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County of Santa Barbara  
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FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

JUN 23 2004

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

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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff.

14 v.

15 MICHAEL JOE JACKSON,

16 Defendant.

No. 1133603

17 } PLAINTIFF'S REQUEST THAT  
18 } DEFENDANT'S PENDING  
19 } "MOTION TO SUPPRESS" BE  
20 } ORDERED "OFF CALENDAR"  
21 } FOR LACK OF TIMELY FILING,  
22 } AND FOR FURTHER ORDER RE  
23 } "PRIVILEGE LOG";  
24 } DECLARATION OF GERALD  
25 } McC. FRANKLIN;  
26 } MEMORANDUM OF  
27 } AND AUTHORITIES  
28 } (Super. Ct. Santa Barbara Local  
Rules. rule 1907)

~~UNDER SEAL~~

DATE: June 25, 2004  
TIME: 8:30 a.m.  
DEPT: SM 2 (Melville)

24 TO: MICHAEL JOE JACKSON, AND TO THOMAS A. MESEREAU, JR., STEVE  
25 COCHRAN and ROBERT SANGER, HIS ATTORNEYS OF RECORD:

26 PLEASE TAKE NOTICE that on June 25, 2004, at 8:30 a.m. or as soon thereafter as  
27 the matter may be heard, in Department SM 2, Plaintiff will, and hereby does, move the court  
28 to order that Defendant's "Motion to Suppress Pursuant to Penal Code Section 1538.5 and

PLAINTIFF'S REQUEST THAT DEFENDANT'S "SUPPRESS:ON MOTION" BE ORDERED "OFF CALENDAR"

1. Non-Statutory Ground (Part 1),” presently calendared for hearing on June 25th, be taken off  
2 calendar for lack of timely service on Plaintiff.

3 This motion is made on the ground that Defendant his motion on Plaintiff by  
4 facsimile transmission at 3:59 p.m. on Monday, June 21, 2004 without prior notice or an order  
5 of court shortening time for filing and service of the motion.


6 Plaintiff will further move the court for an order directed to Defendant, directing him  
7 to prepare and lodge with the court the previously-ordered “privilege log” for documents  
8 contained on certain computer hard-drives lodged with the court nearly five months ago, to  
9 facilitate the court’s determination whether, and to what extent, those documents may be  
10 protected from disclosure by the attorney-client privilege or as the “core” work product of an  
11 attorney.

12 This motion is supported by the accompanying Declaration of Gerald McC. Franklin  
13 and the accompanying Memorandum of Points and Authorities.

14 DATED: June 23, 2004

15 Respectfully submitted.

16 THOMAS W. SNEDDON, JR., District Attorney

17 By:   
18 Gerald McC. Franklin, Senior Deputy

19 Attorneys for Plaintiff  
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1. DECLARATION OF GERALD McC. FRANKLN

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3 I, GERALD McC. FRANKLIN, say:

4 1. I am a lawyer admitted to practice in the State of California. I am a Senior  
5 Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for  
6 the People, Plaintiff in this action.

7 2. On Monday, June 21, 2004, at 3:59 p.m., the District Attorney's office received  
8 an 85-page "Notice of Motion to Suppress Pursuant to Penal Code Section 1538.5 And Non-  
9 Statutory Grounds (Part 1), Declaration of Robert M. Sanger, Memorandum of Points and  
10 Authorities In Support Thereof," all but the first 19 pages of which were attached exhibits and  
11 a proof of service. The Notice specifies that the motion is intended to be heard on Friday, June  
12 25th.

13 3. The Rules of the Santa Barbara Superior Court require that points and authorities  
14 in support of motions in criminal case be filed and served at least 10 days prior to the hearing.  
15 (Super. Ct. Santa Barbara Local Rules. rule 1907.) No request for an order shortening time, or  
16 any such order, accompanied the Notice of Motion.

17 4. The Notice of Motion recited, in part: "Mr. Jackson submits this motion now,  
18 based on the Court's order that he file his motion regarding the search of Mr. Miller's office  
19 and the seizure of privileged materials therein for hearing on June 25, 2004 and that additional  
20 motions to suppress would be heard in August, 2004." (Mot. 2:20-22.) The accompanying  
21 Memorandum recites, in part: "Former counsel for Mr. Jackson, Mark Geragos, originally  
22 represented to the Court that he would proceed regarding the search of Bradley Miller's office  
23 by attorney-client privilege log, under the core work-product doctrine. We must respectfully  
24 withdraw that request in light of further developments including testimony of witnesses before  
25 the Grand Jury." (Mot. 9:21-24; emphasis added, footnote omitted.)

26 5. The only motion before the court concerning the materials seized from  
27 Investigator Miller's office was Mr. Gerago's claim that those materials came within the  
28 attorney-client privilege or constituted his work product and so were privileged from disclosure

1 to the prosecution. On April 2, 2004, the Court ordered the defense to provide it with a  
2 privilege log concerning the contents of Mr. Miller's computer harddrives. And if memory  
3 serves (not a sure thing, given my advanced age), the Court made a follow-up order on May  
4 28th, reiterating its desire for a privilege log.

5 6. Based on the above, I believe defense counsel are mistaken in supposing that  
6 what was earlier put before the court is a "suppression motion." In any event, there is no  
7 apparent excuse for counsel filing the present motion in so untimely a fashion, particularly  
8 when their lawyerly energies ought to be focused on the production of their Penal Code section  
9 995 motion.

10 I declare under penalty of perjury that the foregoing is true, except as to matters  
11 stated upon my information or belief. As to such matters, I believe it is true. I execute this  
12 declaration at Santa Barbara on June 23, 2004.

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15 Gerald McC. Franklin

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MEMORANDUM OF POINTS AND AUTHORITIES

Santa Barbara Superior Court Rules, rule 1907, provides:

If the court is asked to consider a particular point of authority, even if the respondent waives written notice of the motion, the moving party shall file with the court and serve upon opposing counsel at least ten (10) days prior to the hearing a full and complete memorandum of points and authorities, unless waived by the court for good cause shown.

The self-evident reason for rule 1907 is to permit opposing counsel a reasonable amount of time within which to consider to the noticed motion and respond appropriately, if necessary, to that motion.

In this case, the pending motion to suppress raises substantial issues, including the foundational question of Defendant's standing to litigate the constitutionality of a search of premises in which he has no reasonable expectation of privacy, concerning property that is not his own and as to which his Fourth Amendment rights are not implicated. Adequate time is needed to address and discuss the apparent deficiencies of the pending motion. Three working days is not sufficient time.

DATED: June 23, 2004

Respectfully submitted,

THOMAS W. SNEDDON, JR., District Attorney

By: Gerald McC. Franklin  
Gerald McC. Franklin, Senior Deputy

Attorneys for Plaintiff

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 June 23, 2004, I served the within PLAINTIFF'S REQUEST THAT DEFENDANT'S PENDING "MOTION TO SUPPRESS" BE ORDERED "OFF CALENDAR" FOR LACK OF TIMELY FILING AND FOR FURTHER ORDER RE "PRIVILEGE LOG"; DECLARATION OF GERALD McC. FRANKLIN; MEMORANDUM OF POINTS AND AUTHORITIES on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, and ROBERT SANGER, 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 to each counsel at that address.

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

Executed at Santa Barbara, California on this 23rd day of June, 2004.

*Gerald McC. Franklin*  
\_\_\_\_\_  
Gerald McC. Franklin



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Co-counsel for Defendant

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