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17 Attorneys for Defendant
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 JOE JACKSON,**

26 Defendant.

27 Case No. 1133603

28 **REPLY TO OPPOSITION RESPONSE TO**
DEFENSE MOTION TO CONTINUE

Honorable Rodney Melville

Date: December 20, 2004

Time: 8:30 am.

Dept: SM 8

FILED UNDER SEAL

MEMORANDUM OF POINTS AND AUTHORITIES

THE DEFENSE ASKS LEAVE TO FILE THIS REPLY LATE FOR GOOD CAUSE

The Prosecution served its Opposition Response at 5:00 p.m. on Wednesday, December 15,

REPLY TO OPPOSITION RESPONSE TO DEFENSE MOTION TO CONTINUE

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

DEC 17 2004

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

* unsealed pursuant
to 6/16/05 court order

1 2004, giving us less than one day to file our Reply. We, therefore, ask leave to file this Reply on
2 Friday, December 17, 2004. We have no objection to proceeding with the hearing as planned as long
3 as the Court will consider this Reply.

4 **II.**

5 **THE PROSECUTION'S OPPOSITION RESPONSE DOES NOT ADDRESS THE**
6 **ISSUES RAISED BY THE MOTION**

7 The Prosecution takes a lot of time and space analyzing what the discovery means to them.
8 They do not address the real issue, which is what effect the production of discovery has on the
9 defense. They are also misleading the Court as to some representations, such as, that they have
10 provided reports or other materials when, in fact, they mean to say they provided them after we filed
11 our motion to continue. They also try to confuse the otherwise clear fact that they just recently
12 announced that they were going to try to bring in evidence from the 1993-94 period.

13 **A. DISCOVERY PROVIDED AND THE PROSECUTION'S DEFECTIVE WITNESS**
14 **LIST**

15 The prosecution does not dispute that their witness list was defective. They glibly say that
16 we should have been able to figure it out and that they have "already provided discovery" regarding
17 people on the list. Both of these contentions are false.

18 First, the witness list contained a number of misspelled names and other which are not correct
19 at all. They list Susan Hansen Hiephuyn and now glibly tell the Court that Susan Hansen and Hiep
20 Huyn are two people who attended the raid on the Ranch on December 3, 2004. This is inexcusable
21 and did, in fact, waste considerable time of several lawyers and paralegals on the defense team over
22 a period of days. If this were the only instance, it would not be worth raising. However, it was part
23 of a generally sloppy list that left the defense guessing as to almost one-third of the list which was
24 diminished to a couple of unascertainable entries after a few days of hard work.

25 Instead of apologizing and taking responsibility, the prosecutors use sarcasm and
26 misdirection to try to convince the Court that the list was not a mess. For instance, they smugly say
27 that "DuRoss O'Brien" is forensic accountant, as if it is our fault that we did not know that. They
28

1 neglect to tell the Court that they misspelled his name (it is J. Duross O'Bryan).

2 Second, the prosecution misleadingly says that they have provided addresses and resumes
3 in discovery, as if to suggest that we simply have not read the discovery and that it is our fault. They
4 neglect to say that the discovery was provided AFTER we filed our motion and AFTER we spent
5 days trying to figure out who these people are. They make no reference to the fact that the discovery
6 came AFTER the date of the discovery exchange date ordered by the Court. For instance, the CV
7 of Mr. O'Bryan (whose name was misspelled on the December 6, 2004 list) was not provided until
8 December 15, 2004. They have not provided a report at all. In fact, they gave us his CV the SAME
9 day they served their Opposition to our Motion to Continue (the day before yesterday!).

10 This is also true of Kenneth Lanning, Karla Fischer and Mindy Mechanic. We had their
11 names on December 6, 2004 and no other information. The limited discovery provided did not arrive
12 until December 15, 2004. As to Gail Pendleton and Nancy Lemon, we still do not have reports and
13 we are told that they do not know which of the experts they will call. It is too late for that sort of
14 game on the part of the prosecution. Obviously, the defense has to know who is going to testify and
15 as to what, so that we can investigate, obtain consultants, and hire experts.

16 **B. 1993-1994 INVESTIGATION**

17 The prosecution also casts the production of the voluminous documents relating to the
18 1993-94 investigation in a false light. They say that the defense requested these materials as if that
19 excuses their failure to provide them at all for months during the pendency of the case. They say
20 they did not intend to call witnesses in these reports but they now disclose them on their witness list.

21 This is incredible. How could they not have thought about this issue until October of 2004?
22 However, even if this is true, the fact remains that Mr. Sneddon has had over 11 years with this
23 material and the defense is now given 3 months before trial, and less, before having to respond to
24 a comprehensive motion under Section 1108 filed by the prosecution.

25 ///

27 ///

1 III.

2 CONCLUSION

3 Therefore, respectfully submits that the trial should be continued.

4 Dated: December 17, 2004

5 Respectfully submitted,

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

8 SANGER & SWYSEN
9 Robert M. Sanger

10 OXMAN & JAROSCAK
11 Brian Oxman

12 By: 

13 Robert M. Sanger
14 Attorneys for Defendant
15 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 December 16, 2004, I served the foregoing documents on the interested parties in this action by depositing a true copy thereof as follows: **REPLY TO OPPOSITION TO RESPONSE TO DEFENSE MOTION TO CONTINUE**

Tom Sneddon
Gerald Franklin
Ron Zonen
Gordon Auchincloss
District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2398

 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.

 X **BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties

 X **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed December 16, 2004, at Santa Barbara, California.


Bobette J. Tryon