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COLLINS, MESEREAU, REDDOCK & YU
Thomas A. Mesereau, Jr., State Bar Number 091182
Susan C. Yu, State Bar Number 195640
1875 Century Park East, 7th Floor
Los Angeles, CA 90067
Tel.: (310) 284-3120, Fax: (310) 284-3133

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

SANGER & SWYSEN
Robert M. Sanger, State Bar Number 058214
233 East Carrillo Street, Suite C
Santa Barbara, CA 93101
Tel.: (805) 962-4887, Fax: (805) 963-7311

OXMAN & JAROSCAK
Brian Oxman, State Bar Number 072172
14126 East Rosecrans
Santa Fe Springs, CA 90670
Tel.: (562) 921-5058, Fax: (562) 921-2298

Attorneys for Defendant
MICHAEL JOSEPH JACKSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

~~PROPOSED~~ REDACTIONS

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiffs,

vs.

MICHAEL JOSEPH JACKSON,

Defendant.

Case No. 1133603

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

MEMORANDUM OF POINTS AND AUTHORITIES

I.

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

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

1 The search warrant authorized the seizure of materials [REDACTED]
2 [REDACTED] 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 [REDACTED]
19 [REDACTED] 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
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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 [REDACTED]. 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 [REDACTED]
11 [REDACTED] on a folder establishes probable cause to seize the folder.

12 Furthermore, many of the items seized are [REDACTED]
13 [REDACTED]. 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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II.

CONCLUSION

The Court should suppress all of the materials seized from [REDACTED] 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