

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 1112 Santa Barbara Street  
Santa Barbara, CA 93101  
5 Telephone: (805) 568-2300  
6 FAX: (805) 568-2398

9:50 AM  
DEC 23 2004  
CLERK OF SUPERIOR COURT  
SANTA BARBARA COUNTY  
COURT 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

16 NOTICE OF MOTION AND  
17 MOTION FOR ORDER  
18 DIRECTING THAT SEARCH  
19 WARRANT NO. SW 5192,  
20 THE SUPPORTING AFFIDAVIT  
21 AND THE RETURN, WHEN  
22 FILED, BE FILED AND  
23 MAINTAINED UNDER  
24 CONDITIONAL SEAL UNTIL  
25 FURTHER ORDER OF COURT;  
26 DECLARATION OF GERALD  
27 McC. FRANKLIN;  
28 MEMORANDUM OF POINTS  
AND AUTHORITIES;

DATE: December 23, 2004  
TIME: ~~8:30 a.m.~~ 9:30 AM  
DEPT: SM 2 (Melville)

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

26 PLEASE TAKE NOTICE that on December 23, 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 The warrant for the search of certain structures at Neverland Valley  
3 Ranch (warrant no. SW 5192), issued November 24, 2004 and executed December  
4 3, 2004, together with its supporting affidavit and the return filed December 7,  
5 2004.

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

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

13 DATED: December 13, 2004

14 THOMAS W. SNEDDON, JR.  
15 District Attorney

16 By:   
17 Gerald McC. Franklin, Senior Deputy

18 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 a search warrant for Neverland Valley  
7 Ranch (warrant no. SW 5192), together with the supporting affidavit and the return. A  
8 warrant, its supporting affidavit and the return thereon, by statute, are not open to public  
9 inspection until the return to a given warrant has been filed or within 10 days after the warrant  
10 was issued, whichever is later.

11 3. The information set out in the affidavits in support of SW No. 5192 expands  
12 upon the confidential information gained by investigators in the course of the ongoing  
13 investigation and set out in the original warrant for the search of Neverland Ranch, most of  
14 which was sealed by order of this Court pending trial in order to preserve the right of both  
15 parties to a fair trial. In addition, the affidavit makes reference to information gathered by  
16 investigators following execution of the warrant for the Neverland Ranch search, which they  
17 regard as confidential and which would be prejudicial to defendant's right to a fair trial if  
18 disclosed to the public prior to trial and while the investigation itself is still underway.


19 4. I believe the information set out in the search warrant affidavit is privileged  
20 information within the meaning of Evidence Code sections 1040, subdivision (a) and 1042,  
21 subdivision (b), and as information relating to the investigation of alleged child molestation  
22 offenses, it may also be privileged pursuant to the Child Abuse and Neglect Reporting Act,  
23 Penal Code sections 11164 through 1117.4. I hereby claim and assert that privilege.

24 5. I therefore believe that the interest in a fair trial overrides the public's prompt  
25 access to the search warrant records, and supports the sealing of those records until the  
26 investigation has been concluded.

27 6. I believe an order maintaining those records under seal in the interim would avert  
28 the probability of prejudice, and that no more narrowly tailored order with respect to those

1 records could be drafted to achieve the overriding interest in a fair trial.

2 I declare under penalty of perjury under the laws of California that the foregoing is  
3 true and correct, except as to matters stated upon my information and belief, and as to such  
4 matters I believe it to be true. I execute this declaration at Santa Barbara, California on  
5 December 13, 2004.

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7 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  
24 or page must be included in the public file.

25 Rule 243.2(b) provides, in pertinent part, that “Pending the determination of the  
26 motion [of a party to file a record under seal], the lodged record will be conditionally under  
27 seal.”

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1 DATED: December 13, 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

8 mjfacts.com

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3 **PROOF OF SERVICE**  
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6 STATE OF CALIFORNIA

7 COUNTY OF SANTA BARBARA

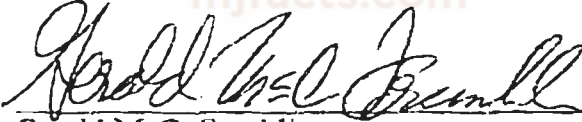
} SS

8 I am a citizen of the United States and a resident of the County aforesaid; I am over  
9 the age of eighteen years and I am not a party to the within-entitled action. My business  
10 address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara,  
11 California 93101.

12 On December 13, 2004, I served the within NOTICE OF MOTION AND MOTION  
13 FOR ORDER DIRECTING THAT SEARCH WARRANT NO. SW 5192 , THE  
14 SUPPORTING AFFIDAVIT , AND THE RETURN, BE FILED AND MAINTAINED  
15 UNDER CONDITIONAL SEAL UNTIL FURTHER ORDER OF COURT; DECLARATION  
16 OF GERALD McC. FRANKLIN; MEMORANDUM OF POINTS AND AUTHORITIES on  
17 Media's counsel, and on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT  
18 SANGER, by causing to be mailed a true copy to each counsel at the address shown on the  
19 attached Service List.

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

21 Executed at Santa Barbara, California on this 13th day of December, 2004.

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23 Gerald McC. Franklin  
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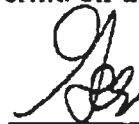
STATE OF CALIFORNIA  
COUNTY OF SANTA BARBARA } SS

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; 1112 Santa Barbara Street, Santa Barbara, California 93101.

On December 13, 2004, I served the within NOTICE OF MOTION AND MOTION FOR ORDER DIRECTING THAT SEARCH WARRANT NO. SW 5192 , THE SUPPORTING AFFIDAVIT , AND THE RETURN TO BE FILED, 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. and ROBERT SANGER, by causing to be mailed a true copy to each counsel at the address shown on the attached Service List.

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

Executed at Santa Barbara, California on this 13th day of December, 2004.



\_\_\_\_\_  
Gerald McC. Franklin

SERVICE LIST

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