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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

**REDACTED VERSION**

18 THE PEOPLE OF THE STATE OF )  
19 CALIFORNIA, )

Case No. 1133603

20 Plaintiffs, )

) DEFENDANT'S REPLY TO THE DISTRICT  
) ATTORNEY'S SUPPLEMENTAL  
) RESPONSE IN OPPOSITION TO DEFENSE  
) MOTION TO SUPPRESS

21 vs. )

~~UNDER SEAL~~

22 **MICHAEL JOSEPH JACKSON,** )

Honorable Rodney Melville

23 Defendant. )

24 Date: September 17, 2004

25 Time: 8:20 am.

26 Dept: SM 8

27  
28  
DEFENDANT'S REPLY TO THE DISTRICT ATTORNEY'S SUPPLEMENTAL RESPONSE IN OPPOSITION  
TO DEFENSE MOTION TO SUPPRESS

1 **INTRODUCTION**

2 The prosecution repeatedly justifies the seizure of items because it may be a lead to other  
3 evidence or is indicia of association among certain individuals. The probable cause affidavit  
4 does not request and the warrant does not authorize seizure of items that may reflect association  
5 among people. Moreover, those items cannot be seized under the plain view doctrine because  
6 incriminating character is not immediately apparent.

7 Furthermore, the prosecution concedes that the seizure of approximately 20 items was not  
8 justified by either the warrant or the plain view exception. The import of this concession is that  
9 the search was admittedly exploratory.

10 **ARGUMENT**

11 **I.**

12 **APPLICABLE LAW**

13 A warrantless search is presumptively unreasonable under the Fourth Amendment to the  
14 United States Constitution. (*Groh v. Ramirez* (2004) 124 S.Ct. 1284, 1290.) The burden is on the  
15 prosecution to prove that probable cause existed to seize the property in question.

16 **A. OVERBREADTH**

17 The Fourth Amendment to the United States Constitution, Article 1, Section 13 of the  
18 California Constitution, and California Penal Code Sections 1525 and 1529 require that a search  
19 warrant describe the items to be seized with "particularity." This requirement precludes both a  
20 "general search" and the seizure of one thing under a warrant describing a different thing.

21 (*Marron v. United States* (1927) 275 U.S. 192; *Stanford v. Texas* (1965) 379 U.S. 476.)

22 **B. PLAIN VIEW**

23 In *Horton v. California* (1990) 496 U.S. 128, 136-137, the United States Supreme Court  
24 held that, a plain view exception to the Fourth Amendment may exist if:

- 25 1. The officer does not violate the Fourth Amendment in arriving at the place  
26 from which the evidence could be plainly viewed;
- 27 2. The incriminating character of the item is immediately apparent; and

1 3. The officer also has a lawful right of access to the object itself.

2 Probable cause is required to seize a particular item rather than mere suspicion. (*Arizona*  
3 *v. Hicks* (1987) 480 U.S.) The burden is on the prosecution to show that the plain view doctrine  
4 is applicable to each particular seizure. (*People v. Murray* (1978) 77 Cal.App. 3d 305.) In a  
5 situation where an officer seizes several objects under the plain view theory the trial court has the  
6 power to admit the lawfully seized objects and to suppress the unlawfully seized objects. (See,  
7 e.g., *People v. Clark-Van Brunt* (1984) 158 Cal.App. 3d Supp. 8, 18.) On the other hand, if th  
8 search is conducted with sufficient disregard for the limitations of the warrant, suppression of all  
9 items may be the appropriate remedy. (See *United States v. Rettig*, 589 F.2d 418, 423 (9th Cir.  
10 1978); *United States v. Heldt*, 668 F.2d 1238, 1259 (D.C. Cir. 1981).) This remedy is required  
11 in an appropriate case where the violations of the warrant's requirements are so extreme that the  
12 search essentially is transformed into an impermissible general search. (*People v. Bradford*  
13 (1997) 15 Cal. 4<sup>th</sup> 1229, 1305-1306.)

## 14 II.

### 15 THE SEIZED ITEMS MUST BE SUPPRESSED

#### 16 A. ITEM 329-A

17 Item 329-A is described as several DVD-R and CD-R digital computer storage disks that  
18 the government claims to have "discovered at the Santa Barbara Sheriff's Department after Item  
19 329 had already been seized and booked into evidence." (People's Supplemental Response, page  
20 4.) The District Attorney now asserts that this seizure was justified by the portion of the search  
21 warrant that authorizes seizure of computers and all things computer related.

22 The Fourth Amendment does not permit the government to seize all computers and  
23 computer related equipment based on an assertion that documents are commonly stored on  
24 computers, without some amount of particularity as to what computers are to be searched and  
25 what materials are expected to be seized. There is not an exception to the Fourth Amendment's  
26 particularity requirement for computers or computer disks.

#### 27 B. ITEMS 333-A AND 334-A

1 The government has failed to meet its burden of demonstrating that the plain view  
2 doctrine applies to Items 333-A and 334-A. Item 333-A is a [REDACTED]  
3 [REDACTED]  
4 [REDACTED] The District Attorney asserts that "[t]hese [REDACTED] came into plain  
5 view in the search of the lawfully seized cases." (People's Supplemental Response, page 5.) The  
6 government has failed to meet the second part of the three-part test of *Horton v. California*  
7 (1990) 496 U.S. 128, 136-137.

8 The District Attorney has failed to show that the incriminating character of this item was  
9 immediately apparent. The government cannot justify seizing items simply because they make  
10 reference to the names of people mentioned in the search warrant or in a list distributed to law  
11 enforcement.

12 It was possible for law enforcement officers to apply for a warrant to seize indicia of  
13 specific association with specific named individuals. They did not do so in this case. Even if the  
14 officers had applied for a warrant to seize indicia of associates, they would have had to tailor it to  
15 a specific name or names. A warrant cannot simply authorize seizure of documents relating to  
16 unspecified associates. In *Griffin v. Superior Court* (1972) 26 Cal.App. 3d 672, 693, 694-695,  
17 the Court of Appeal held that a search warrant authorizing the seizure of "any papers showing  
18 names and addresses of associates of [the suspect]" to be unconstitutionally overbroad. Here, of  
19 course, the papers were seized without any authorization in the warrant.

20 C. Item 340.

21 The government has failed to meet its burden of establishing that the plain view doctrine  
22 applies with regard to Item 340. The District Attorney asserts that the fact that Item 340 was  
23 unlabeled, "gave the seizing officer reason to believe they contained depictions of the types  
24 authorized for seizure." (People's Supplemental Response, page 5.) The seizure of this item was  
25 based on a law enforcement hunch rather than immediately apparent incriminating character. In  
26 fact, the District Attorney is attempting to use the lack of immediately apparent incriminating  
27 character to justify this seizure. The seizure of this item falls into the "mere suspicion" category  
28



1 discussed in *Arizona v. Hicks* (1987) 480 U.S. rather than under the plain view exception. The  
2 seizure of tape recordings on the grounds that they "might reveal something" was held to be  
3 unconstitutional by the California Supreme Court. (*People v. Hill* (1974) 12 Cal. 3d 731, 763,  
4 overruled on other grounds by *People v. DeVaughn* (1977) 18 Cal. 3d 889, 896 fn 6.)

5 D. Item 348

6 Item 348, [REDACTED] is not contraband or evidence of a crime. The  
7 District Attorney's assertion that law enforcement "suspected it might contain [REDACTED] of  
8 individuals or images of the type specified in Attachment B, paragraph 1 . . . , paragraph 2 . . . and  
9 paragraph 4" (People's Supplemental Response, page 5) establishes "mere suspicion" rather than  
10 probable cause. The search warrant did not authorize law enforcement to seize all [REDACTED] and  
11 look at all [REDACTED] or undeveloped film. The District Attorney has not demonstrated  
12 probable cause to believe that this particular [REDACTED] contained any particular [REDACTED]. The  
13 government did not have probable cause to seize the [REDACTED] or to look at the [REDACTED] contained  
14 on [REDACTED].

15 E. ITEMS 350, 351 and 352

16 The government attempts to justify the seizure of Items 350, 351 and 352 by asserting  
17 that the "all relate to the identity of the [REDACTED]." (People's Supplemental Response, page  
18 6.) However, the test for the plain view exception is not met by demonstrating that items "relate  
19 to the identity" of a particular person, whether or not that person is mentioned in the search  
20 warrant affidavit. Seizure of documents not authorized by the warrant, as argued above, cannot  
21 be lawful.

22 The government also attempts to justify this seizure by arguing that "[t]he paperwork  
23 contained information directly linking her to Michael Jackson and contained address and contact  
24 information that would facilitate the investigators' efforts to find and interview her." (People's  
25 Supplemental Response, page 6.) This attempted justification, however, is without any support  
26 in the law.

27 The government knew in advance that certain individuals may have some relationship to  
28

1 the case. A list of "Named Individuals" was distributed to law enforcement so that they knew  
2 what to seize. (People's Supplemental Response, page 6.) As argued above, if the government  
3 believed that there was probable cause to seize items containing indicia of certain individuals  
4 then they were obligated present that information to the magistrate. The failure of the  
5 government to present this information to the Court prior to the issuance of the search warrant  
6 cannot be justified by a claim that the items fall under the plain view exception.

7 **F. ITEM 354**

8 The District Attorney asserts that the seizure of Item 354, [REDACTED]  
9 was justified by the plain view exception because it could have been "useful in apprehending the  
10 defendant or facilitating the assistance of other agencies." (People's Supplemental Response,  
11 page 8.) The District Attorney acknowledges that the item has no "present evidentiary value."  
12 (People's Supplemental Response, page 8.) What the District Attorney implicitly acknowledges  
13 is that the [REDACTED] never had evidentiary value. The attempted justification makes no sense.

14 The plain view exception to the Fourth Amendment requires more than a mere  
15 explanation of why the officers seized a particular item. Law enforcement efficiency is not a  
16 valid justification for an unconstitutional seizure. The fact that the District Attorney is now  
17 willing to voluntarily return this item (People's Supplemental Response, page 8) ten months after  
18 it was seized does not change the fact that the seizure of this item was unconstitutional.

19 **G. ITEM 368**

20 The government failed to meet its burden of establishing a plain view exception for Item  
21 368, three [REDACTED]. One of the [REDACTED] is labeled [REDACTED]. A second [REDACTED] is  
22 labeled [REDACTED]. A third [REDACTED] is unlabeled. The District Attorney claims  
23 that the "search warrant specifically authorized the seizure of [REDACTED]." However, the  
24 District Attorney fails to point to language in the search warrant that would authorize the seizure  
25 of these particular [REDACTED]. This is because no such authorization exists. Two of the [REDACTED] have  
26 labels that do not suggest the kind of materials covered by the search warrant and the third [REDACTED]  
27 contains no label at all.

1 The District Attorney claims that the fact that the tapes were [REDACTED] was  
2 evidence of the significance defendant attached to them." (People's Supplemental Response,  
3 page 9.) Significance to the defendant, however, is not an element of the test for the plain view  
4 exception. There was nothing that was apparently incriminating about these tapes and their  
5 seizure is evidence of an unconstitutionally overbroad search.

6 H. ITEM 510-A

7 The District Attorney had failed to establish that Item 510-A falls under the plain view  
8 exception to the Fourth Amendment. [REDACTED]

9 [REDACTED] Nothing in the search warrant authorized the seizure of adult clothing, [REDACTED]

10 [REDACTED] This  
11 item was located in the arcade which is separate from Mr. Jackson's private living area. This  
12 item must be suppressed.

13 I. ITEMS 514 AND 516

14 The government attempts to justify the seizure of Item 514, an [REDACTED], by claiming  
15 that it is the type of [REDACTED] (People's  
16 Supplemental Response, page 9.) The government further attempts to justify the seizure by  
17 claiming that [REDACTED]  
18 [REDACTED] (People's Supplemental Response, page 10.) This argument  
19 is unpersuasive.

20 The government has failed to meet the burden of establishing that this item's allegedly  
21 incriminating character was immediately apparent. [REDACTED]

22 [REDACTED] The item  
23 was also seized in the arcade which is separate from Mr. Jackson's private living area.

24 The government has failed to demonstrate that Item 516 is covered by the plain view  
25 exception to the Fourth Amendment. The District Attorney asserts that among the "numerous  
26 pieces of paper," "the one of the most interest to the seizing officer was the paper with notations  
27 about [REDACTED] (People's Supplemental  
28

1 Response, page 10.) The District Attorney further asserts that Item 516 is further evidence that  
2 Item 514 contained [REDACTED] (People's Supplemental Response, page 10.)

3 There was nothing to establish probable cause that the [REDACTED] and the notations regarding  
4 [REDACTED] or that they had anything to do with the allegations at issue in the  
5 investigation of Mr. Jackson. [REDACTED]

6 [REDACTED]  
7 [REDACTED]  
8 **J. ITEMS 515 AND 518**

9 The District Attorney asserts that the seizures of Items 515 and 518, [REDACTED]  
10 and [REDACTED], were justified because the items contained references to [REDACTED]  
11 [REDACTED] that they provide evidence that [REDACTED] was in the area of  
12 Neverland during [REDACTED], and that the items might constitute evidence of violations of  
13 [REDACTED] (People's Supplemental Response, page 11.)

14 None of these rationalizations constitute an exception to the Fourth Amendment.

15 As argued elsewhere, there is no exception to the Fourth Amendment for names of people  
16 mentioned in the affidavit or a law enforcement list. If the District Attorney had probable cause  
17 to seized items that demonstrated particular people knew Mr. Jackson or were in Santa Barbara  
18 County at a particular time, they were obligated to present this information to the Court, prior to  
19 the search. [REDACTED]

20 [REDACTED] These items must be suppressed because they do not fall under a recognized  
21 exception to the Constitution.

22 **K. ITEMS 601, 602, 611-642**

23 To the extent that the government justifies the seizure of Items 601 and 602 based on  
24 paragraph 10 of the search warrant authorizing the seizure of "all other paperwork related to the  
25 [Doe] family" (People's Supplemental Response, page 11), the search warrant was overbroad in  
26 that it did not state with particularity what items were to be seized. (See *Griffin v. Superior*  
27 *Court* (1972) 26 Cal.App. 3d 672.)



1 The government asserts that the seizure of Items 614, 615, 616, 617, 618, 619, 620, 622,  
2 623, 636, 638, 639, 640, 641, and 642 is justified by the fact that the names of Doe family  
3 members are listed in these documents. As argued above, the search warrant was  
4 unconstitutionally overbroad in that it did not state with particularity were to be seized and instead  
5 authorized the seizure of any paperwork related to the Doe family.

6 The District Attorney asserts that the seizure of Items 611-613, 621, 624-629, 630-634,  
7 635 and 637 were justified because these logs contained the names of either [REDACTED]

8 [REDACTED] The District Attorney asserts that the plain view requirement was  
9 satisfied by the mere mention of the names of the alleged [REDACTED]. The District Attorney  
10 further claims that, with regard to the items that reference [REDACTED] "it was most reasonable  
11 for the officers to retain these documents as evidence linking [REDACTED] to Michael Jackson, to co-  
12 conspirators and to events described by the Doe family in the supporting affidavit." (People's  
13 Supplemental Response, page 13.)

14 The problem with this argument is that if the government knew it would be seizing  
15 anything and everything containing the names of anyone on the "Named Individuals" list that  
16 was distributed to law enforcement, but not the Court. The plain view exception to the Fourth  
17 Amendment does not provided for the for seizure items that law enforcement intended to seize  
18 all along but never bothered to include in the application for the search warrant. Furthermore, as  
19 argued elsewhere, the test for the plain view exception is not met by mere references to names in  
20 the affidavit or on a "Named Individuals" list and even a general warrant listing unspecified  
21 association evidence would be invalid. (*Griffin v. Superior Court* (1972) 26 Cal.App. 3d 672.)

22 **L. ITEMS 1001, 1002, 1009A AND 1010**

23 Items 1001, 1002, 1009-A and 1010 were seized from Mr. Jackson's office, which, as  
24 argued elsewhere, was beyond the scope of the areas authorized to be searched in the warrant.  
25 These items must be suppressed.

26 **M. ITEMS 1103-1108**

27 The District Attorney has conceded that this item has no evidentiary value. (People's  
28

1 Supplemental Response, page 15.) Alternatively, these items, primarily promotional  
2 photographs, are neither subject to seizure under the warrant nor immediately incriminating in  
3 nature.

4 III.

5 CONCLUSION

6 For the reasons stated above, the above listed items must be suppressed.

7 Dated: September 10, 2004

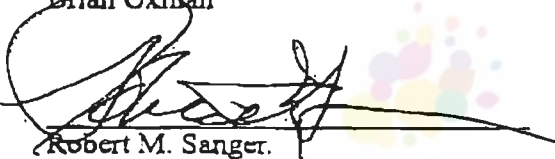
8 Respectfully submitted,

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