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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 )  
29 )  
30 )

31 ) **REPLY TO OPPOSITION TO MOTION TO**  
32 ) **DISMISS FOR VINDICTIVE**  
33 ) **PROSECUTION AND OUTRAGEOUS**  
34 ) **GOVERNMENT CONDUCT**

35 ) Honorable Rodney Melville  
36 )  
37 )

38 ) Date: December 20, 2004  
39 ) Time: 8:30 am.  
40 ) Dept: SM 8  
41 )  
42 )

43 **MEMORANDUM OF POINTS AND AUTHORITIES**

44 I.

45 **THIS CASE AMOUNTS TO A VINDICTIVE PROSECUTION**

46 The District Attorney asserts that Mr. Jackson is asking the Court to make an inflexible

47 **REPLY TO OPPOSITION TO MOTION TO DISMISS FOR VINDICTIVE PROSECUTION AND**  
48 **OUTRAGEOUS GOVERNMENT CONDUCT**

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

DEC 16 2004

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

1 presumption that a vindictive prosecution has occurred. (Opposition, page 3.) This is not the  
2 case. Mr. Jackson is not talking about a presumption, let alone an "inflexible presumption."  
3 Given the facts of this case, articulated in Mr. Jackson's motions, Mr. Jackson submits to the  
4 Court that the uncontested facts demonstrate that this is a vindictive prosecution. Interestingly,  
5 the facts that we have provided in this motion and the concurrently filed motion have not been  
6 controverted by the District Attorney's papers. Whether or not there is a presumption created,  
7 the District Attorney has the burden of confronting the facts set forth in Mr. Jackson's motions.

8 The District Attorney does not deny that an "immense amount of government resources . .  
9 . have been devoted to" this case and that "there has been more investigation on this case than in  
10 capital murder cases or complex white collar prosecutions." (Opposition, page 4.) Instead, the  
11 District Attorney asserts that Mr. Jackson's argument that he is being treated differently is  
12 "embarrassingly post hoc" and that he is simply being prosecuted "because he is believed to have  
13 committed a crime." The unusual procedure followed by the prosecution, amount of government  
14 resources devoted to this case, "regrettable" behavior of the District Attorney, and amount of  
15 investigation belie the District Attorney's argument. Mr. Jackson is clearly being treated  
16 differently than any other person accused of child molestation in the history of Santa Barbara  
17 County. The District Attorney does not attempt to justify this different treatment because it  
18 cannot be justified.

19 II.

20 **AS SET FORTH IN MR. JACKSON'S MOTIONS, THE PROSECUTION HAS**  
21 **ENGAGED IN OUTRAGEOUS CONDUCT**

22 The District Attorney's response to the outrageous government conduct portion of Mr.  
23 Jackson's motion restates Mr. Jackson's position in mocking tones, but does not deny most of the  
24 uncontested factual statements in Mr. Jackson's moving papers.

25 The prosecution claims that, "[o]nly three warrants issued subsequent to the defendant's  
26 indictment implicated his privacy interests and only one of them - notably, not the second  
27 warrant recently approved for the search of Neverland Ranch - has been contested." (Opposition,  
28

1 page 5.) This statement does not make any sense.

2 Three of the invasions of Mr. Jackson's privacy on his property occurred in the 1993-  
3 1994 period of time. At least one of those searches was contested in a hearing on a motion to  
4 suppress and return evidence, before the Honorable Judge Slater of the Santa Barbara Superior  
5 Court.

6 In this case, there were two search warrants issued for the search of Mr. Jackson's  
7 residence executed on November 18, 2003. Both of those warrants were contested before this  
8 Court. There was a warrant for Mr. Jackson's lawyer's investigator that was contested in two  
9 separate motions before this Court. There was a search warrant for Mr. Jackson's assistant that  
10 was contested in this case. There were then two search warrants executed on December 3, 2004.  
11 One of these warrants was for Mr. Jackson's residence and the other was for his person. Both of  
12 these search warrants are the subject of a motion concurrently filed in this case.

13 Other search warrants pertained to Mr. Jackson's bank records, phone records, or other  
14 personal records of Mr. Jackson, himself. Therefore, the assault by search warrant on Mr.  
15 Jackson has been substantial and comprehensive. However, the number and nature of the search  
16 warrants is only one small part of the overall pattern by the District Attorney.

17 Nowhere does the prosecution deny that they have executed more search warrants in this  
18 case than in a capital homicide case or in a complex white collar fraud case. The prosecution  
19 does not deny that it engaged in the conduct detailed in Mr. Jackson's papers. Nowhere has Mr.  
20 Jackson ever said, in the mocking words of Mr. Franklin, "I am a celebrity; therefore I am being  
21 prosecuted." (Opposition, page 5.) However, he has said that he is entitled to no more, but no  
22 less, protection than any other person accused of a crime. The District Attorney's response  
23 essentially asserts that the prosecution is allowed to pile on, and viewed cynically, that he is not  
24 allowed to object because he is a celebrity.

25 The District Attorney's response does not address the conduct complained about in the  
26 concurrently filed motion. There the objection was based on: (1) the District Attorney's  
27 outrageous conduct in seeking more than 100 search warrants; (2) the District Attorney's  
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REPLY TO OPPOSITION TO MOTION TO DISMISS FOR VINDICTIVE PROSECUTION AND  
OUTRAGEOUS GOVERNMENT CONDUCT

1 outrageous conduct in requesting a search warrant for Mr. Jackson's home on the eve of the  
2 discovery cutoff and so close to trial; (3) the nature of the material to be seized does not raise an  
3 issue of exigency; (4) the fact that Mr. Jackson has been treated differently than any other person  
4 within the jurisdiction of this county; and (5) the District Attorney's outrageous conduct in  
5 intruding on Mr. Jackson and his family's right to privacy in his home by conducting an  
6 unnecessary raid.

7 Furthermore, the searches were simply an unnecessary opportunity for the government to  
8 flex its muscles and to shock and intimidate Mr. Jackson, and to distract his counsel. That is the  
9 essence of Mr. Jackson's motions. None of that is controverted by the District Attorney's  
10 response. None of that is responded to or justified by the District Attorney except to say that  
11 investigations and prosecutions tend to rely on the judgment of the prosecutors and that the  
12 defendant's opinion is rarely sought. That, in fact, is the essence of Mr. Jackson's complaint.

13 The Court warned the District Attorney that its judgment was flawed in continuing to  
14 seek search warrants so close to trial. Mr. Sneddon summarily dismissed the Court's opinion.  
15 The prosecution obtained the search warrants because they could, not because it was necessary or  
16 proper at this stage in the proceedings. And yes, the prosecution should have sought Mr.  
17 Jackson, or his counsel's, opinion - that is what a noticed motion is all about.

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REPLY TO OPPOSITION TO MOTION TO DISMISS FOR VINDICTIVE PROSECUTION AND  
OUTRAGEOUS GOVERNMENT CONDUCT

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III.

CONCLUSION

Therefore, the Defendant respectfully submits that the case be dismissed and for such other relief as the Court may deem just and proper.

Dated: December 16, 2004

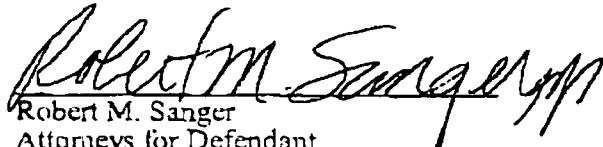
Respectfully submitted,

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

SANGER & SWYSEN  
Robert M. Sanger

OXMAN & JAROSCAK  
Brian Oxman

By:

  
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 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 MOTION TO DISMISS FOR VINDICTIVE PROSECUTION AND OUTRAGEOUS GOVERNMENT CONDUCT**

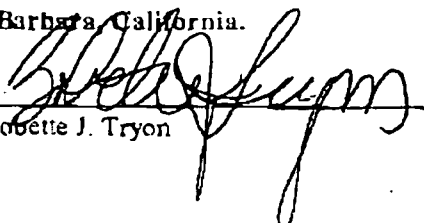
Tom Sneddon  
Gerald Franklin  
Ron Zonen  
Gordon Auchincloss  
District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
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       **BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing 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