

1 Thomas A. Mesereau, Jr. (SBN 91182)  
Susan C. Yu (SBN 195640)  
2 COLLINS, MESEREAU, REDDOCK & YU  
1875 Century Park East, 7<sup>th</sup> Floor  
3 Los Angeles, CA 90067  
Telephone: 310-284-3120  
4 Facsimile: 310-284-3133

5 Steve Cochran (SBN 105541)  
KATTEN MUCHIN ZAVIS ROSENMAN  
6 2029 Century Park East, Suite 2600  
Los Angeles, California 90067  
7 Telephone: (310) 788-4400  
Facsimile: (310) 712-8455

8 Robert M. Sanger (SBN 58214)  
9 SANGER & SWYSEN  
233 E. Carrillo Street, Suite C  
10 Santa Barbara, California 93101  
Telephone: 805-962-4887  
11 Facsimile: 805-963-7311

12 Attorneys for Defendant  
MICHAEL J. JACKSON

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF SANTA BARBARA  
16 SANTA MARIA DIVISION

17 THE PEOPLE OF THE STATE OF  
18 CALIFORNIA,

19 Plaintiff,

20 vs.

21 MICHAEL J. JACKSON

22 Defendant.  
23

CASE NO. 1133603

NOTICE OF MOTION AND  
MOTION TO COMPEL  
DISCOVERY; PENAL CODE §  
1054; MEMORANDUM OF  
POINTS AND AUTHORITIES;  
DECLARATION OF COUNSEL

Hearing: May 28, 2004  
Time: 8:30 a.m.  
Place: Dept. 9

~~FILED UNDER SEAL~~

REDACTED

1 TO THE PEOPLE OF THE STATE OF CALIFORNIA AND THEIR COUNSEL:

2 Please take notice that on May 28, 2004 at 8:30 a.m., before the Honorable  
3 Rodney Melville, defendant Michael J. Jackson ("Mr. Jackson") through his counsel,  
4 will and hereby does move for an order compelling discovery.

5 This motion is brought pursuant to Penal Code § 1054. Relief is justified  
6 because the prosecution has not produced material to which the defense is entitled  
7 under *Brady v. Maryland* and its progeny.

8 This motion is based upon this notice, the attached memorandum of points and  
9 authorities, declaration of counsel, exhibits, the file and record and any other  
10 information presented prior to a ruling hereon.

11 DATED: May 13, 2004 Respectfully submitted,

12 Thomas A. Mesereau, Jr.  
13 Susan C. Yu  
14 COLLINS, MESEREAU, REDDOCK & YU

15 Steve Cochran  
16 KATTEN MUCHIN ZAVIS ROSENMAN

17 Robert M. Sanger  
18 SANGER & SWYSEN

19 By: Steve Cochran  
20 Steve Cochran  
21 Attorneys for Defendant  
22 MICHAEL J. JACKSON  
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1 **I. INTRODUCTION**

2 The prosecution made its worldwide announcement of this case in November  
3 2003. The complaint was filed in December 2003 and Mr. Jackson was arraigned in  
4 mid-January 2004. The prosecution convened a grand jury, which issued an  
5 indictment in late April. Over six months after the charges were raised, the  
6 prosecution is far from satisfying basic discovery obligations.

7 Defense counsel have received three waves of discovery. The first two sets  
8 amount to approximately 850 pages of police reports and summaries of witness  
9 interviews. The third and most recent production consists of almost 300 pages of  
10 reports, 51 audiocassette tapes, 2 videotapes and other material.

11 Defense counsel made their initial demand for discovery on January 30, 2004.  
12 Essential information was requested, including witness statements and copies of  
13 tapes, photographs and other materials, discoverable under *Brady v. Maryland* and its  
14 progeny. The prosecution has not responded to that demand specifically, other than  
15 incomplete production of documents and tapes.

16 On February 18, 2004, defense counsel requested access for in-person review  
17 of the items seized pursuant to search warrants. The prosecution has provided no  
18 written response to that demand either, but has represented more than once that the  
19 items are still under examination and remain unavailable for defense review.

20 Obtaining complete discovery from the prosecution is indispensable for  
21 defense counsel to prepare properly for trial. The investigation of this case involves  
22 dozens of, if not over 100, witnesses, voluminous documents and expert examination  
23 on a variety of topics. The defense needs adequate time to review the material  
24 generated by the prosecution and conduct separate inquiry that may arise from that  
25 review.

26 Absent an order from this Court, the prosecution will continue to regulate the  
27 timing of disclosures which should have been made by now. Mr. Jackson's right to a  
28 fair trial is jeopardized by the undue delay of discovery by the prosecution.



1 Accordingly, Mr. Jackson respectfully requests that this Court order the prosecution  
2 to produce all discovery requested by the defense within a specified period of time.

3 **II. THE PERTINENT FACTS**

4 **A. PROCEDURAL HISTORY**

5 This case first made headlines on November 18, 2003 when search warrants  
6 were executed at three locations, including Mr. Jackson's home in Los Olivos. The  
7 next day, the prosecution announced its decision to file charges. Mr. Jackson  
8 appeared voluntarily and posted bail on November 20, 2003. (Cochran Decl. ¶ 2.)

9 The complaint was filed on December 18, 2003. Arraignment occurred on  
10 January 16, 2004. Mr. Jackson appeared that day and pled not guilty. (Cochran  
11 Decl. ¶ 3.)

12 Hearings occurred on February 16 and April 2, 2004 to schedule a preliminary  
13 hearing, among other things. On March 12, 2004, however, defense counsel received  
14 notice from the prosecution that it would convene a grand jury to seek an indictment  
15 in lieu of a preliminary hearing. Mr. Jackson was charged by way of indictment on  
16 April 21, 2004. Arraignment ensued on April 30, 2004, at which Mr. Jackson pled  
17 not guilty to all counts and denied the special allegations. (Cochran Decl. ¶ 4.)

18 **B. DEFENSE DEMANDS FOR DISCOVERY AND THE**  
19 **INADEQUATE RESPONSE OF THE PROSECUTION**

20 The prosecution produced disks containing approximately 400 pages of police  
21 reports and witness statements on January 16, 2004. Each witness statement,  
22 produced in the dozens so far, indicates that the police recorded the interview. None  
23 of the tapes of recorded interviews were produced.

24 Defense counsel sent a written discovery demand on January 30, 2004. The  
25 defense discovery request itemizes routine categories of information including,  
26 among other things, statements of witnesses, impeachment material, copies of tapes,  
27 papers and other materials. (Cochran Decl. ¶ 6, Exhibit A demand for discovery  
28 attached thereto.)

1 To date, the prosecution has failed to respond specifically to the defense  
2 demands for discovery. Instead, on February 10, 2004, the prosecution produced  
3 approximately 400 additional pages of witness statements and police reports. Again,  
4 the prosecution failed to produce tapes of witness interviews. The last wave of  
5 discovery was provided by the prosecution on March 12, 2004. Those materials  
6 include 300 pages of more witness statements, police reports and photographs of  
7 certain items. Approximately 53 audio and video tapes were also produced.

8 A defense request to inspect items seized pursuant to search warrants also  
9 pends. Inventories for the search warrants reveal in excess of 300 seized items.  
10 Defense counsel sent a written request for access to the seized materials on February  
11 18, 2004. (See Cochran Decl. ¶ 8, Exhibit B attached thereto.) The prosecution has  
12 not responded to this request in writing. Rather, it has represented that the seized  
13 items are unavailable due to ongoing forensic examination. Counsel for the  
14 prosecution estimated long ago that it would be a few weeks before the seized items  
15 are available for examination by the defense. (Cochran Decl. ¶ 8.)

#### 16 C. THE INDICTMENT

17 The indictment does not simply mirror the complaint. The indictment  
18 substantially broadens the scope and complexity of this litigation. An elaborate  
19 conspiracy is alleged among Mr. Jackson, five identified persons and unidentified  
20 others. Twenty-eight overt acts are mentioned in furtherance of a supposed objective  
21 to abduct children, falsely imprison and commit extortion.

22 Four counts of lewd conduct with a minor are alleged, along with one count of  
23 attempt. There are also four counts of providing alcohol to a minor. The indictment  
24 includes special allegations that involve sentencing enhancements. Witnesses  
25 expected to testify for the prosecution are identified. Twenty-five lay witnesses and  
26 16 police officers are listed. (Cochran Decl. ¶ 10.)

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1 **III. THE APPLICABLE LAW**

2 The prosecution is obligated to disclose evidence to the defense under the due  
3 process clause of the Fourteenth Amendment to the United States Constitution. This  
4 duty of disclosure exists in addition to the statutory scheme of reciprocal discovery  
5 set forth in Penal Code § 1054. *United States v. Bagley*, 473 U.S. 667, 674-78  
6 (1985); *Izazaga v. Superior Court*, 54 Cal.3d 356, 378 (1991).

7 Witness statements, physical evidence and the identity of material informants  
8 must be produced by the prosecution. *Brady v. Maryland*, 373 U.S. 93 (1963); *In re*  
9 *Littlefield*, 5 Cal. 4<sup>th</sup> 122 (1993). Exculpatory information, including the criminal  
10 record of adverse witnesses and any deals or incentives extended by authorities to  
11 adverse witnesses must be provided. Penal Code §§ 1054.1(e); 1054(e); *Giglio v.*  
12 *United States*, 405 U.S. 150 (1972); *People v. Pinholster*, 1 Cal.4th 865, 938-939  
13 (1992). The defense is entitled to reports of police officers and investigators  
14 concerning all aspects of the case. Penal Code § 1054.1(e)-(f); *Izazaga v. Superior*  
15 *Court*, 54 Cal.3d 356 (1991).

16 **IV. AN ORDER COMPELLING DISCOVERY IS NECESSARY TO**  
17 **PRESERVE MR. JACKSON'S RIGHTS TO IDENTIFY**  
18 **EXCULPATORY EVIDENCE FOR THE GRAND JURY AND A FAIR**  
19 **TRIAL**

20 Obviously, discovery by the prosecution is far from complete. Meanwhile,  
21 over the last six months, Mr. Jackson has endured intrusions of privacy, worldwide  
22 coverage of criminal allegations, live broadcasts of his voluntary appearance for  
23 booking and the posting of exorbitant bail. The prosecution has found the time and  
24 effort necessary to prepare for grand jury proceedings, conduct ongoing witness  
25 interviews and monitor forensic examination of seized items at the expense of  
26 providing timely discovery as the law requires. The failure to complete discovery is  
27 inexcusable.

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1 All of the discovery categories requested by defense counsel are authorized by  
2 Penal Code §1054 and applicable case law. Defense counsel is entitled to reasonable  
3 access to the items seized pursuant to search warrants. At least so far, the  
4 prosecution does not dispute its obligation to produce the discovery sought by  
5 defense counsel.

6 Since arraignment on the complaint in January of this year, the prosecution has  
7 conducted further investigation through search warrants, witness interviews and  
8 testimony before the grand jury. Meanwhile, defense requests for discovery have  
9 been ignored. The defendant's right of access to seized items has been completely  
10 denied, and other basic information, such as taped witness statements, have not been  
11 produced. This is unfair and unacceptable, especially in view of the interest in  
12 proceeding to trial with undue delay.

13 The indictment indicates that the prosecution has gathered voluminous  
14 information, little of which has been provided. The defense will need a substantial  
15 period of time after discovery by the prosecution is complete to conduct the  
16 investigation and other preparation necessary for trial.

17 Due to the high volume of material and the significant number of witnesses  
18 involved, prompt completion of discovery is essential for adequate trial preparation.  
19 The defense needs ample time to conduct follow-up witness interviews, locate and  
20 interview rebuttal witnesses and conduct its own forensic examinations, among other  
21 things. This process will take months. It cannot begin in earnest until the  
22 prosecution provides complete discovery to the defense that should have been done  
23 by now.

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1 **V. CONCLUSION**

2 This motion should be granted. The prosecution should be ordered to  
3 complete discovery within a short period of time.

4  
5 Dated: May 13, 2004

Respectfully submitted,

6 Thomas A. Mesereau, Jr.  
7 Susan C. Yu  
8 COLLINS, MESEREAU, REDDOCK & YU

9 Steve Cochran  
10 KATTEN MUCHIN ZAVIS ROSENMAN

11 Robert M. Sanger  
12 SANGER & SWYSEN

13 By: Steve Cochran  
14 Steve Cochran  
15 Attorneys for Defendant  
16 MICHAEL J. JACKSON



DECLARATION OF STEVE COCHRAN

I, Steve Cochran, declare and say:

1. I am an attorney duly authorized to practice before all courts of the State of California and am a partner of the law firm of Katten Muchin Zavis Rosenman, counsel for defendant Michael Jackson in the above-entitled case. I submit this declaration in support of a defense motion to compel discovery.

2. This case first made headlines on November 18, 2003 when search warrants were executed at three locations, including Mr. Jackson's home in Los Olivos. The next day the prosecution announced its decision to file charges. Mr. Jackson appeared voluntarily and posted bail on November 20, 2003.

3. The complaint was filed around December 18, 2003. Arraignment occurred on January 16. Mr. Jackson appeared that day to plead not guilty.

4. Hearings occurred on February 16 and April 7, 2004, among other things, to schedule a preliminary hearing. Mr. Jackson was indicted on or about April 21, 2004. Arraignment ensued on April 30, 2004, at which Mr. Jackson pled not guilty and denied special allegations.

5. The prosecution produced disks containing approximately 400 pages of police reports and witness statements on January 16, 2004. Each witness statement produced so far, in the dozens, indicates that police recorded the interview. None of those tapes were produced. Subsequently, the prosecution notified defense counsel that none of those reports and statements include the formality of signature by the officers that authored the reports.

6. Defense counsel sent a written discovery demand on January 30, 2004. The defense discovery request itemizes routine categories of information. Among other things, statements of witnesses, impeachment material and copies of tapes, papers and other materials are requested. See defense demand for discovery, attached hereto as Exhibit A.

1 7. To date, the prosecution has not responded specifically to the defense  
2 demands for discovery. On February 10, 2004, however, the prosecution produced  
3 approximately 400 additional pages of witness statements and police reports. Again,  
4 the prosecution did not produce tapes of witness interviews. The last wave of  
5 discovery was provided by the prosecution on March 12, 2004. Those materials  
6 include 300 pages of more witness statements, police reports and photographs of  
7 certain items. Approximately 53 audio and video tapes were also produced.

8 8. A defense request to inspect items seized pursuant to search warrants  
9 also pends. Inventories for the search warrants reveal in excess of 300 seized items.  
10 Defense counsel sent a written request for access to the seized materials on  
11 February 18, 2004. See defense request to review seized items, attached hereto as  
12 Exhibit B. To date, the prosecution has not responded to this request in writing, but  
13 has represented that the seized items are unavailable due to ongoing forensic  
14 examination. Counsel for the prosecution estimates that it will be a few weeks  
15 before the seized items are available for examination by the defense.

16 9. The indictment does not simply mirror the complaint. The indictment  
17 substantially broadens the scope and complexity of this litigation. An elaborate  
18 conspiracy is alleged among Mr. Jackson, five identified persons and unidentified  
19 others. Twenty-eight overt acts are mentioned in furtherance of a supposed objective  
20 to abduct children, falsely imprison and commit extortion.

21 10. Four counts of lewd conduct with a minor are alleged, along with one  
22 count of attempt. There are also four counts of providing alcohol to a minor. The  
23 indictment includes special allegations that involve sentencing enhancements. The

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1 indictment lists witnesses expected to testify for the prosecution. 25 lay witnesses  
2 and 16 police officers are listed.

3 I declare under penalty of perjury that the foregoing is true and correct.  
4 Executed this 13th day of May, 2004 at Los Angeles, California.

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6 Steve Cochran  
Steve Cochran  
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EXHIBIT A

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**KMZ Rosenman**  
KATTEN MUCHIN ZAVIS ROSENMAN

3129 Century Park East, Suite 2800  
Los Angeles, CA 90067-3012  
310.788.4400 office 310.788.4471 fax

STEVE COCHRAN  
steve.cochran@kmzr.com  
310.788.4455 direct 310.712.8455 fax

January 30, 2004

By fax and mail

Gerald Franklin  
Deputy District Attorney  
1105 Santa Barbara St.  
Santa Barbara, CA 93101

Re: People v. Michael Joe Jackson  
Case Number 1133603

Dear Mr. Franklin:

Please accept this informal discovery request pursuant to Penal Code § 1054.5(b). On behalf of Mr. Jackson, we request the following disclosures:

1. The names and current addresses and telephone numbers of all witnesses you intend to call to testify at trial and of all percipient witnesses and potential witnesses, whether or not the prosecution intends to call such witnesses to testify against Mr. Jackson at trial. Penal Code sections 1054.1(a), 1054.1(e); Brady v. Maryland (1963) 373 U.S. 93. See also, In re Littlefield (1993) 5 Cal.4th 122;

2. All statements or utterances by Mr. Jackson, oral or written, however recorded or preserved, whether or not signed or acknowledged by the defendant including, but not limited to, all audio and video tapes. Penal Code section 1054.1(b), 1054.1(e); Brady v. Maryland, supra;

3. The content of any statements made in Mr. Jackson's presence while being interrogated by law enforcement that were intended or might reasonably be expected to have the effect of encouraging Mr. Jackson to give a statement about the offense to the police. People v. Haydel (1974) 12 Cal.3d 190; Napue v. Illinois (1959) 360 U.S. 264;

**EXHIBIT A**

Doc # LAX01 (201048-00061) 3/18/2004 Time: 13:25  
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Gerald Franklin  
Deputy District Attorney

January 30, 2004  
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4. All physical evidence obtained in the investigation of the case against Mr. Jackson. Penal Code section 1054.1(c), 1054.1(e);

5. Any record of criminal arrests or convictions of Mr. Jackson. Penal Code section 1054.1(d)-(e);

6. Any exculpatory evidence, information, documents, and other materials in the possession of, or that have come to the attention of, the District Attorney or of any police department involved in the investigation of the case against Mr. Jackson. Penal Code sections 1054.1(e), 1054(e). *Giglio v. U.S.* (1972) 405 U.S. 150, 92 S. Ct. 763; *Brady v. Maryland*, *supra*;

7. The identity and whereabouts of any material informants. Penal Code section 1054.1(c), 1054(e). *People v. Hobbs* (1994) 7 Cal.4th 978;

8. All written or recorded statements of witnesses who will testify at trial. Penal Code section 1054.1 (e)-(f);

9. All written or recorded statements of percipient witnesses, whether or not they will be called to testify. Penal Code section 1054.1 (e)-(f);

10. Any record of criminal arrests or convictions (whether felonies or misdemeanors) of any witness to be called to testify against Mr. Jackson. Penal Code section 1054.1 (e), 1054(e); *People v. Lang* (1989) 49 Cal3d 991; *People v. Harris* (1989) 47 Cal-3d 1047. See, *People v. Pinholster* (1992) 1 Cal.4th 865, 938, 939; *People v. Pensinger* (1991) 52 Cal.3d 1210,1271;

11. All records concerning arrests of any alleged victims, complaints filed against any alleged victims, or information concerning incidents of specific acts of aggression by any alleged victims, as well as the names, addresses, and phone numbers of witnesses to such acts. Penal Code section 1054.1(e); *Engstrom v. Superior Court* (1971) 20 Cal.App.3d 240, 245;

Gerald Franklin  
Deputy District Attorney

January 30, 2004  
Page 3

12. All notes and reports of police officers and investigators concerning offenses charged. This includes field notes, bench notes and reports concerning all aspects of the case, e.g. the alleged crime, Mr. Jackson's arrest, law enforcement activities and observations, and conversations with witnesses. Penal Code section 1054.1(e)-(f);

13. Any evidence to be used in rebuttal of the defense case. *Izazaga v. Superior Court* (1991) 54 Cal.3d 356; *People v. Bunyard* (1988) 45 Cal.3d 1189.

14. The content and timing of communications between and anyone from the sheriff or district attorney's offices.

15. The content and timing of communications between and anyone from the sheriff or district attorney's offices.

16. The content and timing of any communications between Tom Sneddon and anyone from the complainant's family.

17. A copy of physical evidence amenable to duplication, e.g., videotapes, audiotapes, etc.

18. Notice of evidence offered under Evidence Code §§ 1101 and 1108.

19. The results of any forensic analysis.

20. The content and timing of any communications between and anyone from the sheriff or district attorney's offices.

21. The content and timing of any communications between and anyone from the sheriff or district attorney's offices relating to Mr. Jackson, the complainant and/or any member of the complainant's family.

Gerald Franklin  
Deputy District Attorney

January 30, 2004  
Page 4

22. The content and timing of any communications between anyone from the Federal Bureau of Investigation and anyone from the sheriff or district attorney's offices.

23. All telephonic records obtained as part of the investigation into the offenses charged.

24. All search warrants and supporting affidavits for phone records sought relating to Mr. Jackson, the complainant, the complainant's family and/or the offenses charged.

Please allow this letter to serve as a reminder that the prosecution has a duty to disclose evidence favorable to the defendant pursuant to the due process clause of the Fourteenth Amendment to the United States Constitution. (*United States v. Bagley* (1985) 473 U.S. 667, 674-78.) The prosecutor's duties of disclosure under the due process clause are wholly independent of any statutory scheme of reciprocal discovery. (*Isaacs v. Superior Court* (1991) 54 Cal 3d 356, 378.)

This is a request that continues through the completion of trial. Your cooperation and quick response to this request is appreciated.

Sincerely,

*Steve Cochran*  
Steve Cochran

*Benjamin Brafman*  
Benjamin Brafman

*Mark J. Geragos*  
Mark J. Geragos

*Robert M. Sanger*  
Robert M. Sanger





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**EXHIBIT B**

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**KMZ Rosenman**  
KATTEN MUCHIN ZAVIS ROSENMAN

2099 Century Park East, Suite 2800  
Los Angeles, CA 90067-3012  
310 788.4400 office 310 788.4471 fax

STEVE COCHRAN  
steve.cochran@kmar.com  
310.788.4455 direct 310.712.8455 fax

February 18, 2004

By fax and mail

Gerald McC. Franklin  
Deputy District Attorney  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

Re: People v Jackson  
Case No. 1133603

Dear Mr. McC. Franklin:

I write to confirm our dialogue regarding defense review of items seized pursuant to search warrants. This request is separate from the pending demand for production of seized items amenable to duplication such as tapes, videos, etc.

During our phone conversation on February 2, 2004, I asked for access to the seized items. You said some time would be necessary to collaborate with your colleagues about making necessary arrangements. The following week I left you a phone message to inquire about the status of this request.

We were able to confer in person before the hearing on February 13, 2004. You explained that, by virtue of the amount of seized materials and ongoing examination by your team, those items are not immediately available for defense review. You will keep me posted about when you can provide access to the items.

Let's talk again in the near future.

Sincerely,

*Steve Cochran*  
Steve Cochran

cc: Benjamin Brafman  
Mark J. Geragos  
Robert M. Sanger

**EXHIBIT B**

Los Angeles

New York

Chicago

Washington, DC

Charlotte

Newark

Palo Alto

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**PROOF OF SERVICE BY MAIL**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action, and my business address is Katten Muchin Zavis Rosenman (the "business"), 2029 Century Park East, Suite 2600, Los Angeles, California 90067.

( ) I am readily familiar with the business's practice for collection and processing of correspondence for mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit in the ordinary course of business.

(X) By Facsimile Machine, I caused the above-referenced document(s) to be transmitted to the above-named persons.

On May 14, 2004, I served the foregoing documents described as

**EX PARTE APPLICATION TO FILE MOTION TO COMPEL DISCOVERY  
UNDER SEAL; (PROPOSED) ORDER**

**NOTICE/MOTION TO COMPEL DISCOVERY**

on the interested parties in this action as follows:

Thomas W. Sneddon, Jr.  
District Attorney of Santa Barbara  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

Fax: 805-568-2398

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct

Executed on May 14, 2004, at Los Angeles, California.

  
Shirley Appleton