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18 **MICHAEL JOSEPH JACKSON**

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

21 THE PEOPLE OF THE STATE OF
22 CALIFORNIA,

23 Plaintiffs,

24 vs.

25 MICHAEL JOSEPH JACKSON,

26 Defendant.

27 Case No. 1133603

28 SUPPLEMENTAL BRIEF IN SUPPORT OF
MR. JACKSON'S MOTION TO SUPPRESS
EVIDENCE OBTAINED BY SEARCH
WARRANT NUMBER 5135

~~UNDER SEAL~~

Honorable Rodney S. Melville
Date: November 5, 2004
Time: 8:30 am
Dept: SM 8

29 **MEMORANDUM OF POINTS AND AUTHORITIES**

30 I

31 **THE DISTRICT ATTORNEY HAS FAILED TO JUSTIFY THE SEIZURE OF ITEMS**
32 **OUTSIDE THE SCOPE OF THE SEARCH WARRANT**

33 SUPPLEMENTAL BRIEF IN SUPPORT OF MR. JACKSON'S MOTION TO SUPPRESS EVIDENCE
34 OBTAINED BY SEARCH WARRANT NUMBER 5135

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

OCT 25 2004

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

* Unsealed pursuant
to 6/16/05 court
order

1 The search warrant authorized the seizure of materials that tended to show the
2 whereabouts of Mr. Jackson during February and March of 2003, computers and computer
3 related materials and items tending to establish ownership of the premises. Despite the narrow
4 language of the warrant, law enforcement seized many items that were outside the scope of the
5 warrant's authorization. (MOTION TO SUPPRESS AND RETURN MATERIALS SEIZED
6 PURSUANT TO SEARCH WARRANT NUMBER 5135, pages 5-6.) To the extent that law
7 enforcement seized items not covered by the search warrant, the seizures were warrantless. A
8 warrantless search is presumptively unreasonable under the Fourth Amendment to the United
9 States Constitution. (*Groh v. Ramirez* (2004) 124 S.Ct. 1284, 1290.)

10 In *Horton v. California* (1990) 496 U.S. 128, 136-137 [110 S.Ct. 2301] the United States
11 Supreme Court held that a plain view exception to the Fourth Amendment's warrant requirement
12 may exist if: (1) the officer does not violate the Fourth Amendment in arriving at the place from
13 which the evidence could be plainly viewed; (2) the incriminating character of the item is
14 immediately apparent; and (3) the officer also has a lawful right of access to the object itself.
15 The burden is on the prosecution to show that the plain view doctrine is applicable to each
16 particular seizure. (*People v. Murray* (1978) 77 Cal.App. 3d 305.) The District Attorney has not
17 met this burden. Instead, the prosecution makes the general argument that, "[t]he documents
18 seized in the course of the warranted search either 'tended to show the activities or whereabouts
19 of Michael Jackson during February and March, 2003' or the folders in which they were
20 maintained suggested the contents would be relevant, or the document appeared to have other
21 relevance to the ongoing investigation when they came into the plain view of the searching
22 office." (Opposition, page 6.) This statement fails to demonstrate that the plain view doctrine is
23 applicable to any specific item. The District Attorney has not met its burden of justifying the
24 seizures of items outside the scope of the warrant.

25 The prosecution invites the Court to make its own determination as to whether the
26 documents are relevant to the prosecution's case. (Opposition, page 6.) A plain view seizure
27 requires probable cause, at the time of the seizure, to believe that the item is either contraband or
28

1 evidence of a crime. (*Arizona v. Hicks* (1987) 480 U.S. 321, 323.) These seizures were made in
2 violation of the Fourth Amendment and cannot be saved by an after-the-fact relevancy
3 determination.

4 In particular, the government seized 3 folders labeled "Mesereau." Law enforcement
5 officers claim that they did not look at the contents of the folders when they seized the materials.
6 It cannot be claimed that the seizure of these materials can be justified by the plain view doctrine
7 because the officers did not look at the materials before they were seized. In *Arizona v. Hicks*
8 (1987) 480 U.S. 321, the United States Supreme Court held that the officer who makes the
9 seizure must have probable cause to believe that the item in question is subject to seizure and not
10 just a "reasonable suspicion." The District Attorney has not articulated how the name of Mr.
11 Jackson's lawyer on a folder establishes probable cause to seize the folder.

12 Furthermore, many of the items seized are facsimiles and emails between Mr. Jackson's
13 personal assistant and Mr. Jackson's attorneys. The District Attorney has not even attempted to
14 specifically justify the seizure of these items. Putting aside the attorney-client privilege issues
15 related to these documents, the Court should recognize that they are beyond the scope of the
16 authorization of the search warrant and should be suppressed.

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CONCLUSION

The Court should suppress all of the materials seized from Ms. Tavasci's office.

Dated: October 25, 2004

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

SANGER & SWYSEN
Robert M. Sanger

OXMAN & JAROSCAK
Brian Oxman

By:

Robert M. Sanger (Signature)

Robert M. Sanger
Attorneys for Defendant
MICHAEL JOSEPH JACKSON

PROOF OF SERVICE

I, the undersigned declare:

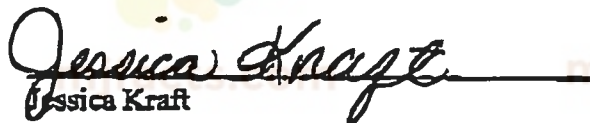
I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On October 25, 2004, I served the foregoing document **SUPPLEMENTAL BRIEF IN SUPPORT OF MR. JACKSON'S MOTION TO SUPPRESS EVIDENCE OBTAINED BY SEARCH WARRANT NUMBER 5135** on the interested parties in this action by depositing a true copy thereof as follows:

SEE ATTACHED SERVICE LIST

- 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 **SEE ATTACHED**
- 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.
- FEDERAL** - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed October 25, 2004, at Santa Barbara, California.


Jessica Kraft



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