

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
3 GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney
4 1105 Santa Barbara Street
Santa Barbara, CA 93101
5 Telephone: (805) 568-2300
6 FAX: (805) 568-2398

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

FEB 20 2004

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

7 Attorneys for Plaintiff

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SANTA BARBARA**
11 **SANTA MARIA DIVISION**

13 THE PEOPLE OF THE STATE OF CALIFORNIA,

14 Plaintiff,

15 v.

16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

PLAINTIFF'S REPLY TO
DEFENDANT'S PROPOSED
AMENDMENT TO "SAFE
HARBOR" PROTECTIVE
ORDER

(Submitted on February 20, 2004)

18
19
20 Plaintiff respectfully responds to "Defendant's Revised Proposed 'Safe Harbor'
21 Addendum To Protective Order" ("Revision").

22 As we see it, the problem with defendant's Revision is threefold:

23 First, it would allow a responsive statement to be made "in person" or by a
24 "prerecorded videotaped statement" as well as in writing.

25 Defendant's lead counsel has demonstrated a facility for going well beyond the
26 limits of a given question when it comes to looking out for the interests of his client, and there
27 is nothing in his Revision that would limit the length or breadth of a "responsive statement" or
28 the context in which it is offered – say, a press conference, or even a gemütlich conversation

1 with a favored television commentator.

2 Second, the Revision does not provide for prior notice to the other party of the
3 content or context of the "responsive statement," let alone provide for an effort to obtain the
4 other party's concurrence in the proposed statement. If the other party objects to the statement,
5 all that party can do is complain about it, after the fact, to the court.

6 Third, it would appear that the complaining party would have to prove that the
7 statement was "made unnecessarily or in bad faith," on pain of being required to pay
8 "reasonable attorney's fees, costs and expenses."

9 "Bad faith" is defined as "[t]he opposite of "good faith," generally
10 implying or involving actual or constructive fraud, or a design to
11 mislead or deceive another, or a neglect or refusal to fulfill some
12 duty or some contractual obligation, not prompted by an honest
13 mistake . . . , but by some interested or sinister motive[,] . . . not
14 simply bad judgment or negligence, but rather . . . the conscious
15 doing of a wrong because of dishonest purpose or moral obliquity;
16 . . . it contemplates a state of mind affirmatively operating with
furtive design or ill will. [Citation.]' [Citations.]" (*Pugh v. See's
Candies, Inc.* (1988) 203 Cal.App.3d 743, 764.)

17 (*Silver Organizations Ltd. v. Frank* (1990) 217 Cal.App.3d 94, 100.)

18 Considered in that light, defendant's Revision offers no more assurance to the Court
19 or the People that spokespersons for the defense will be any more restrained in future than they
20 were before the present protective order was imposed.

21 In our respectful submission, no comment by either party ought to be the rule, as it
22 presently is. A "safe harbor" exception ought not to swallow the rule, as does defendant's
23 proposed Revision. A prompt conference among the parties in response to a precipitating
24 incident, followed by a written statement satisfactory to both parties when appropriate, will
25 take care of virtually every such event. Each party would be motivated to reach a reasonable
26 accord: a party that values its continuing credibility in the eyes of the Court will not count on
27 being able to complain successfully to the Court over minor differences of opinion.

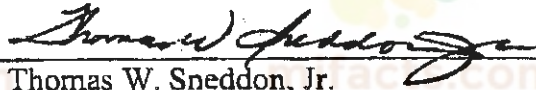
28 ////

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: February 20, 2004

Respectfully submitted,

THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara



Thomas W. Sneddon, Jr.

Attorney for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

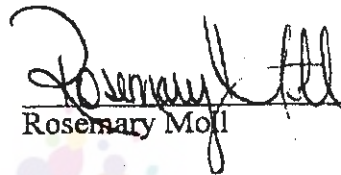
STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

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 February 20, 2004, I served the within PLAINTIFF'S REPLY TO DEFENDANT'S PROPOSED AMENDMENT TO "SAFE HARBOR" PROTECTIVE ORDER on Defendant, by MARK JOHN GERAGOS, his counsel in this action, and on associated counsel, by faxing a true copy to counsel at the facsimile number shown with the address of each on the attached Service List, and then by causing to be mailed a true copy (two true copies, to Attorney Geragos) to counsel at that address.

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

Executed at Santa Barbara, California on this 20th day of February, 2004.



Rosemary Moll

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SERVICE LIST

MARK JOHN GERAGOS, ESQ.
Geragos & Geragos, Lawyers
350 S. Grand Avenue, Suite 3900
Los Angeles, CA 90071-3480
FAX: (213) 625-1600
Attorney for Defendant Michael Jackson

ROBERT SANGER, ESQ.
Sanger & Swysen, Lawyers
233 E. Carrillo Street, Suite C
Santa Barbara, CA 93001
FAX: (805) 963-7311
Co-counsel for Defendant

STEVE COCHRAN, ESQ.
Katten, Muchin, Zavis & Rosenman, Lawyers
2029 Century Park East, Suite 2600
Los Angeles, CA 90067-3012
FAX: (310) 712-8455
Co-counsel for Defendant

BENJAMIN BRAFMAN, ESQ.
Brafman & Ross P.C.
767 Third Avenue, 26th Floor
New York City, NY 10017
FAX: (212) 750-3906
Co-Counsel for Defendant