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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

AUG 09 2004

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REDACTED COPY

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24 MICHAEL JOSEPH JACKSON

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
26 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

27 THE PEOPLE OF THE STATE OF  
28 CALIFORNIA,

Plaintiffs,

vs.

MICHAEL JOSEPH JACKSON,

Defendant.

) Case No. 1133603

)  
) SUPPLEMENTAL BRIEF IN SUPPORT OF  
) MOTION TO TRAVERSE AFFIDAVITS, TO  
) QUASH WARRANTS AND TO SUPPRESS  
) EVIDENCE UNDER PENAL CODE §1538.5;  
) DECLARATION OF ROBERT M. SANGER;  
) MEMORANDUM OF POINTS AND  
) AUTHORITIES

) UNDER SEAL

) Honorable Rodney S. Melville

) Date: August 16, 2004

) Time: 10:00 am.

) Dept: SM 2

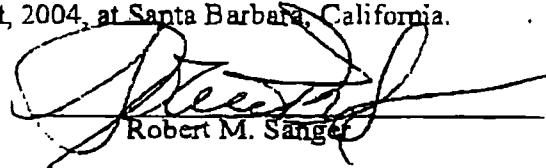
SUPPLEMENTAL MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO  
SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5

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 including the DVDs of the search of Mr. Jackson's residence.
3. As of this writing, Mr. Jackson has not been provided with a complete and proper set of search warrants, affidavits and returns by the prosecutor.
4. Unless the prosecutor provides for this Court and for Mr. Jackson and his counsel, certified copies of search warrants, affidavits and returns, Mr. Jackson will assert that the prosecutor has not established that a warrant was in effect for any or all of the searches herein and will ask the Court to treat all such searches as warrantless.
5. Furthermore, without certified copies of all documents, Mr. Jackson, in fact, cannot adequately prepare for the hearing on this motion.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct this 6<sup>th</sup> day of August, 2004, at Santa Barbara, California.

  
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 Mr. Jackson asks the Court to take judicial notice of the Status Report dated July 30,  
7 2004, which details the status of discovery.

8 As of this writing, Mr. Jackson has not been provided with a complete and proper set of  
9 search warrants, affidavits and returns by the prosecutor. Unless the prosecutor provides for this  
10 Court and for Mr. Jackson and his counsel, certified copies of search warrants, affidavits and  
11 returns, Mr. Jackson will assert that the prosecutor has not established that a warrant was in  
12 effect for any or all of the searches herein and will ask the Court to treat all such searches as  
13 warrantless. A warrantless search is presumptively unreasonable under the Fourth Amendment  
14 to the United States Constitution. (*Groh v. Ramirez* (2004) 124 S.Ct. 1284, 1290.)

15 II.

16 **DETECTIVE ZELIS' "EXPERT" OPINION IN**  
17 **THE STATEMENT OF PROBABLE CAUSE LACKS FOUNDATION**

18 The affidavit lacks foundation to establish that the Affiant, Detective Paul Zelis, is an  
19 expert on the characteristics of pedophiles. A true and correct copy of the affidavit is attached to  
20 Mr. Jackson's MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO  
21 SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5 as Exhibit C. The Affiant did not  
22 establish that he possessed the necessary training and experience on which he purported to base  
23 his opinion of the common traits of pedophiles. Furthermore, as argued in Mr. Jackson's  
24 MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS  
25 EVIDENCE UNDER PENAL CODE §1538.5, pages 13-14, he omitted the opinion of  
26 that Mr. Jackson is not a pedophile.

27 In detailing his background for the magistrate, Detective Zelis states that he has

1 "investigated numerous property crimes and crimes against persons, including burglary, child  
2 molest, theft, assault, domestic violence, narcotic and drug violations." He states that he has  
3 attended "the basic law enforcement training academy and possesses the Basic and Intermediate  
4 P.O.S.T. Certificates" and that he has "attended specialized courses, including Homicide  
5 Investigation (80 hrs.), and Sexual Assault Investigation (40 hrs.)."

6 Detective Zelis' affidavit includes a 4 page pedophile profile titled "Characteristics of  
7 persons involved in sex crimes against children." He states that "[a]s a result of the training and  
8 experience outlined above, your Affiant has learned that the following characteristics are  
9 generally found to exist in varying combinations and be true in cases involving people who  
0 molest children - 'pedophiles'."

1 Conspicuously absent from the affidavit, are any statements regarding the number of  
2 investigations that Detective Zelis has participated in that involve the alleged sexual exploitation  
3 of minors and children. He does not recite any specific experience, let alone expertise, in the  
4 area of pedophiles. There is no mention of the number of investigations, if any, in which he has  
5 served as the lead detective. There is not a description of the specific training that he received or  
6 of any publications that he has read that are relevant to the behavior of pedophiles. The affidavit  
7 also lacks any mention of the number of interviews, if any, that Detective Zelis has conducted  
8 with children who have been molested or with admitted child molesters. Simply put, there is  
9 nothing in the affidavit that establishes that the Affiant is qualified to give expert opinion on the  
10 characteristics of those who molest children.

11 Evidence Code Section 720(a)-(b) states the criteria for determining if a person is  
12 qualified as an expert:

13 (a) A person is qualified to testify as an expert if he has special knowledge, skill,  
14 experience, training, or education sufficient to qualify him as an expert on the  
15 subject to which his testimony relates. Against the objection of a party, such  
16 special knowledge, skill, experience, training, or education must be shown before  
17 the witness may testify as an expert.

18 (b) A witness' special knowledge, skill, experience, training, or education may be  
19 shown by any otherwise admissible evidence, including his own testimony.

1 Here, Detective Zelis failed to provide the necessary foundation to establish that he  
2 possessed the special knowledge, skill, experience, training or education on which to base a  
3 detailed opinion on the common characteristics of pedophiles. Instead, he provides a list of the  
4 different types of crimes he has investigated, makes reference to one sexual assault course, and  
5 then launches into a rote description of characteristics of pedophiles that is obviously not based  
6 on his own special knowledge, skill, experience training or education.

7 In this case, the "expert" testimony in the affidavit was foundationless. It  
8 consisted of rambling boilerplate recitations designed to meet law enforcement  
9 needs. It is clear that the "expert" portion of the affidavit was not drafted with the  
10 facts of this case or this particular defendant in mind.  
11 (*United States v. Weber* (9<sup>th</sup> Circuit, 1990) 923 F.2d 1338, 1346.)

12 As argued below, Detective Zelis' list of pedophile characteristics is used to justify both  
13 the staleness of the search and the overbroad list of the items to be seized. Without this profile,  
14 the warrant lacks any probable cause to believe that any listed items would be or still be at Mr.  
15 Jackson's residence. There was no probable cause to justify the overbroad list of property to be  
16 seized nor the issuance of a warrant so long after the alleged offenses took place.

### 17 III.

#### 18 THE SEARCH WARRANT IS INVALID BECAUSE IT IS STALE

19 There was not probable cause to believe that the property to be seized was in Mr.  
20 Jackson's home shortly before the warrant was executed. An affidavit in support of a search  
21 warrant must contain probable cause to believe that the property to be seized is still in the place  
22 to be searched when the warrant is sought. (*People v. Mesa* (1975) 14 Cal. 3d 466, 470) The  
23 more remote the incidents relied upon, the less probable it is that the evidence will be discovered.  
24 (*People v. Scott* (1978) 21 Cal. 3d 284, 294.)

25 Here, the November 18, 2003 search of Mr. Jackson's home occurred 8 months after the  
26 alleged crimes were supposedly committed. The Affiant attempts to justify the obvious staleness  
27 of the search by including boilerplate language stating that pedophiles "rarely, if ever, dispose of  
28 their sexually explicit material," "keep mementos of their relationship with specific children,"  
and "rarely, if ever" dispose of pictures of children. (Exhibit C to Mr. Jackson's MOTION TO

1 TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS EVIDENCE  
2 UNDER PENAL CODE §1538.5, 5:13-14; 7:19-20; 7:25-27.) As discussed above, foundation  
3 for this testimony was not established in the affidavit. Without Detective Zelis' assertions about  
4 so-called profile, there is not probable cause for believing the property to be seized would be at  
5 the search location.

6 IV.

7 **THE SEARCH WARRANT IS INVALID BECAUSE IT IS OVERBROAD**

8 The foundationless pedophile profile in the affidavit was used to justify an overbroad list  
9 of property to be seized. The finding of probable cause for virtually all of the items in the search  
10 warrant, including pornographic materials, photographs of the , computer systems,  
11 [REDACTED] and correspondence, is based on Detective Zelis' purported expert opinion on the  
12 characteristics of people who sexually abuse children. As discussed above, the Affiant did not  
13 establish that he was qualified to opine as to whether a suspected pedophile would possess these  
14 particular items.

15 V.

16 **THE SEARCH OF MR. JACKSON'S PRIVATE SUITE WAS INVALID BECAUSE**  
17 **THERE WAS NO KNOCK AND NOTICE**

18 The Fourth Amendment to the United States Constitution and California law require that  
19 law enforcement officers executing a search warrant give notice of their authority and be refused  
20 entry before the officer may forcibly enter the premises to execute the warrant. (*Wilson v.*  
21 *Arkansas* (1995) 514 U.S. 527; Penal Code Section 1531.) While there is a split in authority,  
22 there is case law that holds that knock-notice is required not only at outer doors, but also at inner  
23 doors. (*People v. Pipitone* (1984) 152 Cal.App. 3d 1112; *People v. Glasspoole* (1975) 121  
24 Cal.Rptr. 736; *People v. Webb* (1973) 36 Cal.App. 3d 460, 464-465; Contra *People v. Mays*  
25 (1998) 67 Cal.App. 4<sup>th</sup> 969.)

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27 ///

VI.

**THE SHERIFFS CONDUCTED AN ILLEGAL SWEEP OF AREAS THAT WERE  
OUTSIDE THE SCOPE OF THE WARRANT**

The government conducted a sweep of the premises that went far beyond the buildings designated by the search warrant that amounted to a warrantless search. (See *Stanley v. Georgia*, 394 U.S. 557, 572, 22 L.Ed.2d 542, 89 S.Ct 1243, 1251-52 (1969) (Stewart, J., concurring)) The search warrant permitted the officers to search "the arcade building, the main residence, and the security headquarters" at Neverland Ranch. (Exhibit C to Mr. Jackson's MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS EVIDENCE UNDER PENAL CODE §1538.5) However, the officers searched other buildings and areas.

The items seized and the observations of the officers must be suppressed because the search of these other areas constituted an illegal warrantless search. This search cannot be justified as a protective sweep. (See *Thompson v. Louisiana* (1985) 469 U.S. 17; *United States v. Furrow* (9<sup>th</sup> Circuit, 2000) 220 F.3d 805.)

VII.

**THE SEARCH AMOUNTED TO AN IMPERMISSIBLE GENERAL SEARCH**

As Mr. Jackson argued in his MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS EVIDENCE UNDER PEN C §1538.5, pages 15-16, a vast amount of materials were seized that were not covered by the search warrant. To the extent that the District Attorney may attempt to justify the seizure of some of these items based on the plain view doctrine, the burden is on the prosecution to show that the plain view doctrine is applicable to each particular seizure. (*People v. Murray* (1978) 77 Cal.App. 3d 305.) In addition to the item being in plain view, the officer must have probable cause to believe that the item is subject to seizure, rather than mere suspicion. (*Arizona v. Hicks* (1987) 480 U.S. 321.)

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VIII.

**THE MATERIALS PROVIDED IN RESPONSE TO SEARCH WARRANT NUMBER  
5005 ARE OUTSIDE THE SCOPE OF THE WARRANT AND MUST BE SUPPRESSED**

Search Warrant 5005 requested documentation held by Bank of America pertaining to Mr. Jackson's accounts which were active during the time frame between and including "2/1/2003 through 4/31/03 (sic)." A true and correct copy of that search warrant is attached as Exhibit A. According to a Sheriff's Department Report, \_\_\_\_\_, of the Bank of America legal compliance department, indicated that there were no active accounts for Mr. Jackson during the requested time frame. A true and correct copy of that report is attached as Exhibit B. Nevertheless, \_\_\_\_\_ sent Detective Bonner information about account activity that was outside of the requested time frame.

The material faxed to the Sheriff's Department is clearly outside the scope of the search warrant and must be suppressed.

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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 AUGUST 13, 20 04, I served a copy of the attached REDACTED COPY OF SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS EVIDENCE UNDER PENAL CODE § 1538.5; DECLARATION OF ROBERT M. SANGER; MEMORANDUM OF POINTS AND AUTHORITIES 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, 7<sup>TH</sup> FLOOR  
LOS ANGELES, CA 90067

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 13<sup>TH</sup> day of AUGUST, 20 04, at Santa Maria, California.

  
CARRIE L. WAGNER