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17

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 FOR THE COUNTY OF SANTA BARBARA
20 SANTA MARIA DIVISION

21 THE PEOPLE OF THE STATE OF
CALIFORNIA,

22 Plaintiff,

23 vs.

24 MICHAEL J. JACKSON

25 Defendant.
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

OCT 12 2004

GARY M. BLAIR, Executive Officer
BY *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

CASE NO. 1133603

REPLY IN SUPPORT OF
MOTION TO COMPEL
DISCOVERY AND RESPONSE
TO STATUS REPORT RE:
PRODUCTION OF FORENSIC
DATA

Hearing Date: October 14, 2004
Time: 8:30 a.m.

~~FILED UNDER SEAL~~

1 Defendant MICHAEL J. JACKSON, through his counsel, hereby submits his
2 reply memorandum in support of his motion to compel discovery. The defense also
3 responds to the prosecution's status report concerning the production of forensic
4 information.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 I. **THE DEFENSE IS ENTITLED TO DISCOVERY OF**
7 **COMMUNICATION AMONG LAW ENFORCEMENT AND THIRD**
8 **PARTIES CONCERNING MR. JACKSON.**

9 On this issue as well, the practical effect of the prosecution's position is
10 further delay. This motion was not filed to initiate a meet and confer or to stage
11 discovery matters for the status conference in November.

12 A dispute exists concerning the prosecution's obligation to produce notes or
13 written communication of any kind among police, prosecutors and identified third
14 parties concerning Mr. Jackson. Those materials were requested in July of this year.
15 The prosecution's response of August does not deny that those materials exist. The
16 government's position is that such information is not discoverable.

17 Communications among law enforcement and third parties concerning Mr.
18 Jackson is within the ambit of discovery. Those materials could provide further
19 evidence of the extraordinary efforts taken to pursue criminal allegations against Mr.
20 Jackson. That material may also contain exculpatory information to which the
21 defense is entitled under Brady v. Maryland.

22 The prosecution has repeatedly and unduly delayed discovery. Among the
23 many examples are a series of reports produced by the prosecution last Friday,
24 October 8, 2004. These reports were written in January, February and March 2004.
25 These reports relate to witnesses who the prosecution believes have critical
26 information about the precise issues in this case. Yet, they suppressed these reports
27 and the underlying documents during the entire length of the prosecution until now.

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1 The prosecution's approach to discovery puts the trial date in jeopardy. It is
2 plainly unfair for the prosecution to have almost a year to conduct other investigation
3 and provide discovery to the defense, over time, up until weeks before the trial. The
4 defense must be provided with ample time to conduct independent investigation, find
5 out what really happened and cogently present the information at trial. The
6 prosecution should be compelled to produce additional discovery forthwith.

7 **II. THE PROSECUTION SHOULD BE ORDERED TO PRODUCE THE**
8 **RESULTS OF FORENSIC TESTS IMMEDIATELY.**

9 In mid-September 2004, as a result of a defense motion made weeks earlier,
10 this Court ordered the prosecution to provide all results of forensic examinations by
11 October 8, 2004. That was a date proposed by the prosecution, which also promised
12 a status report if forensic data was not available for delivery.

13 Characteristically, everything was not produced by the prosecution on the so-
14 called due date. Some forensic data was produced but the prosecution indicates that
15 discovery of forensic information will not be complete for approximately six (6)
16 weeks.

17 An additional six (6) week delay of receiving the results of forensic
18 examinations was not contemplated by this Court and is unacceptable to the defense.
19 An accused is entitled to at least as much protection as a civil litigant. A strict
20 deadline for production of forensic data is necessary to insure adequate trial
21 preparation and avoid surprise at trial.

22 Furthermore, the major forensic reports from the FBI relating to the contents
23 of computer harddrives were delivered to the prosecution on April 5, 2004. This
24 Court and Mr. Jackson have been told by the prosecution that these reports would not
25 be completed until now because the work was not done. The fact is that the reports
26 show that the FBI work was done at the Sheriff's department, in the presence of
27 Sheriff's detectives in February and March 2004.

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1 It is incredible to learn that the tests were not only completed in February and
2 March, but that the reports were in the hands of the Sheriff's detectives on April 5,
3 2004. This Court should do more than nothing about the delay and the
4 misrepresentations which accompanied this delay.

5 The prosecution should be precluded from using the results of forensic testing
6 produced in a tardy fashion, as well as any not produced by now. Alternatively,
7 another deadline should be set by which forensic discovery must be due.

8 Dated: October 12, 2004

Respectfully submitted,

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

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19 By: Steve Cochran
20 Steve Cochran
21 Attorneys for Defendant
22 MICHAEL J. JACKSON
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2 **PROOF OF SERVICE**

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

7 On October 12, 2004, I served the foregoing documents described as
8 **REPLY IN SUPPORT OF MOTION TO COMPEL DISCOVERY AND
9 RESPONSE TO STATUS REPORT RE: PRODUCTION OF FORENSIC
10 DATA** on the interested parties in this action as follows:

- 11 () I am readily familiar with the business's practice for collection and
12 processing of correspondence for mailing with the United States Postal
13 Service; such correspondence would be deposited with the United States
14 Postal Service the same day of deposit in the ordinary course of business.
15 (X) By Facsimile Machine, I caused the above-referenced document(s) to be
16 transmitted to the persons listed below:

17 Thomas W. Sneddon, Jr.
18 District Attorney of Santa Barbara
19 1105 Santa Barbara Street
20 Santa Barbara, CA 93101 Fax: 805-568-2398

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

23 Executed on October 12, 2004 at Los Angeles, California.

24 
25 Marsha Davis

26
27
28 **PROOF OF SERVICE**