

JUN 02 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
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6 FAX: (805) 568-2398

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 5035
20 THE DECLARATION IN
21 SUPPORT THEREOF AND THE
22 RETURN, WHEN FILED, BE
23 CONDITIONALLY SEALED
24 AND REMAIN UNDER SEAL
25 UNTIL FURTHER ORDER OF
26 COURT; DECLARATION OF
27 GERALD McC. FRANKLIN IN
28 SUPPORT THEREOF;
MEMORANDUM OF POINTS
AND AUTHORITIES

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

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

25 PLEASE TAKE NOTICE that on June 25, 2004, at 8:30 a.m. or as soon thereafter
26 as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does,
27 move for an order directing that the following records be maintained under conditional seal
28

1 until further order of court, pursuant to California Rules of Court, rule 243.1 et seq:

2 Warrant No. **SW 5035** for the search of the records of **AGRAS**

3 **Billing Macc**, which warrant was issued on May 26, 2004, together

4 with the supporting affidavit for each and the return, if any

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: June 2, 2004

13 THOMAS W. SNEDDON, JR.
14 District Attorney

15 By: 


16 Gerald McC. Frankin, Senior Deputy

17 Attorneys for Plaintiff

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

I declare under penalty of perjury under the laws of California that the foregoing is true and correct, except as to matters stated upon my information and belief, and as to such matters I believe it to be true. I execute this declaration at Santa Barbara, California on June 2, 2004.


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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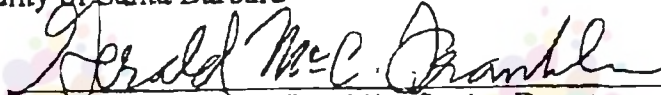
28 ////

1 DATED: June 2, 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

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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 June 2, 2004, I served the within NOTICE OF MOTION AND MOTION FOR
11 ORDER DIRECTING THAT SEARCH WARRANT NO. SW 5035, THE SUPPORTING
12 AFFIDAVIT AND ANY RETURN TO BE FILED AND MAINTANINED UNDER
13 CONDITIONAL SEAL UNTIL FURTHER ORDER OF COURT; DECLARATION OF
14 GERALD McC. FRANKLIN; MEMORANDUM OF POINTS AND AUTHORITIES on
15 Media's counsel, and on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN,
16 and ROBERT SANGER, by faxing a true copy to counsel at the facsimile number shown with
17 the address of each on the attached Service List, and then by causing to be mailed a true copy to
18 each counsel at that address.

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

20 Executed at Santa Barbara, California on this 2st day of June, 2004.

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23 _____
24 Gerald McC. Franklin

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Co-counsel for Defendant



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JUN 03 2004

GARY M. BLAIR, Executive Officer
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 NO.
SW 5035, THE SUPPORTING
AFFIDAVIT AND ANY 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 5035 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 5035, its supporting affidavit, and any return presently on file or which may be filed between now and June 25, 2004 in Santa Barbara Superior Court File No. SW 5029, 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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DATED: June 2, 2004

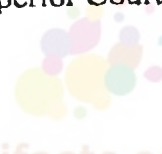
Rodney S. Melville

RODNEY S. MELVILLE

Judge of the Superior Court



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