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10 Attorneys for Defendant  
11 **MICHAEL JOSEPH JACKSON**

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

14  
15 THE PEOPLE OF THE STATE OF  
16 CALIFORNIA,

17 Plaintiffs,

18 vs.

19 MICHAEL JOE JACKSON,

20 Defendant.

) Case No. 1133603

) SUPPLEMENTAL BRIEF IN SUPPORT OF  
) MOTION TO CONTINUE TRIAL;  
) DECLARATION OF ROBERT M. SANGER

) Honorable Rodney Melville

) Date: December 20, 2004

) Time: 8:30 am.

) Dept: SM 8

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SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO CONTINUE TRIAL

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

DEC 17 2004

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

\* Unsealed pursuant  
to 6/16/05 court order

**FILED UNDER SEAL**

1 DECLARATION OF ROBERT M. SANGER

2 I, Robert M. Sanger, declare as follows:

3 1. The District Attorney did not disclose the specific Section 1108 allegations until  
4 December 10, 2004, when Mr. Jackson was served with the prosecution's 1108 motion. The  
5 prosecution's defective witness list, served on defense counsel on December 6, 2004, included  
6 witnesses who were part of the 1993-1994 investigation, however defense counsel had not been  
7 provided with reports for all of those witnesses as of the day the witness list was served.

8 2. The prosecution maintained the position that they had not determined whether or not they  
9 intended to introduce any evidence from the 1993-1994 investigation of Mr. Jackson until  
10 October of 2004. In October, Mr. Jackson was provided with raw files from the 1993-1994  
11 investigation, without indicating what evidence, if any, the prosecution intended to introduce at  
12 trial. The materials provided amounted to at least 9,000 pages.

13 3. During a telephonic conversation with Tom Sneddon yesterday, he stated that many of the  
14 1993-1994 "reports" are actually drafts of reports.

15 4. Defense counsel has an obligation to defend against each allegation as if it was a separate  
16 case. Mr. Jackson is entitled to put on a defense case for each allegation. Given the late  
17 production of the 1993-1994 materials, the fact that many of the reports from that time period are  
18 in draft form, the late identification of Section 1108 witnesses, and the fact that Section 1108  
19 witness reports have been provided as recently as December 13, 2004, a 3 month continuance is  
20 necessary so that Mr. Jackson can defend against the alleged evidence.

21 I declare under the penalty of perjury under the laws of the State of California that the  
22 foregoing is true and correct this 17<sup>th</sup> day of December, 2004, at Santa Barbara, California.

23  
24   
25 Robert M. Sanger  
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1 **INTRODUCTION**

2 After Mr. Jackson requested that trial be continued for 6 weeks and after the discovery  
3 deadline passed, the District Attorney served and filed its 63 page Evidence Code Section 1108  
4 Motion. In light of the substantial Section 1108 evidence that the District Attorney intends to  
5 introduce at trial and significant problems with the prosecution's discovery, it has become  
6 apparent that a continuance in the area of 3 months is necessary to allow defense counsel to  
7 prepare to defend against the alleged prior offenses listed in the prosecution's motion. The  
8 grounds for such a continuance are that the failure to continue the trial would deprive Mr.  
9 Jackson of his right to a fair trial, due process of law, equal protection, privileges and immunities  
10 and effective assistance of counsel within the meaning of the Fourth, Fifth, Sixth and Fourteenth  
11 Amendments to the United States Constitution.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 I.

14 **THE DISTRICT ATTORNEY RECENTLY INDICATED FOR THE FIRST TIME THAT**  
15 **HE INTENDED TO PUT ON SUBSTANTIAL SECTION 1108 EVIDENCE**

16 The District Attorney did not disclose the specific Section 1108 allegations until  
17 December 10, 2004, when Mr. Jackson was served with the prosecution's 1108 motion. The  
18 prosecution's defective witness list, served on defense counsel on December 6, 2004, included  
19 witnesses who were part of the 1993-1994 investigation, however defense counsel had not been  
20 provided with reports for all of those witnesses as of the day the witness list was served.  
21 (Declaration of Robert M. Sanger.)

22 The prosecution maintained the position that they had not determined whether or not they  
23 intended to introduce any evidence from the 1993-1994 investigation of Mr. Jackson until  
24 October of 2004. In October, Mr. Jackson was provided with raw files from the 1993-1994  
25 investigation, without indicating what evidence the prosecution intended to introduce at trial.  
26 The materials provided amounted to at least 9,000 pages. Many of the those materials consist of  
27 rough notes and many of the "reports" are actually drafts of reports. (Declaration of Robert M.  
28

1 Sanger.)

2 **II.**

3 **A CONTINUANCE OF 3 MONTHS IS NECESSARY SO THAT DEFENSE COUNSEL**  
4 **CAN PREPARE TO DEFEND AGAINST HE SUPPOSED SECTION 1108 EVIDENCE**

5 Defense counsel has an obligation to defend against each allegation as if it was a separate  
6 case. Mr. Jackson is entitled to put on a defense case for each allegation. (*People v. Callahan*  
7 (1999) Cal.App. 4<sup>th</sup> 356.) Given the late production of the 1993-1994 materials, the fact that  
8 many of the reports from that time period are in draft form, the late identification of Section 1108  
9 witnesses, and the fact that Section 1108 witness reports have been provided as recently as  
10 December 13, 2004, a 3 month continuance is necessary so that Mr. Jackson can defend against  
11 the alleged evidence. (Declaration of Robert M. Sanger.)

12 **III.**

13 **THE LATE AND INCOMPLETE PRODUCTION OF SECTION 1108 MATERIALS**  
14 **MUST BE TAKEN IN THE CONTEXT OF THE ISSUES RAISED IN THE MOTION TO**  
15 **CONTINUE TRIAL**

16 The Court should consider the belated Section 1108 disclosures in light of: (1) the  
17 tremendous amount of discovery that the prosecution has provided to defense counsel in the last  
18 two months; (2) the fact that much of that discovery could have provided months, if not years  
19 earlier; (3) the prosecution's newly announced battered women's syndrome defense of Jane Doe;  
20 (4) the District Attorney's refusal to heed the Court's warnings and stop requesting new search  
21 warrants; (5) the fact that defense counsel must not go through more than 25 boxes of materials  
22 related to the *Abdool v. Jackson* civil case; and (6) the fact that there is significant prosecution  
23 discovery still outstanding, and in particular, materials related to the Section 1108 evidence and  
24 the prosecution's expert witnesses.



1 IV.

2 CONCLUSION

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

4 Dated: December 17, 2004

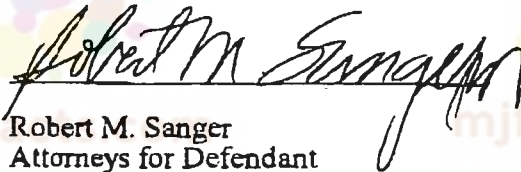
5 Respectfully submitted,

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

9 SANGER & SWYSEN  
10 Robert M. Sanger

11 OXMAN & JAROSCAK  
12 Brian Oxman

13 By:

14 

15 Robert M. Sanger  
16 Attorneys for Defendant  
17 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 17, 2004, I served the foregoing documents on the interested parties in this action by depositing a true copy thereof as follows: **SUPPLEMENTAL BRIEF IN SUPPORT PF MOTION TO CONTINUE TRIAL**

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 17, 2004, at Santa Barbara, California.

  
Bobette J. Tryon