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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 CALIFORNIA,**

28 Plaintiffs,

vs.

**MICHAEL JOSEPH JACKSON,**

Defendant.

) Case No. 1133603

)  
) REPLY TO PLAINTIFF'S OPPOSITION TO  
) DEFENDANT'S MOTION TO TRAVERSE  
) AFFIDAVITS, TO QUASH WARRANTS  
) AND TO SUPPRESS EVIDENCE;  
) DECLARATION OF ROBERT M. SANGER

) UNDER SEAL

) Honorable Rodney S. Melville

) Date: August 16, 2004

) Time: 10:00 am.

) Dept: SM 8

REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO TRAVERSE AFFIDAVITS, TO  
QUASH WARRANTS AND TO SUPPRESS EVIDENCE

1 DECLARATION OF ROBERT M. SANGER

2 I, Robert M. Sanger, declare:

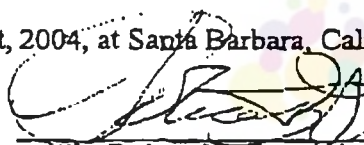
3 1. I am an attorney at law duly licensed to practice law in the courts of the State of  
4 California, a partner in the law firm of Sanger & Swysen, and co-counsel for Mr. Michael  
5 Jackson.

6 2. Despite numerous demands on our part and numerous representations that "the defense  
7 has everything" the prosecution has not provided defense counsel with anything like a full set of  
8 search warrant documents.

9 3. Mr. Jackson's counsel is willing, for the time being, to accept uncertified copies from the  
10 prosecution as discovery, however, we are not willing to stipulate that uncertified copies can be  
11 used in evidence for this motion or any other purpose.

12 4. Mr. Jackson's counsel cannot simply agree that the court take judicial notice of the  
13 documents since they have been sealed at the prosecutor's request and defense counsel has not  
14 been provided with a proper set.

15 I declare under the penalty of perjury under the laws of the State of California that the  
16 foregoing is true and correct this 11<sup>th</sup> day of August, 2004, at Santa Barbara, California.

17 

18 Robert M. Sanger

1 MEMORANDUM OF POINTS AND AUTHORITIES mjfacts.com

2 I.

3 THE STATEMENT IN THE AFFIDAVIT THAT [REDACTED] WAS  
4 WILFULLY FALSE AND ONCE THE FALSE STATEMENT IS EXCISED THE  
5 SEARCH WAS BOTH OVERBROAD AND STALE<sup>1</sup>

6 A. Mr. Jackson Has Met His Initial Burden Under *Franks v. Delaware* (1978) 438 U.S.  
7 154.

8 Mr. Jackson has demonstrated that the Affiant, [REDACTED], knowingly and  
9 intentionally omitted [REDACTED] opinion that, even under the prosecution's so-called facts, [REDACTED]  
10 [REDACTED] (Motion, pages 13-14.)

11 The omission was clearly not a negligent or innocent mistake, as [REDACTED] was aware of  
12 [REDACTED] opinion and even explicitly agreed with his opinion. (Exhibit E to Motion;  
13 Opposition 13:18-25.) Under *People v. Cook* (1978) 22 Cal. 3d 67, 89, this type of omission is

14  
15 <sup>1</sup> A note on condescension and sarcasm in the People's Opposition:

16 Condescension can be an effective rhetorical tool and is often employed in lieu of a  
17 strong argument. Here the prosecutor selects quotes from the moving papers containing what he,  
18 erroneously, believes to be typographical errors. (For instance, "wilfully" is properly spelled with  
19 one "l" in the first syllable, despite his tedious and repetitive bracketed insertions to the contrary.  
20 (See, Opposition pp. 13 and 16; and see Webster's Seventh Collegiate Dictionary (1965) p.1021.)  
21 The prosecutor also describes Mr. Jackson's Supplemental Brief as "tardily-filed," when it is not.  
22 (See, Opposition pp. 1 and 15; and see the discussion herein below as to the effect of the  
23 prosecutor's failure to provide discovery on the defense's ability to proceed with motions to  
24 suppress.)

25 Sarcasm can also be effective but not if the reader is aware that the premise underlying  
26 the sarcastic remark is false. For instance, the prosecutor's sarcastic remarks about the demand  
27 for certified copies is fundamentally factually flawed. (See, Opposition pp. 1-2) First, the  
28 prosecution obtained orders sealing the search warrant documents on the condition that they  
would provide copies of the documents to Mr. Jackson. Despite numerous demands on our part  
and numerous representations that "the defense has everything" Mr. Jackson still does not have  
anything like a full set of search warrant documents. Second, the Court, understandably, did not  
wish to provide certified copies if the parties were able to make other arrangements. Hence, Mr.  
Jackson continued his quest to get a full set from the prosecution, but that has still not occurred.  
Third, since Mr. Jackson has not received the documents, or any assurance that what he has is  
correct, it would be inappropriate for the defense to stipulate that uncertified copies could be  
used by the prosecution. Mr. Jackson is willing, for the time being, to accept uncertified copies  
from the prosecution as discovery, however, he is not willing to stipulate that uncertified copies  
can be used in evidence for this motion or any other purpose. Furthermore, Mr. Jackson cannot  
simply agree that the court take judicial notice of the documents since they have been sealed at  
the prosecutor's request and he has not been provided with a proper set.



1 the equivalent of an allegation actually known to be untrue.

2 The District Attorney argues that [REDACTED] statements regarding [REDACTED]  
3 [REDACTED] was not wilfully false because, under the prosecution's version of the facts, [REDACTED]  
4 [REDACTED] (Opposition, 14:14-21.) The lay definition  
5 [REDACTED] however, is irrelevant. [REDACTED] claims to be knowledgeable, if not an  
6 expert, based on this training and experience, and purports to be assisting the Magistrate by  
7 [REDACTED] It  
8 was wilfully false to state [REDACTED], when [REDACTED]  
9 [REDACTED] knew that [REDACTED], believed [REDACTED]  
10 [REDACTED]

11 Additionally, Mr. Jackson has met the burden of demonstrating that [REDACTED]  
12 [REDACTED] wilfully false statements pursuant to *Franks*  
13 *v. Delaware* (1978) 438 U.S. 154.<sup>2</sup> The defense respectfully submits that these particular  
14 allegations carry the initial burden and permit full inquiry into the basis for the affidavit.

15 **B. [REDACTED] Purported Expert Opinion Lacked Foundation.**

16 The District Attorney argues that [REDACTED] lack of foundation to support the  
17 [REDACTED] can be excused assuming that he read the "results of other's research" and that  
18 he was "conveying information the affiant had obtained from a reliable source or sources."  
19 (Opposition 15-16.) The affidavit does not say that, moreover, the District Attorney misses the  
20 point here. [REDACTED] failed to establish that, based on his knowledge, training, skill and  
21 experience, he was in a position to [REDACTED]  
22 [REDACTED]

23 The District Attorney disingenuously attempts to paint [REDACTED] as an expert by  
24 [REDACTED] (Opposition, 14:12-13.) This is not  
25 [REDACTED]

26 <sup>2</sup> The District Attorney purports to tell this Court "[w]hat Defendant means by "no later  
27 than May 11, 2004." (Opposition, 17:28-18:2.) Given the prosecution's failure to provide  
28 discovery in this case, Mr. Jackson meant exactly what he said, that we did not know what they  
had or when they had it, but that, no later than May 11, 2004, they had this information.

1 how [REDACTED] described his experience in the affidavit. What [REDACTED] actually  
2 states is that he has, [REDACTED]  
3 [REDACTED]  
4 (Supplemental 1538.5, 4:1-2.) If [REDACTED] had been able to assert under oath that he had  
5 [REDACTED] he would have done so. As argued in Mr. Jackson's  
6 Supplemental 1538.5 brief, there is a conspicuous lack of information regarding [REDACTED]  
7 [REDACTED] (Id. at  
8 4:11-20.)

9 [REDACTED] provides  
10 the only alleged probable cause for conducting a search long after the supposed events. The [REDACTED]  
11 [REDACTED] is the only possible justification for the overbroad list of places to be searched and  
12 items to be seized.

13 C. **Once This Statement is Excised, The Search Was Both Overbroad and Stale.**

14 [REDACTED] that conveniently  
15 justifies an otherwise overbroad and stale search, despite a lack of foundation for his opinion and  
16 the fact that [REDACTED]. The warrant would not have been issued  
17 if this information had been excluded from the affidavit for two reasons. First, the breadth of the  
18 search and the list of property to be seized was entirely dependent [REDACTED]  
19 [REDACTED]. Second, the probable cause for issuing a search warrant 8 months after  
20 the alleged events occurred, despite a total absence of new information regarding activity at [REDACTED]  
21 [REDACTED]

22 [REDACTED] (See *People v. Mesa* (1975) 14 Cal. 3d 466, 470)

23 **II.**

24 **THE SHERIFF'S FLAGRANTLY DISREGARDED THE LIMITATIONS OF THE**  
25 **SEARCH WARRANTS**

26 The District Attorney asserts that it is "Defendant's burden to identify those items he  
27 believes qualify neither as property specifically identified in the search warrant nor as property  
28

1 whose relationship to the crimes under investigation would not be "immediately apparent" to the  
2 searching officers. (Opposition, 22:6-9.) This assertion is legally incorrect. The District  
3 Attorney has the burden of justifying the mountain of items seized that fall outside the scope of  
4 the search warrant. If something is seized outside of the property listed then it is a warrantless  
5 search. A warrantless search is presumptively unreasonable under the Fourth Amendment to the  
6 United States Constitution. (*Groh v. Ramirez* (2004) 124 S.Ct. 1284, 1290.)

7 The District Attorney can attempt to justify the seizures of items outside the scope of the  
8 warrant by demonstrating that it is contraband or evidence of a crime. Mr. Jackson has moved to  
9 suppress the results of all warrantless searches and seizures. It is the District Attorney's burden  
10 to justify any such searches or seizures.

### 11 III.

#### 12 **THE SEARCH OF BRADLEY MILLER'S OFFICE WAS AN IMPERMISSIBLE** 13 **GENERAL SEARCH**

14 In response to Mr. Jackson's argument that the search of Mr. Miller's office was a general  
15 search because the search warrant authorized the seizure of all computers and computer related  
16 materials, the District Attorney asserts that the only way to know "whether, e.g., a given  
17 computer contains such records is to first *seize* the hard drive and then *examine* it for its content."  
18 This argument misses the point. The affiant must first provide probable cause to believe that  
19 particular relevant items will be found. As asserted in Mr. Jackson's Motion, there was nothing  
20 in the affidavit that supported a search of this scope. There was nothing to suggest that any  
21 particular documents would be found on the computers. Such a search is similar to authorizing  
22 the taking of every piece of paper of a person's filing cabinet or every piece of paper in their desk  
23 or dresser drawer.

### 24 IV.

#### 25 **ALL OF THE SEIZED PROPERTY MUST BE SUPPRESSED AND RETURNED**

26 All evidence seized should be suppressed because the officers executed the warrant in  
27 flagrant disregard for its limitations, not only those items beyond the scope of the warrant. (See

1 *United States v. Rettig*, 589 F.2d 418, 423 (9th Cir. 1978); *United States v. Heldt*, 668 F.2d 1238,  
2 1259 (D.C. Cir. 1981).) This remedy is required in an appropriate case where the violations of  
3 the warrant's requirements are so extreme that the search essentially is transformed into an  
4 impermissible general search. (*People v. Bradford* (1997) 15 Cal. 4<sup>th</sup> 1229, 1305-1306.) This is  
5 such a case.

6 V.

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

9 The search warrant for Neverland Ranch was limited to "the buildings described as the  
10 arcade building, the main residence, and the security headquarters." (Exhibit B to Motion;  
11 Opposition 24:10-11.) Mr. Jackson's private office, the video arcade and the guest apartment are  
12 all outside of the area particularly described in the warrant. They have separate entrances and are  
13 not accessible through the security office or the main house. To the extent that law enforcement  
14 exceeded this limitation, Mr. Jackson the items seized and the observations of the officers must  
15 be suppressed because the search of these other areas constituted an illegal warrantless search. It  
16 is the prosecution's burden to demonstrate otherwise.

17 VI.

18 **THE SEARCH WAS INVALID BECAUSE THERE WAS NO KNOCK AND NOTICE**

19 As was candidly pointed out by Mr. Jackson in his Supplemental 1538.5 brief, there is a  
20 split in authority as to whether "knock and notice" for interior doors. The District Attorney cites  
21 only one line of authority. (Opposition, 25:18-20.) To the extent that law enforcement did not  
22 comply with the knock and notice requirement when searching Mr. Jackson's private suite, this  
23 Court must make a determination as to the state of the law.

24  
25  
26 ///

27  
28  
RRPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO TRAVERSE AFFIDAVITS, TO  
QUASH WARRANTS AND TO SUPPRESS EVIDENCE



VII.

CONCLUSION

For all of the reasons set forth above, Mr. Jackson requests that this Court find the conclusions, omissions and speculations in statements discussed above to be made in reckless disregard for the truth, or find that there were material omissions in the affidavits which renders what remains in the affidavits insufficient to support a finding of probable cause and that this Court quash both warrants, and suppress all evidence seized under the authority of those warrants.

Dated: August 11, 2004

Respectfully submitted,

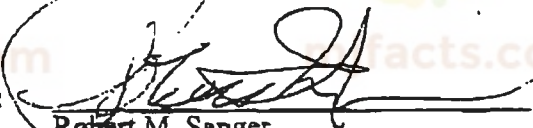
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By:

  
Robert M. Sanger  
Attorneys for Defendant  
MICHAEL JOSEPH JACKSON



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 REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO TRAVERSE AFFIDAVITS, TO QUASH WARRANTS AND TO SUPPRESS EVIDENCE; DECLARATION OF ROBERT M. SANGER 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.

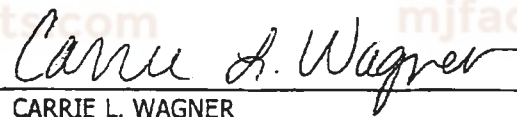
PERSONAL SERVICE

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