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SUPERIOR COURT OF THE STATE OF CALIFORNIA
 SEP 07 2004
 Santa Barbara County
 Clerk of Court

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF SANTA BARBARA
 SANTA MARIA DIVISION**

Proposed Redaction

THE PEOPLE OF THE STATE OF CALIFORNIA,
 Plaintiff,
 v.
 MICHAEL JOE JACKSON,
 Defendant.

No. 1133603
 PEOPLE'S SUPPLEMENTAL
 RESPONSE IN OPPOSITION TO
 DEFENSE MOTION TO SUPPRESS
 DATE: September 17, 2004
 TIME: 8:20 a.m.
 DEPT.: SM 2 (Melville)

~~UNDER SEAL~~

I

INTRODUCTION

There were 150 items seized pursuant to the November 18, 2003, execution of the Search Warrant on Neverland Valley Ranch. Of that number, 38 are not the subject of the Defense's motion. (These consist of 36 items taken from the Main Residence, 1 item from the Arcade (Item No. 517) and 1 item from the Security Building's Upstairs Video Library (Item No. 646).)

Of the remaining 112 items, the court has indicated its tentative view that 38 items were lawfully seized. The court expressly requested further argument concerning an additional 8 items, all taken from the Main Residence.

This Memorandum discusses the remaining 66 items, 8 of which were taken from the Main Residence ("300 Series"), 12 from the Arcade ("500 Series"), 36 from the Security Office ("600 Series"), and 10 from the Office within the Security Building ("1000 Series").

For purposes of this response, the Security Building is described as the structure photographically depicted in Exhibit 39b. References to the "security office" refer to the office at the far left end of the structure. The office referred to as "Michael Jackson's Office" means those areas at the right end of the structure, including the museum area. The upstairs area of the Security Building will be called the Upstairs Apartment or Video Library.

Of these items, all but one of the 36 "600 Series" documents are the security personnel's daily logs or incident reports documenting visitors' presence on the ranch (Item Nos. 601-602; 610-642). Except for Item No. 610, all of these items either document the presence of one or more of the Doe Family, a suspected co-conspirator, or another individual prominently mentioned in the investigation. [REDACTED]

Items Not Being Contested.

The People are not contesting the court's tentative ruling as to the following 12 items: Item Nos. 319, 330, 331, 501, 502, 503, 504, 506, 507, 513, 610, and 643.

Items Contested But Returnable.

There are an additional eight items ([REDACTED]; No. 348, the camera, and No. 354, the 2002 calendar), as well as two of the three tapes found in the safe (packaged together by the seizing officer as Item No. 368, and particularly identified as 368a, 368b and 368c), that the People believe were justifiably seized pursuant to the search warrant. Since they lack evidentiary value, we are willing to return them to the Defense.

Attorney-Client Privilege Items.

Lastly, Item Nos. 312 and 318 were lodged with the court pursuant to the Defense claim of attorney-client privilege. Those items were among the items concerning which the

1 court requested further argument. Without viewing the items, it is impossible for the People to
2 address the court's concern or articulate why these items were appropriately seized pursuant to
3 the search warrant.

4 II

5 APPLICABLE LAW

6 A. Introduction

7 Except as indicated above under the heading "Items Not Contested," we
8 respectfully submit that the items concerning which the court requested has argument and
9 numerous items that the court tentatively ruled would be suppressed were lawfully seized.

10 To assist the Court in its evaluation of the nature and content of the items to be
11 discussed in light of the proffered justification, a notebook with a photocopy of each Exhibit,
12 identified by its Item number, accompanies this Response. The People believe the Court will
13 see that many items it tentatively decided to suppress are indeed items within the ambit of the
14 search warrant's authorization. As to other items not specifically authorized by the search
15 warrant itself, the People will assert that the "in plain view doctrine" justified their seizure.

16 B. "Plain View"

17 The searching officers had a right to be in each of the locations searched (i.e., "the
18 buildings described as the arcade building, the main residence and the security headquarters,
19 the locations of which are depicted on the aerial photograph attached as Attachment 'A-1' or
20 (in the case of the security headquarters) in the photograph attached as 'A-2'"") and to be
21 searching in the areas within those buildings where these items were found in "plain view."

22 "The plain-view doctrine permits, in the course of a search authorized by a search
23 warrant, the seizure of an item not listed in the warrant, if the police lawfully are in a position
24 from which they view the item, if its incriminating character is immediately apparent, and if
25 the officers have a lawful right of access to the object. (*Horton v. California* (1990) 496 U.S.
26 128, 135-137 [110 S.Ct. 2301, 2307-2308]; *Texas v. Brown* (1983) 460 U.S. 730, 739 [103
27 S.Ct. 1535, 1541-1542, 75 L.Ed.2d 502] (plur. opn.); see *Minnesota v. Dickerson* (1993) 508
28 U.S. 366, 374-375 [113 S.Ct. 2130, 3136-2137, 124 L.Ed.2d 334].)"

1 An item's incriminating character is "immediately apparent" if its evidentiary
2 significance is apparent "without conducting some further search of the object" beyond that
3 required to identify the object to begin with." (*Minnesota v. Dickerson* (1993) 508 U.S. 366,
4 374-375 [113 S.Ct. 2130, 3136-2137, 124 L.Ed.2d 334].)

5 As articulated in *Warden v. Hayden* (1967) 387 U.S. 294 [87 S.Ct. 1642, 18
6 L.Ed.2d 782], a "nexus" must be established between the item to be seized and the criminal
7 behavior. "Thus in the case of 'mere evidence,' probable cause must be examined in terms of
8 cause to believe that the evidence sought will aid in a particular apprehension or conviction."
9 (*Id.*, 387 U.S. at p. 307.) In *Texas v. Brown* (1983) 460 U.S. 730 [103 S.Ct. 1535, 75 L.Ed.2d
10 502], the Supreme Court noted that

11 probable cause is a flexible, common-sense standard. It merely requires
12 that the facts available to the officer would "warrant a man of
13 reasonable caution" in the belief that certain items may be contraband or
14 stolen property or useful as evidence of a crime; it does not demand any
15 showing that such a belief be correct or more likely true than false. A
16 "practical, nontechnical" probability that incriminating evidence is
involved is all that is required. [Citation.] (*Id.*, 460 U.S. at 742.)

17 III

18 DISCUSSION

19 A. Search of Main House – "300 Series" Items

20 1. Item No. 329a

21
22 Item No. 329 is described as an Apple Laptop PowerBook G-4 Projector and
23 Computer Case, located by Det. McGillivray in a closet under the main entrance to the
24 stairwell. The Court indicated in its tentative ruling that Item 329 was lawfully seized.
25 Item 329a is described as several DVD-R and CD-R digital computer storage disks. These
26 items were found inside of the case containing Item 329. They were discovered at the Santa
27 Barbara Sheriff's Department after Item 329 had already been seized and booked into
28 evidence. Their subsequent identification and designation as separate items was proper

1 because they are the type of evidence specifically authorized for seizure under paragraph 6,
2 Attachment B. to the search warrant for Neverland Ranch.

3 **2. Item Nos. 333a and 334a**

4 Items 333 and 334 are cases containing laptop computers. Both items were found
5 in one of the children's bedrooms in the main residence pursuant to the search warrant,
6 removed from the premises and booked into the Santa Barbara Sheriff's Evidence Room.
7 Items 333a and 334a were found later by Det. Bonner at the Sheriff's Department when the
8 laptops were removed from the cases for examination. In the cord storage pocket of each
9 computer case (Items 333 and 334) a piece of paper with names and phone numbers was
10 found. These pieces of paper (given alpha numbers 333a and 334a, to identify them as relating
11 to the cases in which they were found) came into plain view in the search of the lawfully-
12 seized cases. [REDACTED]

13 [REDACTED] Both Items 333a and 334a were booked as evidence.

14 **3. Item No. 340**

15 Item No. 340 is a VHS tape cassette found in a cabinet located in one of the
16 children's rooms. Although the cassette itself bore no visible identifying information, several
17 different paragraphs in the search warrant authorize seizure of videotapes. It should be noted
18 that almost every building searched contained countless numbers of videos. Most had
19 commercially produced labels or other identifying information. Given the large number of
20 videotapes not seized, the searching officers obviously were very discreet in selecting the type
21 and number of videos to seize. The lack of any label on the cassettes in question gave the
22 seizing officer reason to believe they contained depictions of the types authorized for seizure.

23 **4. Item No. 348**

24 Item No. 348 is a digital camera. The camera was not operative at the time of its
25 seizure. The camera was taken because the officer reasonably suspected it might contain
26 photographs of individuals or images of the type specified in Attachment B. paragraph 1
27 ("Photographs, films, negative slides . . ."), paragraph 2 ("any photographs, negatives, slides
28 . . .") and paragraph 4 ("any photograph, including but not limited to still photos . . .").

While it could be argued that a simple on-site check of the camera would have sufficed, the fact of access, whether on-site or later at the Sheriff's Department, would constitute a search. Since the camera was not in operating order when it was seized, and because it is easy to erase or compromise electronic media, the camera was removed and examined later by SBSO technical experts. Although lawfully seized, the People are willing to keep the images and return the camera.

5. Items Nos. 350, 351 and 352

Items Nos. 350, 351 and 352 all relate to the identity of [REDACTED]. The affidavit in support of the search warrant sets forth the details of a July 6, 2003, interview with Jane Doe. [REDACTED]

(See Affid. 48.6.)

It was for that reason that Exhibit 35, the Santa Barbara County Sheriff's Department Operational Plan distributed to all individuals searching the premises, listed [REDACTED]

Item No. 350 is described as "Miscellaneous Paperwork." It was found by Det. Janet Williams in one of the children's bedrooms. The item is a FedEx envelope addressed to a [REDACTED] at the [REDACTED]. The envelope also bore the name [REDACTED] and a telephone number.

Item No. 351, also described as "Miscellaneous Paperwork." That item was located within the nightstand in one of the children's bedrooms by Det. Williams. The item is actually a bill or receipt for [REDACTED]

Item No. 352, described as "Miscellaneous Paperwork," was found by Det. Dallenbach inside a suitcase in one of the children's bedrooms. The suitcase contained numerous papers displaying the name [REDACTED]

Other documents in the suitcase indicated

These items were seized because they contained information potentially identifying the full name who was on the flight from Miami to Neverland Ranch. The paperwork contained information directly linking her to Michael Jackson and contained address and contact information that would facilitate the investigators' efforts to find and interview her.

6. Item No 353

Item No. 353 is an

In the course of searching for items listed in the search warrant, officers observed Item 353 in Michael Jackson's master bedroom.

February, 2003 of Bashir's film ("Living With Michael Jackson") containing some of that footage shot at Neverland Ranch. [REDACTED]

7. Item No. 354

Item No. 354 is a November, 2003 calendar. The calendar contains information about Michael Jackson's itinerary and whereabouts that month. The calendar contains information about Michael Jackson's plan for a trip to Capetown, South Africa, in the latter part of November. At the time the warrant was prepared, Mr. Jackson's whereabouts were unknown. On November 17, 2003, a Santa Barbara County Superior Court judge issued the search warrant for Neverland Ranch and an arrest warrant for Mr. Jackson, with bail set at \$3 million and, as a condition to bail, that his passport be surrendered.

Item 354 was in plain view and seized by officers to facilitate locating and arresting Michael Jackson. His travel schedule for the days immediately following execution of the search warrant could have proved very useful in that endeavor. The fact that the itinerary showed defendant was planning to leave the country before the end of the month was important information with regard to his potential departure date and would have been useful in apprehending the defendant or facilitating the assistance of other agencies, including U.S. Customs. Although defendant subsequently posted bail and surrendered his passport, making use of the information unnecessary, certainly at the time of the search warrant's execution, the importance of this item was obvious and its seizure reasonable.

Although the People believe that the item was lawfully seized, it has no present evidentiary value. The People therefore agree voluntarily to return this item to the defense.

8. Item No. 368

Item No. 368 consists of three tapes taken from the safe inside Michael Jackson's master bathroom by Sgt. Ben Ruth [REDACTED]

A third tape had no identifying information and was found to be blank.

The search warrant specifically authorized the seizure of tapes and video

The fact that the tapes were stored in a safe was evidence of the significance defendant attached to them.

The first tape may have evidentiary value in the ongoing investigation and prosecution. The other two tapes lack evidentiary value, and the People are willing to return those to the defense.

B. Search of Arcade – “500 Series” Items

1. Item No. 510a

2. Item Nos. 514 and 516.

[REDACTED]

Item No 516 contains numerous pieces of paper,

[REDACTED]

3. Item Nos. 515 and 518

[REDACTED]

[REDACTED]

[REDACTED]

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C. Search of the Security Office in Security Building – “600 Series” Items

1. Item Nos. 601, 602 and 611 through 642

Item No.601 is a two-page document dated February 8, 2003. It consists of a Neverland Valley Medical Report Log and an Emergency Medical Report documenting a motor scooter accident involving James Doe on that date. The date of the report verifies the presence of James Doe during events set forth in the affidavit supporting the search warrant.

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Item No. 602 is an Accident/Damage Report dated June 21, 2002, bearing the name of John Doe.

Items 601 and 602 were found in a binder in the Security Office. Paragraph 10 of Attachment B to the search warrant specifically authorized officers to search for "Passports, Birth Certificates and all other paperwork relating to the Doc Family." (Emphasis added.) Both items appear to fall squarely within the scope of the search warrant.

Items 611 through 642 are Security Daily Logs (hereinafter referred to as SDL), Security Clearance and Guest Information documents (hereinafter referred to as SCGI and Business Clearance Forms (hereinafter referred to as BCF). These documents were found in the security office and covered the time period of May 7, 2002 through December 7, 2002. Copies of the logs have been attached to this motion as exhibits, using the corresponding Item Number assigned to each by the seizing officer.

The first page of the SDL contains the date of the document and employee work information. The second page contains information sections. The top section is "Blank/Routine Authorization for Entries" with columns for the name, the company and the in-and-out times. Moving down the form, the next area contains "Guest Information" documenting the name and in-and-out times of any individuals present on the Ranch for that day.

The following Security Daily Logs or Security Clearance or Guest Information Sheets document the presence of one or more members of the Doc family at Neverland Valley Ranch during the time period noted above: Items 614, 615, 616, 617, 618, 619, 620, 622, 623, 636, 638, 639, 640, 641, and 642.

[REDACTED]

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[REDACTED]

D. Search of the Office in the Security Building – “1000 Series” Items

1. Item Nos 1001 and 1002.

[REDACTED]

2. Item No. 1009a

[REDACTED]

Item No. 1009 appears on the court's list as tentatively approved. The item was found in the office area of the Security Building.

[REDACTED]

[REDACTED], it was reasonable for the officers to retain and review this item. The ruling as to Item 1009 should apply equally to Item 1009a.

3. Item No. 1010

This item is an off-white envelope, seized by Deputy Shepherd. Printed on the front is the name “Mr. Michael Jackson” and a printed picture of a boy sitting on a crescent moon.

[REDACTED]

mjfacts.com mjfacts.com mjfacts.com

Paragraphs 10, 11 and 12 of Attachment B to the search warrant authorized officers to search for several types of paperwork associated with the Doe family. In the course of lawfully looking for these types of paperwork, searching officers found the two above-described pieces of paper within Item 1010.

[REDACTED]

4. Item Nos. 1103 through 1108

[REDACTED]

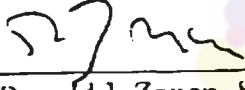
The individual in the photographs has since been identified, and the photographs have no present evidentiary value to the prosecution. The People are willing to return them to the defense.

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DATED: September 3, 2004

Respectfully submitted,

THOMAS W. SNEDDON, JR.
DISTRICT ATTORNEY

By: 
Ronald J. Zonen, Senior Deputy
Attorneys for Plaintiff

PROOF OF SERVICE

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; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On September 3, 2004, I served the within PEOPLE'S SUPPLEMENTAL RESPONSE IN OPPOSITION TO DEFENSE MOTION TO SUPPRESS and the associated Notebook of Photographs of Evidence Items on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, and ROBERT SANGER, his counsel, by faxing a true copy of the Supplemental Response to Messrs. Mesereau and Cochran at the facsimile number shown with the address of each on the attached Service List, and by causing a copy of the associated Notebook to be shipped by Federal Express to those lawyers for next-day delivery, then by personally delivering a true copy of the Supplemental Opposition and associated Notebook to Robert Sanger at the address shown for him.

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

Executed at Santa Barbara, California on this 3rd day of September, 2004.

G. Franklin (by R. Sanger)
Gerald McC. Franklin

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