FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

NOV 03 2004

GARY M. BLAIR, Executive Officer
BY Carrie L. Wagner
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. MICHAEL JACKSON, et al. Defendant.	Case No.: 1133603 Order for Release of Redacted Documents [Response to Prosecution's "Supplement to People's Reply to Defendant's Motion to Compel Discovery"]

The redacted form of the Defendant's Response to Prosecution's "Supplement to People's Reply to Defendant's Motion to Compel Discovery" attached to this order shall be released and placed in the public file. The unredacted originals shall be maintained conditionally under seal pending the hearing following the November 4, 2004 hearing.

DATED: November 3, 2004

Rodney S. Melville
RODNEY S. MELVILLE
Judge of the Superior Court

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Attorneys for Defendant
MICHAEL JOE JACKSON

REDACTED COPY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA, SANTA MARIA DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. MICHAEL JOE JACKSON Defendant.	CASE NO. 1133603 **RESPONSE TO PROSECUTION'S "SUPPLEMENT TO PEOPLE'S REPLY TO DEFENDANT'S MOTION TO COMPEL DISCOVERY"** HEARING DATE: NOVEMBER 5, 2004 TIME: 8:30 A.M. Place: Dept. SM-2 ~~FILED UNDER SEAL~~ & BY FAX

I.

SUMMARY OF RESPONSE

The Prosecution's "Supplement to People's Reply to Defendant's Motion to Compel Discovery" ("Supplement") – which is a response to Mr. Jackson's Status Report re Discovery -- is eloquent, not for what it says, but for what it does not *say*.

1. The prosecution says: "Apart from *Brady* material, Penal Code Section 1054.1 provides the **exclusive** list of items the prosecution must discover to the defense." (Supplement, page 3, lines 11-12) (emphasis added in bold). This statement is misleading because it unnecessarily suggests that Section 1054.1 preempts *Brady*. It does not. The prosecution's constitutional duty under *Brady* to volunteer exculpatory information to the defense is independent of, and to be differentiated from, the statutory duty under Section 1054.1. People v. Bohannon, 98 Cal.Rptr.2d 488, 492, 82 Cal.App.4th 798, 804 (2000).

2. The prosecution says the defense discovery request numbers 1, 9, 12, 13, 35, 37, 40, 41, 42, 52c, 52 f, 52u, 52v, 52w, 52x, 52z, 52cc, 52dd, and 52gg are outside the ambit of Section 1054.1 and that numbers 28, 40, 42, 52i, 52o, 52p and 52q are "so overbroad, vague or abstruse it is difficult it not impossible to determine if the item is discoverable under the law." (Supplement, page 4, lines 3-28 through page 6, lines 1-17.) This is not an accurate report of the parties' meet and confer.

2a. Based on this Court's October 14, 2004 tentative ruling, the prosecution represented that it would not produce documents responsive to numbers 9, 12 and 13. The defense respectfully disagrees because the communications or among the Sheriff and District Attorney may very well contain exculpatory statements by witnesses in this case, including the Doe family and the two individuals referenced in Defense Request No. 13 (i.e., Larry Feldman and Dr. Stanley Katz, who testified at the Grand Jury). The communications sought by the defense includes statements by these witnesses which are critical to the defense. Accordingly, the defense respectfully requests that the Court

reconsider its tentative ruling and order the prosecution to produce all communications concerning this investigation, as set forth above.[1]

2b. During the meet and confer, the prosecution pointed out that 1, 28, 30, 31, 40, 41, 42, 45, 52h, 52i, 52o, 52p, 52q and 52ff were vague and ambiguous. As such, the defense agreed to modify numbers 1, 28, 30, 31, 40, 41, 42, 45, 52h, 52i, 52o, 52p, 52q and 52ff and resubmit the request.

2c. As to request number 35, the prosecution stated that it would produce the documents if it had them. Again, the prosecution has a duty to search for and disclose exculpatory evidence if the evidence is possessed by a person or agency that has been used by them or the investigating agency to assist them or the investigating agency in its work. People v. Superior Court, 96 Cal.Rptr.2d 264, 271, 80 Cal.App.4th 1305, 1315 (2000).

2d. As to request number 37, the prosecution agreed to produce responsive documents, other than statements by fans of Mr. Jackson or by those favoring the prosecution.

2e. As to request numbers 52e, the prosecution refused to produce documents within Pitches discovery, and the defense stated that it will bring a Pitchess Motion.

2f. Finally, the prosecution stated that it will not produce items in numbers 52u, 52v, 52w, 52x, 52z, 52cc, 52dd, and 52gg because they are not *Brady* material. The defense disagrees. The documents sought in these requests may contain and may very well lead to other admissible exculpatory evidence. Even though evidence might not itself be admissible, evidence can be *Brady* evidence if it is reasonably likely to lead to admissible evidence. See United States v. Sudikoff, 36 F.Supp.2d 1196, 1200 (C.D.

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[1] Again, this case presents a unique situation in which Mr. Sneddon directly interviewed witnesses, including Mrs. Doe, her attorney Mr. Feldman and others. In this context, the prosecution cannot claim that Mr. Sneddon's interview notes are protected as work product.

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Cal. 1999) ("In United States v. Kennedy, the Ninth Circuit stated the following standard in the context of appellate review: 'To be material under Brady, undisclosed information or evidence acquired through that information must be admissible.' 890 F.2d 1056, 1059 (9th Cir. 1989). Thus, even in the context of appellate review, which imposes a strict standard of materiality, the Kennedy court held that suppression of inadmissible evidence could create a due process violation if the suppressed inadmissible evidence would have led to admissible evidence. If such inadmissible evidence can give rise to a due process violation even in the appellate review context, it must surely be disclosed under the more lenient pretrial standard. Thus, the Court holds that it would be incorrect to conclude that only admissible evidence is discoverable under Brady.")

3. The prosecution says it will not provide the defense with the address of the alleged victim and his family. (Supplement, page 8, lines 7-9.) This implies that the prosecution will not do what it agreed to do at the meet and confer.

Specifically, as discussed more fully in the defense Status Report, Mr. Sneddon stipulated that the prosecution will, on behalf of Mrs. Doe, accept the trial subpoena, serve it on Mrs. Doe and file the proof of service with the court. It is now unclear whether the prosecution is withdrawing the stipulation. The defense requests the prosecution to confirm this stipulation in open court. If the prosecution is unwilling to do what it agreed to do, the defense requests an order compelling the prosecution to disclose Mrs. Doe and her family's address.

The Doe family is the crux of the prosecution's false charges against Mr. Jackson. Mr. Doe is the prosecution's confidential informant. The real victim in this case is Mr. Jackson, not the Doe family.

[redacted]

[redacted]

The Court and the public have thus far seen and heard only one side of the story, i.e., that of the prosecution's. The prosecution said whatever it wanted to say before this Court imposed a gag order, inflaming the public and poisoning the jury pool. It is utterly unfair to now say that the address of the Doe family, who must be present at trial, will not be disclosed. There is no "good cause." There is no evidence (competent or otherwise) of the "threats or possible danger to the safety" of the Doe family.

Mr. Jackson has the constitutional right to confront these witnesses at trial. Absent stipulation, the prosecution must be ordered to accept any pre-trial subpoena on behalf of Mr. Doe (the informant, whose address the defense is entitled to know); and the trial subpoenas on behalf of Mrs. Doe and her three Doe children.

4. Finally, the Supplement inaccurately states the parties' discussion re *Sanchez* during the meet and confer.

First, Mr. Sanger never raised the two tapes "pursuant to *Sanchez*." Rather, he advised the prosecution that the defense will provide them with copies of these tapes, consistent with his statement in open court. The defense delivered these tapes to the prosecution on October 27, 2004, following the October 26, 2004 meet and confer.

Second, the two tapes have nothing to do with *Sanchez* because they are exculpatory, not inculpatory. Mr. Auchincloss, however, refused to acknowledge this fact and attempted to grill both Mr. Sanger and Mr. Mesereau on the law of *Sanchez*. Mr. Auchincloss refused to stop. He repeatedly said the *Sanchez* motion was not denied and continued with his grilling. The defense refused to subject itself to his deposition and

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interrogation. Mr. Mesereau terminated the call after thanking everyone for their participation.

5. The prosecution says it received no discovery from the defense. That is not true. The prosecution has received thousands of pages of the JC Penny documents, as well as other subpoenaed records the defense obtained months ago.

The defense is still conducting investigation and attempting to gather documents. The biggest obstacle in conducting a proper and timely investigation for document production and trial preparation is the prosecution's delay in producing discovery. The defense was provided with approximately 15,000 pages of documents plus 30 more cassette tapes and 40 CDs/DVDs within only the last three weeks.

The prosecution repeatedly says it is in "full compliance." They say it again in their Supplement, at page 10, line 4. The truth is they are not in full compliance. The prosecution represented in open court approximately a month ago that they would produce all of the '93 materials promptly. The defense received the bulk of them only within the last week or so. More may be on their way. The jail booking documents arrived after the defense filed its status report on October 29, 2004. It is unclear whether these documents are complete. Further, the defense has yet to receive all of the forensic documents.

It is virtually impossible for the defense to review and analyze the prosecution's voluminous documents, tapes, CDs and DVDs in a short period of time and then investigate and gather evidence for production.

The prosecution has not yet provided the defense with all of its search warrant affidavits and returns. After filing the Status Report, the defense (by Ms. Yu) sent a letter to the prosecution (to Mr. Sneddon) on October 29, 2004, in accordance with the prosecution's request during the October 26th meet and confer, listing the outstanding search warrants, affidavits and returns. (A copy of that letter is attached hereto as Exhibit A.)

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It is unclear when the prosecution will provide these search warrant materials (particularly the returns, which may yield thousands of pages) to the defense. It is also unclear what other new search warrants have been issued and when the defense will receive them.

Trial is now less than three months away. The defense needs to properly investigate and prepare for production and trial. The prosecution cannot be permitted to cause discovery delays, and the defense cannot be forced to go to trial without the benefit of full investigation and preparation.

Accordingly, it is respectfully requested that the Court order the prosecution to comply with its discovery obligations.

DATED: November 2, 2004

Respectfully submitted,

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

Robert M. Sanger
SANGER & SWYSEN

Brian Oxman
OXMAN & JAROSCAK

By: _____
Susan C. Yu
Attorneys for Mr. MICHAEL J. JACKSON

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PROOF OF SERVICE

I, the undersigned, declare:

I am a citizen of the United States of America, am over the age of eighteen (18) years, and not a party to the within action. I am employed at 1875 Century Park East, 7th Floor, Los Angeles, CA 90067. On November 2, 2004, I served the following document:

RESPONSE TO PROSECUTION'S "SUPPLEMENT TO PEOPLE'S REPLY TO DEFENDANT'S MOTION TO COMPEL DISCOVERY"

on the interested parties addressed as follows:

Thomas Sneddon, Esq., District Attorney
Gerald Franklin, Esq.
Ronald Zonen, Esq.
Gordon Auchincloss, Esq.
District Attorney's Office
1105 Santa Barbara Street
Santa Barbara, CA 93108
FAX: (005) 568-2398

____BY MAIL: I placed each envelope, containing the foregoing document, with postage fully prepaid, in the United States mail at Los Angeles, California. I am readily familiar with the business practice for collection and processing of mail in this office; that in the ordinary course of business said document would be deposited with the US Postal Service in Los Angeles on that same day.

_X__BY FACSIMILE: I served a copy of the within document on the above-interested parties, by way of a facsimile, at the facsimile numbers listed above.

____BY MESSENGER/ATTORNEY SERVICE: I caused _____ to personally serve the within document on the above interested parties.

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

_____(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on November 2, 2004, at Los Angeles, California.

Susan L. Yu

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EXHIBIT A

CMRY

LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW

1875 CENTURY PARK EAST, 7th FLOOR
LOS ANGELES, CALIFORNIA 90067

TELEPHONE: (310) 284-3120 FACSIMILE: (310) 284-3133
WEBSITE: WWW.CMRYLAW.COM

October 28, 2004

VIA FACSIMILE (805) 568-2398

Thomas Sneddon, Esq.
District Attorney's Office
1105 Santa Barbara Street
Santa Barbara, CA 93108

Re: People v. Jackson, SBSC Case No. 1133603

Dear Mr. Sneddon:

During the parties' October 26, 2004 meet and confer conference call, I advised you that the defense still has not receive from your office all of the search warrants and the supporting affidavits and returns. You replied that I should send you a letter, listing the items we did not have in our possession. Accordingly, this letter shall list the items we have not received.

I. Below is a list (by search warrant number and corresponding description) of the returns we have not received from your office.

1.	5048	Assoc. Citibank SD)
2.	5048A	Citicorp Credit Services c/o CT Corporation
3.	5049	Banana Republic
4.	5050	Bank One/ First USA Bank
5.	5052	Chase NA
6.	5054	Discover Financial Services
7.	5058	Household Bank
8.	5060	JC Penny Credit Services
9.	5061	King Sizes

10.	5063	MBNA America
11.	5070	Citibank USA NA
12.	5110	Qwest Communications
13.	5111	Pacific Bell
14.	5112	Nextel Communications
15.	5113	Cingular Wireless
16.	5114	Bell South
17.	5115	AT&T Wireless
18.	5116	Arch Wireless
19.	5117	Pacific Bell
20.	5119	Experian Credit Bureau
21.	5120	Equifax Legal Process
22.	5121	The Beverly Hilton
23.	5122	Continental Airlines
24.	5123	American Airlines
25.	5124	AT&T Wireless
26.	5125	Sprint Spectrum
27.	5126	Verizon California
28.	5127	Verizon New Jersey
29.	5128	Cellco dba Verizon Wireless

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II. Below is a list (by search warrant number and corresponding description) of the redacted search warrants and the supporting redacted probable cause statements we received from your office. We still have not received the unredacted search warrants, affidavits, and most importantly, returns.

30.	5141	American Express
31.	5142	Citicorp Credit Services c/o CT Corporation
32.	5143	Bank of America
33.	5144	Bergdorf Goodman/ Nieman Marcus
34.	5145	Capital One Bank
35.	5146	Chevron/ Standard Oil CA
36.	5147	Federated Department Stores
37.	5148	Bank One/ First USA Bank
38.	5149	Fleet Credit Card Services
39.	5150	MBNA America
40.	5151	GE Consumer Card Services/ Mobil Gas Card
41.	5152	Nordstroms Card Services

Please let us know when your office will be producing these items to us. Thank you for your professional cooperation and courtesy in this regard.

Very truly yours,

Susan C. Yu

cc: Thomas A. Mesereau, Jr.
Robert M. Sanger
Brian Oxman

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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 NOVEMBER 3, 20 04, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENT (RESPONSE TO PROSECUTION'S SUPPLEMENT TO PEOPLE'S REPLY TO DEFENDANT'S MOTION TO COMPEL DISCOVERY) addressed as follows:

THOMAS SNEDDON
DISTRICT ATTORNEY'S OFFICE
1112 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 (Thomas Sneddon); (310) 861-1007 (Thomas 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 the person having charge thereof or by hand delivery to the above mentioned parties.

___ EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post 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 3rd day of NOVEMBER, 20 04, at Santa Maria, California.

Carrie L. Wagner

CARRIE L. WAGNER