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10 Attorneys for Defendant
11 MICHAEL JOSEPH JACKSON

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

15 THE PEOPLE OF THE STATE OF CALIFORNIA,
16 Plaintiffs,
17 vs.
18 MICHAEL JOE JACKSON,
19 Defendant.
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21
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Case No. 1133603
NOTICE OF MOTION AND MOTION TO DISMISS FOR VINDICTIVE PROSECUTION AND OUTRAGEOUS GOVERNMENT CONDUCT
Honorable Rodney Melville
Date: December 20-23, 2004
Time: ~~8:30 am~~ 9:30 AM
Dept: SM 8

~~FILED UNDER SEAL~~

24 TO THE CLERK OF THE ABOVE ENTITLED COURT AND TO THE DISTRICT
25 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY
26 DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN AND GORDON
27 AUCHINCLOSS:

28 NOTICE OF MOTION AND MOTION TO DISMISS FOR VINDICTIVE PROSECUTION AND OUTRAGEOUS GOVERNMENT CONDUCT

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

DEC 13 2004

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

X Unsealed pursuant to 1/16/05 court order

SANTA BARBARA COUNTY
CLERK OF SUPERIOR COURT
04 DEC 13 AM 9:33
RECEIVED

ORIGINAL

1 Please take notice that the Defendant does hereby move and will further move on December
2 20, 2004 at ^{4:30}~~8:30~~ a.m., or as soon thereafter as counsel may be heard in Department 8 of the above
3 entitled court, for an order to dismiss the case, and for such other relief as the Court may deem just
4 and proper, based on the vindictive prosecution of Mr. Jackson, and outrageous conduct of the
5 government¹, in violation of Mr. Jackson's rights to effective assistance of counsel, due process, a
6 fair trial and right against self-incrimination guaranteed by the Fifth, Sixth and Fourteenth
7 Amendments to the United States Constitution and his state constitutional rights as guaranteed by
8 Article I, Sections 1, 7, 15 and 16 of the Constitution of the State of California.

9 This motion is based on this Notice of Motion, and the Memorandum of Points and
10 Authorities attached hereto, the papers, records and files in this case and such other matters as may
11 be received by the Court at or after the hearing scheduled on this motion.

12 Dated: December 10, 2004

13 Respectfully submitted,

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

16 SANGER & SWYSEN
17 Robert M. Sanger

18 OXMAN & JAROSCAK
19 Brian Oxman

20 By: 

21 Robert M. Sanger
22 Attorneys for Defendant
MICHAEL JOSEPH JACKSON

23 _____
24 ¹ Mr. Jackson and his lawyers are aware that the Court had indicated a preference for
25 counsel to not bring into question the conduct of opposing counsel if possible. Nevertheless, the
26 defense must respectfully bring the more recent conduct of the prosecution (conducting a last
27 minute raid on the defendant's home, providing a defective witness list, and failing to comply
with Penal Code Section 1054) to the Court's attention in the context of the remainder of the
case. The defense respectfully submits that the totality of these circumstances, and some of them
standing alone, amount to conduct regarding which sanctions must be imposed.

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NOTICE OF MOTION AND MOTION TO DISMISS FOR VINDICTIVE PROSECUTION AND OUTRAGEOUS
GOVERNMENT CONDUCT

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 THIS CASE AMOUNTS TO A VINDICTIVE PROSECUTION

4 The prosecution's decision to treat Mr. Jackson differently than any other defendant
5 accused of child molestation in the history of Santa Barbara County constitutes a vindictive
6 prosecution. The prosecution has attempted to punish him for asserting his innocence and hiring
7 counsel to defend against the false charges. This vindictive prosecution is evidenced by the
8 District Attorney's decision to increase the charges against Mr. Jackson, to convene a grand jury
9 rather than to proceed with a preliminary hearing in which the defense would have had an
10 opportunity to cross-examine witnesses, and to present that grand jury with a mountain of
11 inadmissible evidence in order to secure an indictment. It is shown by the District Attorney's
12 actions including the abuse of the power of the search warrant, failure to provide witness lists and
13 discovery, personally meeting with a witness and personally surveilling the office of Mr.
14 Jackson's lawyer's investigator and other conduct..

15 Looked at overall, the immense amount of government resources that have been devoted
16 to a Penal Code Section 288 case demonstrates that the prosecution of Mr. Jackson is vindictive.
17 There has been more investigation on this case than in capital murder cases or complex white
18 collar prosecutions. The use of more than 100 search warrants, by itself, demonstrates that Mr.
19 Jackson is being treated differently than any other person accused in this type of case.

20 The fact that Mr. Jackson is being treated differently cannot be justified by a claim that he
21 is a celebrity or that he is wealthy. He is entitled to vigorously defend himself and to hire
22 counsel to do so. It is entirely lawful for him to use his resources to defend himself against these
23 false charges. The prosecution has, in essence, punished Mr. Jackson for being a celebrity and
24 defending himself.

25 The prosecution commenced these proceedings in mid-November 2003, with an arrest
26 warrant alleging violation of Penal Code § 288(a), lewd conduct with a minor. A complaint was
27 filed on December 18, 2003, asserting seven counts under § 288(a) and two counts of giving
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1 alcohol to a minor, in violation of Penal Code § 222. A series of hearings occurred in early 2004
2 that included discussion about the schedule for a preliminary hearing. Mr. Jackson was prepared
3 to vigorously defend himself against the charges contained in the complaint, a point which was
4 made clear by his counsel at the hearings.

5 Once the case was vigorously defended, the prosecution decided to convene a grand jury
6 and add the additional conspiracy charges. Grand jury proceedings ensued and an indictment
7 was filed on April 21, 2004.

8 The doctrine of vindictive prosecution precludes the government from responding to a
9 criminal defendant's exercise of his or her rights by changing the manner of the prosecution in a
10 fashion which punishes defendant. The United States Supreme Court and the California
11 Supreme Court have repeatedly held that the independent state and federal constitutional
12 guarantees to due process of law clause prohibit such vindictive prosecution. As stated by the
13 United States Supreme Court:

14 To punish a person because he has done what the law plainly allows him to do is a
15 due process violation 'of the most basic sort.' [Citation omitted.] In a series of
16 cases beginning with *North Carolina v. Pearce* and culminating in *Bodenkircher v. Hayes*, the Court has recognized this basic—and itself uncontroversial—principle.
17 For while an individual certainly may be penalized for violating the law, he just as
18 certainly may not be punished for exercising a protected statutory or constitutional
19 right.
(*United States v. Goodwin* (1982) 457 U.S.368, 372.)

20 The *Goodwin* court also reiterated that, “for an agent of the State to pursue a course of
21 action whose objective is to penalize a person's reliance on his legal rights is “patently
22 unconstitutional.”” (*Id.*, at p. 372, fn. 4, quoting from *Bodenkircher v. Hayes* (1978) 434 U.S.
23 357, 363, which in turn was quoting from *Chaffin v. Stynchcombe* (1973) 412 U.S. 17, 32-33, fn.
24 20. See, also, *Blackledge v. Perry* (1974) 417 U.S. 21 [40 L.Ed.628, 94 S.Ct. 2098]; *North
25 Carolina v. Pearce* (1969) 395 U.S. 711.)

26 The California Supreme Court has condemned the prosecution practice of punishing a
27 criminal defendant in response to the exercise of his or her statutory or constitutional rights.
(*Twiggs v. Superior Court* (1983) 34 Cal.3d 360, 368-375; *In re Bower* (1985) 38 Cal.3d 865,
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1 873-879.) In the words of the California Supreme Court, in *Bower*:

2 The constitutional protection against prosecutorial vindictiveness is based on the
3 fundamental notion that it 'would be patently unconstitutional' to 'chill the
assertion of constitutional rights by penalizing those who choose to exercise them.

4 (*Bower, supra*, 38 Cal.3d at p. 873; citation omitted.)

5 Moreover, the California Supreme Court has explicitly ruled that the independent force of
6 the California Constitution equally prohibits such vindictive prosecution. As observed by the
7 California Supreme Court: "California cases have recognized a due process protection of a
8 similar scope. The due process clause of the California Constitution also prohibits increased
9 charges motivated by prosecutorial vindictiveness." (*Id.*, at p. 876.)

10 Further, it must be "emphasized that actual retaliatory motivation need not be shown."
11 (*Twiggs v. Superior Court, supra*, 34 Cal.3d 360, 369.) Rather:

12 Where the defendant shows that the prosecution has increased the charges in
13 apparent response to the defendant's exercise of a procedural right, the defendant
has made an initial showing of an appearance of vindictiveness. [Citation
14 omitted.] The defendant need not demonstrate that the prosecution in fact acted
with a retaliatory motive. [Citation omitted.] Once this prima facie case is made,
15 the prosecution bears a 'heavy burden' of dispelling the appearance of
vindictiveness as well as actual vindictiveness.

16 (*Id.*, at p. 371.)

17 Finally, although examination of the prosecution's motivation may be a difficult task, it
18 "is not meant to question the integrity of the prosecutor." (*Id.*, at p. 374.) Instead, "once the
19 presumption of vindictiveness is raised the prosecution bears a heavy burden of rebutting the
20 presumption with an explanation that adequately eliminates actual vindictiveness. In this regard,
21 the trial court should consider the prosecutor's explanation in light of the total circumstances of
22 the case in deciding whether the presumption has been rebutted. The prosecution should be
23 required to show that facts that would legitimately influence the charging process were not
24 available when it exercised its discretion to bring the original charges." (*Ibid.*)

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1 II.

2 **THE PROSECUTION HAS ENGAGED IN OUTRAGEOUS GOVERNMENT CONDUCT**
3 **AND HAS INTERFERED WITH DEFENDANT'S RIGHTS TO EFFECTIVE**
4 **ASSISTANCE OF COUNSEL, DUE PROCESS, A FAIR TRIAL, AND RIGHT AGAINST**
5 **SELF-INCRIMINATION**

6 The conduct of the prosecution and other agents of law enforcement in the investigation
7 of this case amounts to outrageous government conduct. The District Attorney has demonstrated
8 a blatant disregard for Defendant's rights to effective assistance of counsel, due process, a fair
9 trial and right against self-incrimination. The prosecution has invaded the attorney-client
10 relationship, undermined the work product doctrine and has so contaminated the prosecution of
11 this case that it is not possible to fashion any remedies other than dismissal. Portions of the
12 grounds for this motion have been addressed in other motions filed previously and one filed
13 concurrently herewith.

14 **THE SEARCH OF BRADLEY MILLER'S OFFICE AND EVVY TAVASCI'S HOME**
15 **AND OFFICE**

16 As previously argued, and incorporated herein by this reference, the prosecution's
17 invasion of Bradley Miller's office and Evvy Tavasci's home and office was an abuse of power.
18 Although the Court did not grant the relief requested at that time, the facts of the searches should
19 be considered in the overall context of this motion.

20 **EVIDENCE PRESENTED IN MOTION TO RECUSE**

21 Although the Court also denied the motion to recuse, all of which is incorporated by
22 reference, it should be considered in the context of this motion to dismiss. This is particularly
23 true in light of the District Attorney's flagrant disregard for this Court's clear admonition by
24 obtaining and executing search warrants at the defendant's home just before production of
25 discovery.

26 **INVASION OF MR. JACKSON'S HOME FOR THE FIFTH TIME**

27 The government has conducted raids at Mr. Jackson's home five times in the last 11
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1 years. As argued in a motion filed concurrently herewith, and incorporated herein by this
2 reference, the most recent raid on Mr. Jackson's home constitutes outrageous government
3 conduct based on the proximity of the raid to the discovery cutoff and the trial, and based on the
4 sheer number of search warrants issued in this case. The most recent search of Mr. Jackson's
5 home, as well as the previous four raids, should be considered in the context of this motion to
6 dismiss.

7 **DEFECTIVE AND MISLEADING WITNESS LIST**

8 As argued in a motion filed concurrently herewith, and incorporated herein by this
9 reference the witness list provided to defense counsel by the prosecution is defective and makes
10 it impossible for defense counsel to adequately prepare for trial. The defective witness list
11 should be considered in light of this motion to dismiss.

12 **FAILURE TO COMPLY WITH SECTION 1054 PRODUCTION**

13 As argued in a motion filed on December 10, 2004, the prosecution has failed to comply
14 with Penal Code Section 1054. The failure to comply with Section 1054 should be placed in the
15 context of this motion to dismiss.

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III.

CONCLUSION

The cumulative effect of the prosecution's most recent actions in conjunction with the matters previously brought before this Court, amount to vindictive prosecution and outrageous government conduct.

Therefore, the Defendant respectfully submits that the case be dismissed and for such other relief as the Court may deem just and proper.

Dated: December 10, 2004

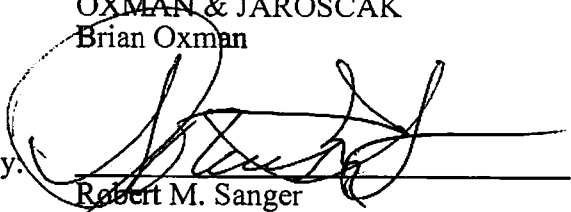
Respectfully submitted,

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OXMAN & JAROSCAK
Brian Oxman

By.



Robert M. Sanger
Attorneys for Defendant
MICHAEL JOSEPH JACKSON

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On December 10, 2004, I served the foregoing document NOTICE OF MOTION AND MOTION TO DISMISS FOR VINDICTIVE PROSECUTION AND OUTRAGEOUS GOVERNMENT CONDUCT on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon
District Attorney
1105 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2398

- BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.
- BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties at
- BY HAND** - I caused the document to be hand delivered to the interested parties at the address above.
- STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed December 10, 2004 at Santa Barbara, California


Bobette J. Tryon