

1 Thomas A. Mesereau, Jr. (SBN 91182)  
Susan Yu (SBN 195640)  
2 COLLINS, MESEREAU, REDDOCK & YU  
1875 Century Park East, 7<sup>th</sup> Floor  
3 Los Angeles, CA 90067  
Telephone: 310-284-3120  
4 Facsimile: 310-284-3133

5 Steve Cochran (SBN 105541)  
Stacey McKee Knight (SBN 181027)  
6 KATTEN MUCHIN ZAVIS ROSENMAN  
2029 Century Park East, Suite 2600  
7 Los Angeles, California 90067  
Telephone: (310) 788-4400  
8 Facsimile: (310) 712-8455

9 Robert M. Sanger (SBN 58214)  
SANGER & SWYSEN  
10 233 E. Carrillo Street, Suite C  
Santa Barbara, California 93101  
11 Telephone: 805-962-4887  
Facsimile: 805-963-7311  
12

13 Brian Oxman (SBN 072172)  
OXMAN & JAROSCAK  
14 14126 East Rosecrans Boulevard  
Santa Fe Springs, California 90670  
Telephone: 562-921-5058  
15 Facsimile: 562-921-2298

16 Attorneys for Defendant  
MICHAEL J. JACKSON  
17

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 FOR THE COUNTY OF SANTA BARBARA  
20 SANTA MARIA DIVISION

21 THE PEOPLE OF THE STATE OF  
CALIFORNIA,

22 Plaintiff,

23 vs.

24 MICHAEL J. JACKSON

25 Defendant.  
26  
27  
28

CASE NO. 1133603

REPLY IN SUPPORT OF  
MOTION TO COMPEL  
DISCOVERY AND RESPONSE  
TO STATUS REPORT RE:  
PRODUCTION OF FORENSIC  
DATA

Hearing Date: October 14, 2004  
Time: 8:30 a.m.

~~FILED UNDER SEAL~~

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

OCT 12 2004

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

1 Defendant MICHAEL J. JACKSON, through his counsel, hereby submits his  
2 reply memorandum in support of his motion to compel discovery. The defense also  
3 responds to the prosecution's status report concerning the production of forensic  
4 information.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 I. **THE DEFENSE IS ENTITLED TO DISCOVERY OF**  
7 **COMMUNICATION AMONG LAW ENFORCEMENT AND THIRD**  
8 **PARTIES CONCERNING MR. JACKSON.**

9 On this issue as well, the practical effect of the prosecution's position is  
10 further delay. This motion was not filed to initiate a meet and confer or to stage  
11 discovery matters for the status conference in November.

12 A dispute exists concerning the prosecution's obligation to produce notes or  
13 written communication of any kind among police, prosecutors and identified third  
14 parties concerning Mr. Jackson. Those materials were requested in July of this year.  
15 The prosecution's response of August does not deny that those materials exist. The  
16 government's position is that such information is not discoverable.

17 Communications among law enforcement and third parties concerning Mr.  
18 Jackson is within the ambit of discovery. Those materials could provide further  
19 evidence of the extraordinary efforts taken to pursue criminal allegations against Mr.  
20 Jackson. That material may also contain exculpatory information to which the  
21 defense is entitled under Brady v. Maryland.

22 The prosecution has repeatedly and unduly delayed discovery. Among the  
23 many examples are a series of reports produced by the prosecution last Friday,  
24 October 8, 2004. These reports were written in January, February and March 2004.  
25 These reports relate to witnesses who the prosecution believes have critical  
26 information about the precise issues in this case. Yet, they suppressed these reports  
27 and the underlying documents during the entire length of the prosecution until now.

28

1 The prosecution's approach to discovery puts the trial date in jeopardy. It is  
2 plainly unfair for the prosecution to have almost a year to conduct other investigation  
3 and provide discovery to the defense, over time, up until weeks before the trial. The  
4 defense must be provided with ample time to conduct independent investigation, find  
5 out what really happened and cogently present the information at trial. The  
6 prosecution should be compelled to produce additional discovery forthwith.

7 **II. THE PROSECUTION SHOULD BE ORDERED TO PRODUCE THE**  
8 **RESULTS OF FORENSIC TESTS IMMEDIATELY.**

9 In mid-September 2004, as a result of a defense motion made weeks earlier,  
10 this Court ordered the prosecution to provide all results of forensic examinations by  
11 October 8, 2004. That was a date proposed by the prosecution, which also promised  
12 a status report if forensic data was not available for delivery.

13 Characteristically, everything was not produced by the prosecution on the so-  
14 called due date. Some forensic data was produced but the prosecution indicates that  
15 discovery of forensic information will not be complete for approximately six (6)  
16 weeks.

17 An additional six (6) week delay of receiving the results of forensic  
18 examinations was not contemplated by this Court and is unacceptable to the defense.  
19 An accused is entitled to at least as much protection as a civil litigant. A strict  
20 deadline for production of forensic data is necessary to insure adequate trial  
21 preparation and avoid surprise at trial.

22 Furthermore, the major forensic reports from the FBI relating to the contents  
23 of computer harddrives were delivered to the prosecution on April 5, 2004. This  
24 Court and Mr. Jackson have been told by the prosecution that these reports would not  
25 be completed until now because the work was not done. The fact is that the reports  
26 show that the FBI work was done at the Sheriff's department, in the presence of  
27 Sheriff's detectives in February and March 2004.

28

1 It is incredible to learn that the tests were not only completed in February and  
2 March, but that the reports were in the hands of the Sheriff's detectives on April 5,  
3 2004. This Court should do more than nothing about the delay and the  
4 misrepresentations which accompanied this delay.

5 The prosecution should be precluded from using the results of forensic testing  
6 produced in a tardy fashion, as well as any not produced by now. Alternatively,  
7 another deadline should be set by which forensic discovery must be due.

8 Dated: October 12, 2004

Respectfully submitted,

9 Thomas A. Mesereau, Jr.  
10 Susan Yu  
11 COLLINS, MESEREAU, REDDOCK & YU

12 Steve Cochran  
13 Stacey McKee Knight  
14 KATTEN MUCHIN ZAVIS ROSENMAN

15 Robert M. Sanger  
16 SANGER & SWYSEN

17 Brian Oxman  
18 OXMAN & JAROSCAK

19 By: Steve Cochran  
20 Steve Cochran  
21 Attorneys for Defendant  
22 MICHAEL J. JACKSON  
23  
24  
25  
26  
27  
28

