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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

SEP 17 2004

GARY W. BLAIR, Executive Officer
CARRIE L. WATSON, Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

11
12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15 MICHAEL JOE JACKSON,

16 Defendant.

No. 1133603

17 NOTICE OF MOTION AND
18 MOTION FOR ORDER
19 DIRECTING THAT SEARCH
20 WARRANT NO. SW 5118,
21 THE DECLARATION IN
22 SUPPORT THEREOF AND THE
23 RETURN MADE TO IT BE
24 CONDITIONALLY SEALED
25 AND REMAIN UNDER SEAL
26 UNTIL FURTHER ORDER OF
27 COURT; DECLARATION OF
28 GERALD McC. FRANKLIN IN
SUPPORT THEREOF;
MEMORANDUM OF POINTS
AND AUTHORITIES

DATE: Sept. 16, 2004
TIME: 8:30 a.m.
DEPT: SM 2 (Melville)

21 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, STEVE
22 COCHRAN, and ROBERT SANGER, HIS ATTORNEYS OF RECORD, AND TO
23 THEODORE J. BOUTROUS, JR., ESQ., GIBSON, DUNN & CRUTCHER, LLP:
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25 PLEASE TAKE NOTICE that on September 16, 2004, at 8:30 a.m. or as soon
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1 thereafter as the matter may be heard, in Department SM 2, Plaintiff will, and hereby does,
2 move for an order directing that the following records be maintained under conditional seal
3 until further order of court, pursuant to California Rules of Court. rule 243.1 et seq:

4 Warrant No. **SW 5118** for the search of the records of

5 **TRANSUNION LEGAL PROCESS**

6 which warrant was issued on August 20, 2004, together with its supporting affidavit and the
7 return, if any, on said warrant.

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

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

15 DATED: August 27, 2004

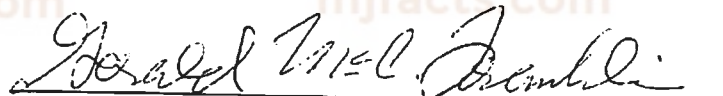
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17 THOMAS W. SNEDDON, JR.
District Attorney

18 By: 
19 Gerald McC. Franklin, Senior Deputy

20 Attorneys for Plaintiff
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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 August
7 27, 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 DATED: August 27, 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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