

333 S. Grand Avenue

Los Angeles, CA 90071-3197

Attorneys for (collectively) "Media"

THOMAS A. MESEREAU, JR.

Collins, Mesereau, Reddock & Yu, LLP

1875 Century Park East, No. 700

Los Angeles, CA 90067

FAX: (310) 284-3122

Attorney for Defendant Michael Jackson

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

ROBERT SANGER, ESQ.

Sanger & Swysen, Lawyers

233 E. Carrillo Street, Suite C

Santa Barbara, CA 93001

FAX: (805) 963-7311

Co-counsel for Defendant

JUN 03 2004

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

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

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

MICHAEL JOE JACKSON,

Defendant.

No. 1133603

~~(PROPOSED)~~

ORDER DIRECTING THAT
SEARCH WARRANT NOS.
SW 4976, THE SUPPORTING
AFFIDAVIT AND THE RETURN
BE MAINTAINED UNDER
CONDITIONAL SEAL UNTIL
FURTHER ORDER OF COURT

It appearing from the Declaration of Gerald McC. Franklin and from the supporting affidavit in Santa Barbara Superior Court Search Warrant File No. SW 4976 that the affidavit contains 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 search warrant number SW 4976 and its supporting affidavit in Santa Barbara Superior Court File No. SW 4976, are conditionally sealed;
2. The motion to maintain those documents under conditional seal until further order of court shall be heard on June 25, 2004, at 8:30 a.m.

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3 DATED: June 2, 2004

Rodney S. Melville

RODNEY S. MELVILLE

Judge of the Superior Court

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