

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT
2 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY
3 DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN AND GORDON
4 AUCHINCLOSS:

5 Please take notice that on August 16, 2004, at 9:30 a.m., or as soon thereafter as the matter
6 may be heard, before the Honorable Rodney S. Melville, defendant Michael Joseph Jackson will
7 move and hereby does move to traverse the search warrant affidavits supporting all search warrants
8 issued in connection with the above entitled case, to quash all said warrants and to suppress all
9 evidence seized and all observations of law enforcement or their representatives or agents and all of
10 the fruits thereof. The searches and seizures pursuant to the warrants, as well as all warrantless
11 searches were in violation of the Fourth and Fourteenth Amendments to the United States
12 Constitution and Article I, Section 13 of the California Constitution and relevant case and statutory
13 law, all as set forth more fully in the Memorandum of Points and Authorities attached hereto and
14 incorporated herein by this reference, because¹:

15 1. The affidavits for the search warrants do not establish probable cause for their
16 issuance;

17 2. The affidavits for the search warrants are defective by the omission of material facts
18 and the inclusion of wilfully false, erroneous and speculative information;

19 3. The search warrants and each of them were deficient on the face; and

20 4. The evidence seized, including the observation of law enforcement officers, their
21 agents and representatives, was beyond the scope of the places and descriptions described in said
22 warrant and such searches and seizures were unreasonable.

23
24 ²This Motion to Suppress is made at the earliest practicable time. However, all of the
25 search warrants, affidavits and inventories relating to this prosecution have been sealed by the
26 Court at the request of the prosecution. This Honorable Court ordered the District Attorney to
27 provide counsel for Mr. Jackson with unredacted copies of all such documents in lieu of
28 providing access to the court's documents. The prosecution has not provided unredacted copies
of all of the search warrants, affidavits or inventories regarding the searches which took place
over the course of the investigation. Mr. Jackson will ask leave of the Court to file supplemental
papers in support of this motion after necessary discovery has been provided.

1 The evidence to be suppressed includes but is not limited to all the items seized at Neverland
2 Ranch, the offices of Brad Miller and all other locations, as set forth in part in the inventories and
3 exhibits attached hereto and incorporated herein by this reference, as well as all observations of law
4 enforcement officers, their agencies, representatives and members of the prosecution and all of the
5 evidence leads and information derived therefrom and the fruits thereof.

6 This motion is based on this Notice of Motion, the Memorandum of Points and Authorities
7 and Declaration of Robert M. Sanger filed concurrently herewith as well as all papers, records and
8 files herein and such supplemental and further papers, exhibits and evidence as may be filed
9 hereafter and as may be adduced at the hearing on this motion.

10 Dated: June 29, 2004

11 Respectfully submitted,

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

14 KATTEN MUCHIN ZAVIS ROSENMAN
15 Steve Cochran
Stacey McKee Knight

16 SANGER & SWYSEN
17 Robert M. Sanger

18
19 By 

20 Robert M. Sanger
21 Attorneys for Defendant
22 MICHAEL JOSEPH JACKSON
23
24
25
26
27
28

DECLARATION OF ROBERT M. SANGER

I, Robert M. Sanger, declare:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Sanger & Swysen, and co-counsel for Mr. Michael Jackson.

2. I have reviewed the search warrants, affidavits and inventories provided by the prosecution to defense counsel by the prosecution. I have compared the same to the applications for sealing filed by the prosecution. It appears that the prosecution has not provided unredacted copies of all of the search warrants issued to date, nor have they provided all of the affidavits and inventories in this case. Furthermore, it appears that there are search warrants which have been provided but for which the prosecution has not provided affidavits.

3. District Attorney Tom Sneddon stated that he would provide copies of all search warrants and affidavits on June 25, 2004 in open court while I was present.

4. As of this writing, there appears to have been 54 search warrants which have been issued in this case. All of them have been sealed by order of the Court and they are not available to the public or to counsel for Mr. Jackson, except that the Court has ordered the District Attorney to provide unredacted search warrants, affidavits and inventories to defense counsel.

5. Of the 54 search warrants which appear to have been issued, counsel for Mr. Jackson has received 50 copies of redacted and unredacted warrants. The four search warrants which we have found reference to but which have not been provided are as follows:

- 1) A second telephonic search warrant for the search of Neverland Ranch issued on November 18, 2003;
- 2) Search warrant 4912;
- 3) Search warrant 4914; and

1 4) Search warrant 5024.

2 Through discovery, the District Attorney has provided us with affidavits for five of the
3 warrants. Those five affidavits are as follows:

- 4 1) Search warrant 884686 for Neverland Ranch;
5 2) Unnumbered telephonic search warrant for Neverland Ranch;
6 3) Unnumbered search warrant for
7 4) Unnumbered search warrant for Brad Miller;
8 5) Search warrant 5047 for American Express.

9 6. The search warrants provided in discovery appear to have originally had attachments
10 describing the property to be seized. Many of the search warrants are also missing
11 the attachments.

12 7. The undersigned was not provided with copies of any formal returns as filed with the
13 court showing the inventory of items seized. Nevertheless, we have attempted to
14 determine from the 2,587 pages of discovery which items were seized as a result of
15 particular searches. As of the time of this writing, it appears that we can ascertain at
16 least some of the items seized in approximately half of the searches.

17 8. In the ordinary course of preparing motions to suppress and investigating the
18 lawfulness of searches and seizures, counsel for the defense will rely upon the
19 original documents filed with court by the District Attorney and law enforcement.
20 We are unable to do that in this case and are dependant upon the District Attorney's
21 office to provide us with copies through discovery. Therefore, we ask the Court to
22 take judicial notice of the original search warrants, affidavits and inventories
23 (returns) filed with the Superior Court.

24 9. A summary of the search warrants which have been issued, based on information
25 available thus far to the defense, is attached hereto as Exhibit A. Copies of the 50
26 search warrants which have been provided to the counsel for Mr. Jackson are
27 attached hereto as Exhibits B1 through B50; the affidavits for search warrants which
28

1 have been provided to counsel for Mr. Jackson are attached hereto as Exhibit C1
2 through C5; the inventories which have been provided through discovery and which
3 we believe represent the returns for items seized pursuant to search warrant are
4 attached collectively hereto as Exhibit D.

5 10.

11 11.

17 12.

23 (A copy of the report is attached hereto as Exhibit

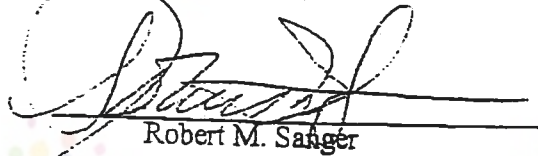
24 F.)

25 13. The District Attorney, as of the time of this writing, has not furnished Mr. Jackson's
26 counsel with full discovery on the nature and scope of the searches including the
27 search of the Neverland Ranch property. In particular, we have learned that there are

1 at least four videotapes depicting the actual search as it was being conducted. Those
2 videotapes have not been provided.

3 14. The undersigned was instructed by law enforcement officers to wait at the gate house
4 of Neverland Ranch until the officers concluded their search. The officers did not
5 leave the ranch until after 11 p.m. on the night of November 18, 2003.

6 I declare under the penalty of perjury under the laws of the State of California that the
7 foregoing is true and correct this 29th day of June, 2004, at Santa Barbara, California.

8 
9 Robert M. Sanger

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 MR. JACKSON AND HIS COUNSEL HAVE NOT BEEN PROVIDED WITH ALL OF
4 THE SEARCH WARRANTS, AFFIDAVITS AND INVENTORIES
5 RELATED TO ALL OF THE SEARCHES

6 The District Attorney has provided Mr. Jackson and his counsel with many more search
7 warrants than corresponding affidavits and property inventories. District Attorney Tom Sneddon
8 stated that he would provide copies of all search warrants and affidavits on June 25, 2004 in open
9 court.² (Sanger Declaration at ¶ 3.) As of this filing defense counsel does not have all search
10 warrants and affidavits. Furthermore, the Santa Barbara Sheriff's Office has disclosed to defense
11 counsel that there were at least four videotapes taken during the search of the residence of Mr.
12 Jackson. None of those tapes have been provided to the defense. (Sanger Declaration at ¶ 13.)

13 As of this writing, there appears to have been 54 search warrants which have been issued
14 in this case. All of them have been sealed by order of the Court and they are not available to the
15 public or to counsel for Mr. Jackson, except that the Court has ordered the District Attorney to
16 provide unredacted search warrants, affidavits and inventories to defense counsel.

17 Of the 54 search warrants which appear to have been issued, counsel for Mr. Jackson has
18 received 50 copies of redacted and unredacted warrants. The four search warrants which defense
19 counsel have found reference to but have not been provided are as follows:

- 20 1) A second telephonic search warrant for the search of Neverland Ranch issued on
21 November 18, 2003;
22 2) Search warrant 4912;
23 3) Search warrant 4914; and

24
25 ² Mr. Jackson makes this comprehensive motion to traverse, quash and suppress within
26 60 days of the arraignment in order to comply with Penal Code Section 1510. However, pursuant
27 to Penal Code Section 1510, Mr. Jackson reserves his right to raise issues that he is currently
28 unaware of and has not yet had the opportunity to raise, after the 60 day period, based on the fact
that the District Attorney has not provided Mr. Jackson or his counsel with all of the materials
required to conduct additional investigation regarding the searches disclosed or obtain searches
as yet undisclosed.

1- 4) Search warrant 5024.

2 Through discovery, the District Attorney has provided us with affidavits for five of the
3 warrants. Those five affidavits are as follows:

4 1) Search warrant 884686 for Neverland Ranch;

5 2) Unnumbered telephonic search warrant for Neverland Ranch;

6 3) Unnumbered search warrant for

7 4) Unnumbered search warrant for Brad Miller;

8 5) Search warrant 5047 for American Express. . (Sanger Declaration at ¶ 5.)

9 The search warrants provided in discovery appear to have originally had attachments .
10 describing the property to be seized. Many of the search warrants are also missing the
11 attachments. . (Sanger Declaration at ¶ 6.)

12 Counsel for Mr. Jackson was not provided with copies of any formal returns as filed with
13 the court showing the inventory of items seized. Nevertheless, defense counsel have attempted
14 to determine from the 2,587 pages of discovery which items were seized as a result of particular
15 searches. As of the time of this writing, defense counsel can ascertain at least some of the items
16 seized in approximately half of the searches. (Sanger Declaration at ¶ 7.)

17 In the ordinary course of preparing motions to suppress and investigating the lawfulness
18 of searches and seizures, counsel for the defense will rely upon the original documents filed with
19 court by the District Attorney and law enforcement. That cannot be done in this case and
20 defense counsel must rely upon the District Attorney's office to provide copies through
21 discovery. Therefore, Mr. Jackson asks the Court to take judicial notice of the original search
22 warrants, affidavits and inventories (returns) filed with the Superior Court. . (Sanger
23 Declaration at ¶ 8) Leave to supplement and amend this motion will be sought if and when
24 additional material becomes available to counsel for Mr. Jackson regarding the search warrants,
25 affidavits or inventories and returns and any discovery related thereto.

26 A summary of the search warrants which have been issued, based on information
27 available thus far to the defense, is attached hereto as Exhibit A. . (Sanger Declaration at ¶ 9.)

1 Copies of the 50 search warrants which have been provided to the counsel for Mr. Jackson are
2 attached hereto as Exhibits B1 through B50; the affidavits for search warrants which have been
3 provided to counsel for Mr. Jackson are attached hereto as Exhibit C1 through C5; the
4 inventories which have been provided through discovery and which we believe represent the
5 returns for items seized pursuant to search warrant are attached collectively hereto as Exhibit D.
6 (Id.)

7 III.

8 MR. JACKSON HAS A LEGITIMATE EXPECTATION OF PRIVACY WITH REGARD
9 TO THE SEARCHES EXECUTED BY LAW ENFORCEMENT

10 Given the state of discovery as of the time of this writing, it is not possible to ascertain
11 with certainty what areas and items were searched and seized nor what statements of probable
12 cause were submitted by the Affiants for the various warrants. Mr. Jackson has a legitimate
13 expectation of privacy in some if not all of the areas searched. Leave to supplement this motion
14 will be sought if and when additional information is provided through discovery or further
15 investigation.

16 At the present time, without waving his right to assert a legitimate expectation of privacy
17 as to any other searches with or without warrants, Mr. Jackson has a legitimate expectation of
18 privacy in the following searched areas:

- 19 1) Search warrant 884686 for the search of Neverland Ranch. This search was
20 extended apparently by, two telephonic search warrants only one of which has
21 been provided. Neverland Ranch located in Santa Ynez, California, is the
22 residence of Mr. Jackson and his children.
- 23 2) The unnumbered search warrant issued for the office of Brad Miller, a licensed
24 private investigator who was the investigator for Mr. Jackson's attorney, Mark
25 Geragos. Mr. Jackson has a legitimate expectation of privacy in the
26 confidentiality of the attorney/client privilege which includes the right to
27 confidential employment of investigators and experts.

1 3) Search warrants number 4896, 4897, 4898, 4899, 4900, 4901, 4902, 4977, 4977A,
2 5020 and 5035 to the extent they pertain to telephone records of other private
3 communications of Mr. Jackson.

4 4) Search warrant numbers 4913, 4915, 4926, 4946, 4953, 4976, 4998, 5005, 5006,
5 5007, 5008, 5047 - 5071 call for records which may include private records
6 pertaining to Mr. Jackson. In particular, 5005, 5047, 5053 and 5061 specifically
7 mention records pertaining to Mr. Jackson.

8 5) The unnumbered search warrant pertaining to and search warrants
9 4913 and 4915 contain portions which may be attorney/client privileged material
10 relating to Mr. Jackson.

11 6) Defense counsel have not been provided with any information regarding search
12 warrant numbers 4912, 4914 and 5024, as well as any others thus far unaccounted
13 for, and reserve the right to contest such searches and establish an expectation of
14 privacy if appropriate when the same are disclosed.

15 IV.

16 MR. JACKSON IS ENTITLED TO TRAVERSE THE FACTUAL STATEMENTS
17 CONTAINED IN AN AFFIDAVIT IN SUPPORT OF A WARRANT

18 Penal Code section 1539 provides in part:

19 "(a) If a special hearing be held in the superior court pursuant to section
20 1538.5, or if the grounds on which the warrant was issued be controverted and a
21 motion to return property be made . . . , the judge or magistrate must proceed to
22 take testimony in relation thereto . . ."

23 Penal Code section 1540 provides in part:

24 "If it appears that the property taken is not the same as that described in a warrant,
25 or that there is no probable cause for believing the existence of the grounds on
26 which the warrant was issued, the magistrate must cause it to be restored to the
27 person from whom it was taken."

1 [W]here the defendant makes a substantial preliminary showing that a
2 false statement knowingly and intentionally, or with reckless disregard for the
3 truth, was included by the affiant in the warrant affidavit, and if the allegedly false
4 statement is necessary to the finding of probable cause, the Fourth Amendment
5 requires that a hearing be held at the defendant's request. In the event that at that
6 hearing the allegation of perjury or reckless disregard is established by the
7 defendant by a preponderance of the evidence, and, with the affidavit's false
8 material set to one side, the affidavit's remaining content is insufficient to
9 establish probable cause, the search warrant must be voided and the fruits of the
10 search excluded to the same extent as if probable cause was lacking on the face of
11 the affidavit.
12 (*Franks v. Delaware* (1978) 438 U.S. 154, 155-156.)

13 The rule of *Franks* is applicable to affidavits marred by omissions of facts. *United States*
14 *v. Lefkowitz* (1980) 618 F.2d 1313, 1317,

15 As set forth below, the affidavits supporting the search warrants are marred with
16 omissions of facts. The affidavits also contain known intentional or reckless statements which
17 are false.

18 v.

19 A SWORN MISSTATEMENT MADE WITH CONSCIOUS INDIFFERENCE TO
20 WHETHER IT IS TRUE IS EQUIVALENT TO AN ALLEGATION
21 ACTUALLY KNOWN TO BE FALSE

22 The California Supreme Court stated in *People v. Cook* (1978) 22 Cal.3d 67, 89 [148
23 Cal.Rptr. 605]: "a sworn misstatement made with conscious indifference to whether it is true or
24 false is deemed the equivalent to an allegation actually known to be untrue." (Id. at 89, 90-91.)
25 Further, Penal Code Section 125 provides that "An unqualified statement of that which one does
26 not know to be true is equivalent to a statement of that which one knows to be false."

27 In addition, an affidavit is considered defective not only because of intentional
28 misstatements but also because of intentional omissions. (Id. at 93.)

The California Supreme Court in *Cook* citing *Theodor v. People* (1972) 8 Cal.3d 77, 100-
101 [104 Cal Rptr. 226], stated: "Although most mistakes occur in relating events which have
transpired, an affidavit may be inaccurate because of the failure to include information which
might otherwise negate a finding of probable cause." (Id. at 93.)

VI.

THE PORTION OF THE AFFIDAVIT STATING THAT
WAS WILFULLY FALSE AND THAT ASSERTION WAS USED TO
SUPPORT THE BROADEST CLAIMS FOR INTRUSION
INTO MR. JACKSON'S PRIVACY

The California Supreme Court recognized in *Theodor* and confirmed in *Cook* "the possibility of attacking a search warrant affidavit on the ground that it omitted information 'which might otherwise negate a finding of probable cause.'" (*Cook, supra*, 22 Cal.3d at 93.) Further, is not necessary to further prove the affiant made the allegations with the specific intent to deceive the magistrate. (Id. at 92.)

Detective Paul Zelis (hereinafter "the Affiant") devotes 4 single spaced pages of the Statement of Probable Cause (Exhibit C1, pages 4-8.) to In his conclusion, the Affiant states that he "believes this affidavit establishes reasonable and probable cause to believe " (Exhibit C1, page 72.) This affidavit was used to obtain many if not all of the search warrants³ including the search warrants issued for Mr. Jackson's residence.

The Affiant's wilfully false claim that was the centerpiece to the affidavit. From this assertion, the officer attempted to justify the broadest aspects of the warrant request. The Affiant, Paul Zelis, included in the affidavit a statement that "[a] trained forensic psychologist" interviewed the alleged victim and his brother.

The Affiant, however, knew that the same "trained forensic psychologist" stated that (Sanger Declaration at ¶ 10.) The Affiant knew this before he wrote the Statement of Probable Cause. During the Affiant's initial interview with the "trained forensic psychologist", a true and correct copy of which is attached as Exhibit

³Given the state of discovery, we cannot determine which affidavits were used to obtain some of the warrants. This particular affidavit appears to have been incorporated by reference in all of the probable cause affidavits.

1 E,

9 (Exhibit E.)

10 Therefore, the Affiant knew that when he signed the
11 sworn statement claiming that he believed In the interview, the
12 Affiant himself, Paul Zelis, said he agreed

13 Under *Franks v. Delaware* (1978) 438 U.S. 154, 155-156, the false statement that
14 along with all of the Affiant's own conclusions, must be excised from the
15 affidavit. Without this statement, there is not probable cause to support the search warrant,
16 which authorizes the seizure of property that the Affiant claimed would be found at the residence
17 a full seven months after any alleged misconduct. The warrant must be quashed
18 because there is no probable cause without the intentionally false statement. It appears the
19 original affidavit for search warrant 884686 was submitted to the court as the basis for all the
20 subsequent search warrants which were issued. The only other affidavit provided to defense
21 counsel in discovery other than the original Neverland Ranch search warrant, the telephonic
22 search warrant and the searches of is search warrant number 5047 which
23 purports to incorporate by reference "the search warrant and affidavit executed on November 17,
24 2003, in support of a search warrant (no. sw8844686)".

25 Therefore, as a result of traversing the search warrant affidavit as set forth above, all of
26 the search warrants issued in this case must be quashed.

27 \\\

VII.

THE AFFIDAVIT CONTAINED OTHER WILFULLY FALSE STATEMENTS

A. Exaggerations About

The Affiant in the search warrant affidavit which forms the basis for all subsequent searches indicated that

At the time this affidavit was executed and each time thereafter that it was submitted for the purpose of obtaining a search warrant, law enforcement was aware that

. . (Sanger Declaration at ¶ 11.) Nevertheless, this information was not disclosed and the false information was not corrected in the original or any of the subsequent search warrant affidavits.

B.

(Sanger Declaration at ¶ 10.)

(A copy of the report is attached hereto as Exhibit F.) . (Sanger Declaration at ¶ 12.) At least as to all searches which took place subsequent to November 18, 2003,, the wilfully false statements and the omission of statements known to the officer to show that were not included.

C. Other Misstatements

Investigation is continuing and discovery is still being provided to counsel for Mr. Jackson. We reserve the right to supplement this motion to include other factual grounds for traversing the affidavit to the search warrants in this case.

\\

VIII.

THE SEARCHES WERE OVERBROAD. GENERAL SEARCHES

A. The Warrants Were Overbroad On Their Faces Because They Exceeded The Probable Cause Showing.

The Fourth Amendment to the United States Constitution, Article 1, Section 13 of the California Constitution, and California Penal Code Sections 1525 and 1529 require that a search warrant describe the items to be seized with "particularity." This requirement precludes both a "general search" and the seizure of one thing under a warrant describing a different thing. (*Marron v. United States* (1927) 275 U.S. 192; *Stanford v. Texas* (1965) 379 U.S. 476.)

For instance, the search warrant for Mr. Miller's office authorized the search and seizure of virtually all computers and computer related materials in his office. There was nothing in the affidavit that supported a search of that scope. Such a search is similar to authorizing the taking of every piece of paper of an investigator's filing cabinet. We believe that other search warrant are subject to the same criticism, however discovery is still pending and investigation continuing.

B. The Warrants Were Overbroad On Its Face Because They Lacked Particularity.

The warrant clause of the Fourth Amendment provides that no warrant may issue except those particularly describing the place to be searched, and the persons or things to be seized. The warrant describes all computer systems, and all items related to computer systems, without giving any specific indications of what is to be searched.

IX.

THE SHERIFF'S FLAGRANTLY DISREGARDED THE LIMITATIONS OF THE SEARCH WARRANTS

The evidence must be suppressed because the execution of the search was overbroad and amounted to an impermissible general search. The framers of the constitution drafted the Fourth Amendment to prohibit "exploratory rummaging" in a person's belongings. (*Andresen v. Maryland*, 427 U.S. 463, 480, 49 L.Ed.2d 627, 96 S.Ct. 2737, 2748 (1976) (quoting *Coolidge v. New Hampshire*, 403 U.S. 443, 467, 29 L.Ed.2d 564, 91 S.Ct. 2022, 2038 (1971)); see, *Payton v.*

1. *New York*, 445 U.S. 573, 584-85, 63 L.Ed.2d 639, 100 S.Ct. 1371, 1378-79 (1980); *U.S. v.*
2. *Beaumont*, 972 F.2d 553, 560-561 (5th Cir. 1992).) The law emphatically prohibits government
3 agents from using a warrant as a "key" to obtain entry and then to violate the terms of the
4 warrant by engaging in a search or seizure beyond its scope. A "governmental official [may not]
5 use a seemingly precise and legal warrant only as a ticket to get into a man's home, and, once
6 inside, to launch forth upon unconfined searches and indiscriminate seizures as if armed with all
7 the unbridled and illegal power of a general warrant." (*Stanley v. Georgia*, 394 U.S. 557, 572, 22
8 L.Ed.2d 542, 89 S.Ct 1243, 1251-52 (1969) (Stewart, J., concurring).) To the extent the officers
9 here searched through and seized items beyond those described by the warrant, they conducted a
10 warrantless search.

11 Here the officers flagrantly exceeded even the broad limitations that were imposed by the
12 warrant. The officers conducted a general search by ignoring the face of the warrant; they
13 explored, rather than searching for specified items, and they seized numerous items that were
14 outside the scope of the warrant.

15 A. The Officers Seized Items Which Were Not Described In The Search Warrants

16 Examples of exceeding the scope of the search warrant include, but are not limited to⁴ the
17 following: The search warrant for Neverland Ranch authorizes the seizure of photographs, films,
18 negatives, slides, video tapes, movies, books, magazines, newspapers, flyers, and advertisements
19 depicting

20
21
22
23 The inventory reveals that the seized materials consisted of

24 clearly outside the scope of the search warrant.

25 The police searched through and seized materials such as legal papers, a Robb Report magazine

26
27 ⁴Discovery on the searches has not been provided in its entirety.

1 with "s phone number written on it, correspondence with business
2 associates, miscellaneous paperwork containing phone numbers, "several paperwork with
3 " a bottle of wine, " "Misc. Papers with 's name,"
4 a Christmas Invitation from " and other items that
5 are described in a manner that is so vague it is not possible to determine what was seized. Police
6 seized eight computers without regard to the subject matter of the information stored on the hard
7 drives. None of these materials bear any resemblance to the description of the property to be
8 seized.

9 These are some examples of the overbroad execution of the search warrant, which
10 indicate that the search became a general exploratory rummaging, and the seizures became an
11 indiscriminate dragnet. An evidentiary hearing after full discovery is necessary to establish the
12 overbroad execution of the search.

13 **B. The Officers Exceeded The Scope Of The Place To Be Searched In The Warrant**

14 In the warrants authorizing the search of Neverland Ranch located at 5225 Figueroa
15 Mountain Road, Los Olivos, California, the search warrant limited the search to "the arcade
16 building, the main residence and the security headquarters" as depicted on an areal photograph.
17 It appeared that law enforcement agents exceeded the scope of the place described in the search
18 by searching Michael Jackson's private office and by searching a video library and apartment that
19 were not included within the description.

20 The District Attorney, as of the time of this writing, has not furnished Mr. Jackson's
21 counsel with full discovery on the nature and scope of the searches including the search of the
22 Neverland Ranch property. In particular, we have learned that there are at least four videotapes
23 depicting the actual search as it was being conducted. Those videotapes have not been provided.
24 Therefore, prior to an evidentiary hearing on the scope of the search, this motion will be
25 supplemented after receiving the appropriate discovery and following up with any investigation.

26 \\\n27
28

X.

**ALL EVIDENCE SEIZED. NOT JUST THE ITEMS BEYOND THE SCOPE.
MUST BE SUPPRESSED.**

All evidence seized -- not only those items beyond the scope of the warrant -- should be suppressed because the officers executed the warrant in flagrant disregard for its limitations.

(See *United States v. Retrig*, 589 F.2d 418, 423 (9th Cir. 1978); *United States v. Heldt*, 668 F.2d 1238, 1259 (D.C. Cir. 1981).) This remedy is required in an appropriate case where the violations of the warrant's requirements are so extreme that the search essentially is transformed into an impermissible general search. (*People v. Bradford* (1997) 15 Cal. 4th 1229, 1305-1306.)

Here the sheriffs flagrantly exceeded even the broad limitations that were imposed by the warrant. They explored, rather than searched for specified items, and they seized numerous items that were outside the scope of the warrant.

The warrant was used to conduct a general search, as exemplified by the items actually seized and as will be further demonstrated at an evidentiary hearing. The necessary remedy for a search conducted in flagrant disregard of the warrant is suppression of all evidence from the search and all its fruits.

XI.

**THE SEARCH OF NEVERLAND RANCH BECAME AN UNJUSTIFIED NIGHTTIME
SEARCH WHEN THE SHERIFFS CONTINUED SEARCHING AFTER 10 P.M.**

At the grand jury proceeding,

Penal Code Section

1533 provides that "the warrant shall be served only between the hours of 7:00 a.m. and 10:00 p.m." unless there is a showing of good cause and the magistrate authorizes nighttime service.

Here, the search continued until after 10 p.m. The court can take judicial notice that there were only 15 hours between the hours of 7 a.m. and 10 p.m.

Furthermore, defense counsel on the scene were instructed by law enforcement officers to

wait at the gate house of Neverland Ranch until the officers concluded their search. The officers did not leave the ranch until after 11 p.m. (Declaration of Robert M. Sanger ¶ 14)

XII.

SHOULD THE COURT GRANT MR. JACKSON'S MOTION TO TRAVERSE, QUASH, AND SUPPRESS, MR. JACKSON IS ENTITLED TO HAVE SUCH ILLEGALLY OBTAINED EVIDENCE EXCISED FROM THE EVIDENCE PRESENTED TO THE GRAND JURY

Mr. Jackson is concurrently filing a MOTION TO DISMISS PURSUANT TO PENAL CODE SECTION 995. Should the court grant this motion, Mr. Jackson "must have an opportunity to receive a determination whether the indictment rests upon competent legally obtained evidence." (*People v. Sherwin* (2000) 82 Cal.App. 4th 1404, 1409.) In *Sherwin*, the Court of Appeal held that the suppression of evidence, as a result of the defendants' motions to suppress, resulted in a sufficient change of circumstances to warrant renewal of the motions under section 995. (*Sherwin* at 1411.)

The Court must also consider the prejudicial effect of the presentation of the illegally obtained evidence. The indictment must be set aside if the extent of the incompetent and irrelevant evidence is such that the grand jury cannot fulfill its obligation to protect citizens from unfounded allegations. (*People v. Backus* (1979) 23 Cal. 3d 360.)

///

///

///

///

///

///

///

///

1 CONCLUSION

2 For all of the reasons set forth above, Mr. Jackson requests that this Court find the
3 conclusions, omissions and speculations in statements discussed above to be made in reckless
4 disregard for the truth, or find that there were material omissions in the affidavits which renders
5 what remains in the affidavits insufficient to support a finding of probable cause and that this
6 Court quash both warrants, and suppress all evidence seized under the authority of those
7 warrants.

8
9 Dated: June 29, 2004

Respectfully submitted,

10 COLLINS, MESEREAU, REDDOCK & YU
11 Thomas A. Mesereau, Jr.
Susan Yu

12 KATTEN MUCHIN ZAVIS ROSENMAN
13 Steve Cochran
Stacey McKee Knight

14 SANGER & SWYSEN
15 Robert M. Sanger

16
17 By: 

18 Robert M. Sanger
19 Attorneys for Defendant
20 MICHAEL JOSEPH JACKSON

PROOF OF SERVICE

1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On JULY 7, 20 04, I served a copy of the attached NOTICE OF MOTION AND MOTION TO TRAVERS AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS EVIDENCE UNDER PENAL CODE § 1538.5; DECLARATION OF ROBERT M. SANGER; MEMORANDUM OF POINTS AND AUTHORITIES REDACTED COPY addressed as follows:

THOMAS W. SNEDDON, DISTRICT ATTORNEY
DISTRICT ATTORNEY'S OFFICE
1105 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

X FAX

By faxing true copies thereof to the receiving fax numbers of: 805-568-2398 (DISTRICT ATTORNEY); 310-861-1007 (THOMAS A. MESEREAU, JR.). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

___ MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

___ PERSONAL SERVICE

By leaving a true copy thereof at their office with their clerk therein or the person having charge thereof.

___ EXPRESS MAIL

By depositing such envelope in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 7TH day of JULY, 2004, at Santa Maria, California.

Carrie L. Wagner
CARRIE L. WAGNER