

ORIGINAL

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Superior Court of California  
County of Los Angeles

MAY 21 2014

Sheri R. Carter, Executive Officer/Clerk  
By Andre Waits Deputy

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7 Attorneys for Claimant/Creditor WADE ROBSON

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES, CENTRAL DISTRICT  
11

12 ESTATE OF MICHAEL JOSEPH JACKSON,  
13 Deceased.

Case No.: BP 117321  
[Related to civil case BC508502, Wade  
Robson v. Doe 1, et al.]  
[Both cases assigned to the Honorable Judge  
Mitchell L. Beckloff, Dept. 51]

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15  
16 CLAIMANT WADE ROBSON'S  
17 OPPOSITION TO EXECUTORS'  
18 MOTION TO QUASH SUBPOENAS;  
DECLARATION OF MARYANN R.  
MARZANO IN SUPPORT THEREOF

19 Hearing Date: TBD  
20 Time: 8:30 a.m.  
Place: Department 51

21 Evidentiary Hearing: To be rescheduled  
22 Petition Filed: May 1, 2013

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	CLAIMANT'S ALLEGATIONS AGAINST DECEDENT ARE DIRECTLY RELEVANT TO HIS EQUITABLE ESTOPPEL DEFENSE AND TO PROVING THE FOUR ELEMENTS OF ESTOPPEL .....	2
III.	EQUITABLE ESTOPPEL AS A DEFENSE TO CLAIMS PRESENTATION LIMITATIONS IS NOT RESTRICTED TO CLAIMS AGAINST THE REPRESENTATIVES OF AN ESTATE .....	8
IV.	CLAIMANT HAS COMPLIED WITH THE NOTICE TO CONSUMER REQUIREMENTS AND DOES NOT KNOW THE IDENTITIES OF ANY ADDITIONAL POTENTIALLY INTERESTED THIRD PARTIES .....	10
V.	THE EXECUTORS' PRIVILEGE CLAIMS ARE TOO VAGUE TO CONSTITUTE GROUNDS FOR QUASHING SUBPOENAS .....	11
VI.	THE EVIDENCE SOUGHT BY THE SUBPOENAS IS ADMISSIBLE UNDER EVIDENCE CODE §§ 1101(B) AND 1105 TO SHOW PLAN, INTENT, HABIT AND CUSTOM .....	12
VIII.	CONCLUSION .....	13

## TABLE OF AUTHORITIES

### CASES

<i>Ascherman v. Superior Court</i> (1967) 254 Cal. App. 2d 506.....	12
<i>Battuello v. Battuello</i> , (1999) 64 Cal. App. 4th 842 .....	6
<i>Christopher P. v. Mojave Unified School Dist.</i> (1993) 19 Cal. App. 4th 165 .....	4
<i>Curtin v. Dep't of Motor Vehicles</i> (1981) 122 Cal. App. 3d 381 .....	8
<i>Doe v. Bakersfield City School Dist.</i> , (2006) 136 Cal. App. 4th 556.....	5, 6
<i>Estate of Bonzi</i> (2013) 216 Cal.App.4 <sup>th</sup> 1085 .....	7
<i>Estate of Housley</i> (1997) 56 Cal. App. 4 <sup>th</sup> 342 .....	9
<i>Executors of Prindle</i> (2009) 173 Cal. App. 4th 130 .....	7
<i>Fredrichsen v. City of Lakewood</i> (1971) 6 Cal.3d 353 .....	4
<i>Horowitz v. Sacks</i> (1928) 89 Cal. App. 336.....	11
<i>John R. v. Oakland School Dist.</i> (1989) 48 Cal. 3d 438 .....	4
<i>Mahoney v. Superior Court</i> (1983) 142 Cal. App. 3d 937.....	11
<i>Oriega v. Pajaro Valley Unified School Dist.</i> (1998) 64 Cal. App. 4th 1023.....	5
<i>Sellery v. Cressey</i> (1996) 48 Cal. App. 4th 538.....	9
<i>Times-Mirror Co. v. Super. Crt. of Los Angeles County</i> (1935) 3 Cal. 2d 309, .....	8

### STATUTES

Civil Code Section 3517 .....	3
Code of Civil Procedure § 340.1(j), .....	3
Code of Civil Procedure § 366.....	7
Code of Civil Procedure § 366.2(a).....	7
Code of Civil Procedure § 377.40.....	8
Code of Civil Procedure § 1985.3.....	10
Code of Civil Procedure § 2017.010.....	1, 2
Evidence Code § 992 .....	11
Evidence Code § 993(c) .....	11
Evidence Code § 1012 .....	11
Evidence Code § 1013(c) .....	11
Evidence Code § 1101(a).....	2, 12
Evidence Code § 1101(b).....	2, 12
Evidence Code § 1105 .....	2, 13
Probate Code § 9103 .....	1, 2

1 **I. INTRODUCTION**

2 In their Motion to Quash ("Motion"), the Executors of the Estate of Michael Jackson  
3 ("Executors") contend that Claimant Wade Robson's ("Claimant") subpoenas to the Santa  
4 Barbara County District Attorney and Santa Barbara Sheriff's Office ("Subpoenas") "do not have  
5 any conceivable relevance to the disputed issues before this Court on Claimant's petition to file a  
6 late claim under California Probate Code ("Prob. Code") § 9103." (Motion, p. 1.) Nothing could  
7 be further from the truth. As Claimant has set forth in his Petition to File a Late Claim  
8 ("Petition") and Motions to Compel Discovery, the allegations Claimant has raised against the  
9 Decedent Michael Jackson ("Decedent") are inextricably linked to Claimant's equitable estoppel  
10 defense against the claims presentation limitations of Prob. Code § 9103, and the substance of  
11 these allegations must be considered by the Court in its decision whether to grant Claimant's  
12 Petition. The Subpoenas seek police reports, witness statements, and other information which  
13 directly relates to Claimant's allegations against Decedent, and which are necessary for Claimant  
14 to prove the four elements of equitable estoppel. Thus, the Subpoenas are entirely "relevant to the  
15 subject matter involved in the pending action" and "reasonably calculated to lead to the discovery  
16 of admissible evidence." (California Code of Civil Procedure ("CCP") § 2017.010.) As such,  
17 Claimant is fully entitled as a matter of law to request these materials in order to support his  
18 equitable estoppel claim.

19 The Motion also makes the spurious claim that the equitable estoppel defense in these  
20 proceedings can only be raised as to the actions of the Executors themselves, and not to those of  
21 Decedent. This contention has no basis in law or fact, and goes against the very nature of  
22 equitable claims in general. It further ignores the fact that Executors "stand in the shoes" of  
23 Decedent, and are consequently responsible for his wrongful acts.

24 The Executors further contend that the subpoenas are defective because the requisite  
25 Consumer Notices were only served upon interviewees, and not upon *all* parties whose personal  
26 information *may* be contained in the witness statements. However, given that Claimant has never  
27 had access to these witness statements, it has no way of knowing the identities of these potentially  
28 interested parties, and the Motion only vaguely mentions a few possible candidates (and not by

1 name). Furthermore, only one of the 37 interviewees objected to the production of these records,  
2 and he did not provide any grounds for his objection. Thus, these potential privacy concerns of  
3 unknown parties do not constitute a valid reason for quashing the subpoenas in their entirety, and  
4 denying Claimant the discovery to which he is entitled.

5 In a similar vein, the Executors assert that the subpoenas seeking statements from medical  
6 professionals *may* include information which is privileged to the Executors (as the holder of the  
7 Decedent's privilege) and third parties. However, the Executors fail to provide any detail as to  
8 what this potentially privileged information may be, or as to the identity of these potentially  
9 interested third parties. As such, these potential concerns also do not constitute valid grounds for  
10 quashing the subpoenas in their entirety, and can be handled through a privilege review and  
11 presentation of a privilege log by the Executors.

12 Finally, the Executors erroneously rely on California Evidence Code ("Evid. Code") §  
13 1101(a) to suggest that any information produced through the subpoenas would be inadmissible  
14 as evidence of "prior bad acts," when in fact it would be admissible under both Evid. Code §§  
15 1101(b) and 1105.

16 In light of the foregoing reasons, the Motion should be denied in its entirety.

17 **II. CLAIMANT'S ALLEGATIONS AGAINST DECEDENT ARE DIRECTLY**  
18 **RELEVANT TO HIS EQUITABLE ESTOPPEL DEFENSE AND TO PROVING**  
19 **THE FOUR ELEMENTS OF ESTOPPEL**

20 Claimant's allegations of childhood sexual abuse against Decedent lie at the very heart of  
21 his equitable estoppel defense to the claims presentation limitations of Prob. Code § 9103, and as  
22 such, pursuant to CCP § 2017.010, he is fully entitled to conduct discovery regarding these  
23 claims.

24 In the Motion, the Executors state that "the petition and evidentiary hearing thereon are  
25 solely about the *timeliness* of Robson's alleged creditor's claim and *not* about the merits of the  
26 claim. Thus, Robson is not entitled to take discovery in these proceedings in an attempt to prove  
27 the merits of his claim." (Motion, 5:12-15.) This contention is entirely incorrect, and the  
28



1 Executors both misconceive and misconstrue the proof needed to establish the doctrine of  
2 equitable estoppel in order to raise the statute of limitations and the claim period in this case.  
3 Although this proof overlaps with the merits of Claimant's underlying case, it is nevertheless  
4 necessary for Claimant to establish that he was sexually molested as a child, and that this abuse  
5 rendered him psychologically incapable of filing within the limitation period. The Honorable  
6 Mitchell L. Beckloff has reviewed the unredacted Complaint *in camera*, together with the  
7 Certificates of Merit from counsel and a renowned psychiatrist in the field of childhood sexual  
8 abuse, and found "reasonable and meritorious cause for the filing of the action." (See, Order  
9 Pursuant to CCP § 340.1(j), issued on November 20, 2013.) As alleged in the redacted Second  
10 Amended Complaint ("SAC"), and backed by the psychiatrist's Certificate of Merit:

11 California Civil Code Section 3517 – entitled "Clean hands" – provides that "[N]o  
12 one can take advantage of his own wrong". There can be no less clean hands than  
13 the hands of one who sexually abuses a child for seven years as alleged above.  
14 DECEDENT's Executors should not be permitted to take advantage of the wrong  
15 caused by DECEDENT's sexual abuse, namely, Plaintiff's psychological inability  
16 to bring his claim until now. Plaintiff's heart, body and mind were so very severely  
17 manipulated as a child by DECEDENT that the psychological injury and damage it  
18 has caused Plaintiff to suffer will continue for a lifetime. Often victims of such  
19 childhood sexual abuse take their secret to the grave. Plaintiff has lived most of his  
20 life in unspeakable shame, guilt and denial as a result of DECEDENT's  
21 wrongdoing. The long-term psychological consequences of DECEDENT's threats,  
22 sexual trauma and mental manipulation imprisoned Plaintiff's mind and prevented  
23 him from filing a timely claim just as effectively as if he had been physically  
24 imprisoned by DECEDENT. Equity goes where justice requires, and justice here  
25 requires that Defendants be equitably estopped from raising statutory or other  
26 periods of limitation in defense of Plaintiff's claim for childhood sexual abuse.

27 (SAC at ¶ 33.)

28 Thus, the threshold proof required to establish the doctrine of equitable estoppel to assert  
the claims limitation periods is that childhood sexual abuse, sexual trauma and threats occurred.  
That is the factual predicate to next proving the psychological inability to bring the claim until  
now (as the psychiatrist has concluded beyond a reasonable degree of medical certainty). Proof  
of childhood sexual abuse, sexual trauma and threats will be presented by direct evidence,  
corroborating evidence and evidence of the Decedent's intent, plan, habit and custom, which, in  
the case of a pedophile, have a unique and repeated signature. Claimant's Subpoenas are

1 reasonably calculated to lead to the discovery of admissible evidence necessary to prove equitable  
2 estoppel.

3 As mentioned hereinabove, the Executors assert that whether the Decedent sexually  
4 abused, traumatized, threatened and psychosexually manipulated Claimant as a child is irrelevant  
5 to establishing equitable estoppel as a defense to claims presentation limitations. However, a  
6 number of courts have ruled otherwise in similar sexual abuse cases. In *John R. v. Oakland*  
7 *School Dist.* (1989) 48 Cal. 3d 438, 447, a minor sued his school district as a result of being  
8 sexually molested by his teacher. (*John R.*, 48 Cal. 3d at 447.) The Supreme Court found that  
9 equitable estoppel "may certainly be invoked when there are acts of violence or intimidation that  
10 are intended to prevent the filing of a claim." (*Id.* at 445) (internal citations omitted) (emphasis in  
11 original). As a result of the threats, and plaintiff's embarrassment and shame at what had  
12 happened, he did not disclose the incidents to anyone until after the statute of limitations had run.  
13 (*Id.* at 444.) The court held that it would be inconsistent with the "equitable underpinnings of the  
14 estoppel doctrine to permit the district to benefit to plaintiffs' detriment by such threats" and  
15 escape liability. (*Id.* at 445-446.)

16 Furthermore, in *Christopher P. v. Mojave Unified School Dist.* (1993) 19 Cal. App. 4th  
17 165, the Court of Appeal viewed the *John R.* equitable estoppel holding through the prism of a  
18 previous Supreme Court decision which found estoppel available in all circumstances where the  
19 defendant "has acted in an unconscionable manner or attempted to take unfair advantage of the  
20 claimant. The issue is determined from the totality of the circumstances." (*Id.* at 172) (relying on  
21 *Fredrichsen v. City of Lakewood* (1971) 6 Cal.3d 353, 359 (emphasis added)). It was in this  
22 context that the court found a "simple directive 'not to tell'" may support estoppel in light of the  
23 circumstances in which the statement was uttered. (*Id.* at 172.) In *Christopher P.*, the fact that  
24 the directive not to tell was made by an authority figure -- a teacher -- to a young student in  
25 conjunction with sexual molestation was enough to invoke estoppel, particularly because "the  
26 very nature of the underlying tort deters the molested child from reporting the abuse. (citations  
27 omitted)" (*Id.* at 173.)  
28

1 In support of its estoppel analysis, the Court also acknowledged that "[a] common trait of  
2 'child sexual abuse accommodation syndrome' is the child's failure to report, or delay in  
3 reporting abuse . . . [and] a molestation coupled with a directive not to report the incident may  
4 well deter a child from promptly reporting the abuse and protecting his or her right to redress."  
5 (*Id.* at 172; *see also Doe v. Bakersfield City School Dist.*, (2006) 136 Cal. App. 4th 556, 571  
6 (plaintiff presented evidence that, even into adulthood, he continued to be deterred by the  
7 abuser's threats and that the "question of whether the plaintiff acted within a reasonable time is  
8 measured from the time the deterrent effect of unconscionable conduct . . . ceased"); *Ortega v.*  
9 *Pajaro Valley Unified School Dist.* (1998) 64 Cal. App. 4th 1023, 1047 (approving application of  
10 equitable estoppel based upon the totality of the circumstances to allow claim for sexual  
11 molestation that occurred seven years before the action was brought, even though claimant first  
12 made and later recanted allegations of molestation right after the acts in question occurred).)

13 While heartbreaking and distressing to have to admit to the world, Claimant's relationship  
14 and interaction with Decedent is strikingly similar to those relationships described in other  
15 childhood sexual abuse cases, including the threats Decedent made to Claimant to never tell  
16 anyone about the abuse or they would both "go to jail." (Petition, 11:10-13 (citing Robson Decl.  
17 ¶ 17).) Decedent met and befriended Claimant when he was just five years old and the sexual  
18 abuse began at age seven and continued over a seven year span until Claimant was fourteen.  
19 (Petition, 11:13-15 (citing *Id.*, ¶¶ 14-15).) Decedent was not only Claimant's hero, god and idol,  
20 but was an international superstar and the stimulus for Claimant's dramatic success as a dancer  
21 and choreographer from a startlingly young age. (Petition, 11:16-18 (citing *Id.*, ¶¶ 13, 18).)  
22 Decedent said he "loved" Claimant and Claimant believed it to be true. (Petition, 11:18 (citing  
23 *Id.*, ¶ 7).) Thus, the burden of shame and guilt, coupled with Decedent's portentous threat that  
24 divulging the nature of Claimant and Decedent's relationship to anyone would mean that both  
25 would go to jail for the rest of their lives, prevented Claimant from becoming aware of his  
26 psychological injury and damage until his unexpected breakdown necessitated that he seek  
27 professional help. (Petition, 11:19-23 (citing *Id.*, ¶ 25).)  
28



1 Decedent manipulated Claimant into believing from a young age that no one would  
2 understand their relationship. Just as in *Doe v. Bakersfield*, it was only once Claimant was able to  
3 realize with the help of a therapist that his symptoms and his breakdown arose from childhood  
4 sexual abuse and the relationship surrounding it, that he was finally able to begin to recognize that  
5 he was a victim of childhood sexual abuse. (Petition, 11:23-27 (citing *Id.*; see also  
6 [REDACTED] Cert., ¶ 11(s)).) The still-recent recognition that he was a victim of childhood  
7 sexual abuse by Decedent also explains Claimant's "psychological inability to admit childhood  
8 sexual abuse in prior legal proceedings or to bring this lawsuit until now". (Petition, 11:27-12:2  
9 (citing *Id.*, ¶ 11(s)).) The threats and mental manipulation exerted by Decedent had long-term  
10 consequences and led Claimant to believe until recently that Decedent had his best interests at  
11 heart. (Petition, 12:2-4 (citing *Id.*)). In short, based upon the totality of the circumstances,  
12 Claimant's "heart, body and mind were so severely manipulated as a child" by the unfair  
13 advantage that his "God" had over him "that the consequences of this manipulation continued to  
14 endure well into adulthood." (Petition, 12:4-7 (citing *Id.*, ¶ 14)).

15 Accordingly, based upon the extent of the abuse, fear, uncertainty and threat of loss of  
16 everything important in his life that Decedent instilled in Claimant from a very young age,  
17 Decedent's Executors would be equitably estopped from relying on claims presentation  
18 limitations to bar Claimant's otherwise timely and meritorious action for childhood sexual abuse  
19 if Claimant can prove up those facts. The subject discovery is both necessary and appropriate to  
20 do so.

21 The Executors also argue that the doctrine of equitable estoppel to raise limitations  
22 periods does not apply to the time period for filing the notice of claim because the tolling  
23 permitted by Prob. Code § 9103 is the exclusive remedy. This argument fundamentally  
24 misconceives the nature of the doctrine. Equitable estoppel is a "distinct" doctrine from tolling.  
25 (*Battuello v. Battuello*, (1999) 64 Cal. App. 4th 842, 847.) Unlike tolling, which affects the  
26 commencement of the limitations period and is governed by the language of the statute itself,  
27 equitable estoppel "comes into play only after the limitations period has run and addresses itself  
28 to the circumstances in which a party will be estopped from asserting the statute of limitations as

1 a defense." (*Id.*) Thus, "[i]ts application is wholly independent of the limitations period itself"  
2 and any tolling language contained in the statute. (*Id.*) For those reasons, the court in *Battuello*  
3 held that equitable estoppel can apply to claims that would otherwise have been time-barred by  
4 operation of the one-year limitations period from the date of the decedent's death as set forth in  
5 CCP § 366.2(a). (*Id.* at 848.) In *Battuello* and other cases in which estoppel has been found, the  
6 failure to file the claim within four months was necessarily encompassed in the analysis of failing  
7 to file within the one year as required by CCP § 366. (See, e.g., *Executors of Prindle* (2009) 173  
8 Cal. App. 4th 130 (finding estoppel applied to prevent assertion that claimant failed to file a  
9 timely claim against the Executors).)

10 Finally, the Executors contend that the subpoenaed documents are irrelevant to proving  
11 the four "elements" of equitable estoppel. (Motion, 9:19-25.) These four elements are: (1) the  
12 party to be estopped must know the facts; (2) the estopped party must intend that his conduct shall  
13 be acted upon, or must act in a way that causes the other party to believe that was his intent; (3)  
14 the party asserting estoppel must be unaware of the true facts; and (4) he must detrimentally rely  
15 on the other party's conduct. (*Estate of Bonzi* (2013) 216 Cal.App.4th 1085, 1106.)

16 Although Claimant's situation is quite distinct from the standard type of case involving an  
17 equitable estoppel defense to the statute of limitations, Decedent's alleged actions and Claimant's  
18 response do in fact conform to these elements. As alleged by Claimant, Decedent clearly knew  
19 that he was committing wrongful sexual acts with Claimant; then, by convincing Claimant to lie  
20 about the nature of their relationship and leading Claimant to believe he was a consenting  
21 participant in their sexual acts, Decedent engaged in conduct which he intended Claimant to act  
22 upon; Claimant was unaware of the illicit, non-consensual nature of these acts until he sought  
23 therapy as an adult; and lastly, Claimant relied to his detriment upon Decedent's conduct by  
24 continuing to deny that he had been the victim of abuse until after the statute of limitations had  
25 run. (See Robson Decl., ¶¶ 6-27.) Thus, by seeking witness statements dealing with these  
26 allegations against Decedent, Claimant's Subpoenas are reasonably calculated to lead to evidence  
27 proving these four elements of his equitable estoppel defense.  
28

1 **III. EQUITABLE ESTOPPEL AS A DEFENSE TO CLAIMS PRESENTATION**  
2 **LIMITATIONS IS NOT RESTRICTED TO CLAIMS AGAINST THE**  
3 **REPRESENTATIVES OF AN ESTATE**

4 In the Motion, the Executors erroneously contend that Claimant cannot raise an equitable  
5 estoppel defense with regard to the acts of Decedent because "the decedent is *not* a party to these  
6 proceedings," and "the personal representatives are the parties to these proceedings." (Motion,  
7 9:2-4.) As the Executors should be well aware, however, they "stand in the shoes" of Decedent  
8 and therefore can be held liable for Decedent's actions. CCP § 377.40 provides that "Subject to  
9 Part 4 (commencing with Section 9000) of Division 7 of the Probate Code governing creditor  
10 claims, a cause of action against a decedent that survives may be asserted against the decedent's  
11 personal representative or, to the extent provided by statute, against the decedent's successor in  
12 interest." Thus, if Executors contention were true, then CCP § 377.40 would be stripped of all  
13 meaning, and no claim could ever be brought against an estate on the basis of a decedent's  
14 wrongdoing. This is not the case, however, and Claimant is fully entitled as a matter of law to  
15 raise an equitable estoppel defense with respect to the acts of Decedent.

16 In addition, Executors' claim that an equitable estoppel defense is somehow strictly  
17 limited to claims brought against personal representatives (See Motion, 8:1-9:16) has no basis in  
18 law or fact. Indeed, it defies the very nature of an equitable claim to require precedent before it  
19 can be applied. (See *Times-Mirror Co. v. Super. Ct. of Los Angeles County* (1935) 3 Cal. 2d  
20 309, 331 ("Equity does not wait upon precedent which exactly squares with the facts in  
21 controversy, but will assert itself in those situations where right and justice would be defeated but  
22 for its intervention.")) In fact, it "has always been the pride of courts of equity that they will so  
23 mold and adjust their decrees as to award substantial justice according to the requirements of the  
24 varying complications that may be presented to them for adjudication." (*Id.*; accord *Curtin v.*  
25 *Dep't of Motor Vehicles* (1981) 122 Cal. App. 3d 381 ("Equity is not limited in the scope or type  
26 of relief which may be granted. Its decrees are molded in accordance with the exigencies of each  
27 case and the rights of the persons over whom it has acquired jurisdiction."))

1 While no case directly on point has been found, most likely because of the unique and  
2 extreme factual circumstances of this case, there is legal precedent contrary to the proposition that  
3 the Executors are trying to advance—that the equitable estoppel defense can only be raised as to  
4 the actions of the Executors themselves and not the Decedent. In *Estate of Housley* (1997) 56  
5 Cal. App. 4<sup>th</sup> 342, the Court of Appeal reversed a trial court grant of summary judgment in favor  
6 of the executor/trustee against the plaintiff therein, finding that the plaintiff had submitted  
7 sufficient evidence to make a prima facie case for the application of equitable estoppel as against  
8 the decedent to enforce an oral agreement made by the decedent (plaintiff's father). The plaintiff  
9 had brought a petition seeking to enforce an oral promise and agreement made by the decedent  
10 that the plaintiff would inherit all of the decedent's property if plaintiff took care of him during  
11 the rest of his lifetime. The plaintiff fulfilled his obligations, and upon the death of the decedent  
12 (who had executed a codicil to his will in the interim amending his trust to remove the plaintiff as  
13 a beneficiary), plaintiff sought to enforce that agreement. He argued in his petition that the  
14 executor and trustee were estopped from relying on the statute of frauds to defeat the agreement,  
15 because it would result in an unconscionable injury to the plaintiff. The Court of Appeal  
16 discussed at length the application of equitable estoppel in the context of will contests and the  
17 effect of the statute of frauds, and why the elimination of equitable estoppel in cases where the  
18 promisor is dead would result in many cases of injustice.

19 Similarly, equity would be defeated but for the application of equitable estoppel as against  
20 the Decedent. As detailed in the Petition, in addition to the sexual abuse he suffered at the hands  
21 of the Decedent, Claimant was also subject to threats and mental manipulation so severe he  
22 continued to suffer from their effect well into adulthood. It took two nervous breakdowns and  
23 intensive therapy before Claimant could admit to himself and to others that he was a victim of  
24 childhood sexual abuse. (See e.g., *Sellery v. Cressey* (1996) 48 Cal. App. 4<sup>th</sup> 538, 547 ("[I]t is  
25 only when an adult survivor of sexual abuse enters therapy that any meaningful understanding of  
26 his or her injuries can be developed.").)

27 Standing in the shoes of the Decedent, the Executors cannot profit from the Decedent's  
28 victimization of Claimant and must be equitably estopped from asserting the statutes of limitation

1 to bar Claimant's claim. Further, the Executor's contorted view that equitable estoppel defense in  
2 these proceedings can only be raised as to *their* actions and not those of the Decedent is wholly  
3 without support.

4 **IV. CLAIMANT HAS COMPLIED WITH THE NOTICE TO CONSUMER**  
5 **REQUIREMENTS AND DOES NOT KNOW THE IDENTITIES OF ANY**  
6 **ADDITIONAL POTENTIALLY INTERESTED THIRD PARTIES**

7 The Executors claim that the Subpoenas are defective because Claimant failed to send the  
8 requisite Notice to Consumer under CCP § 1985.3 to all interested third parties, and that this by  
9 itself is sufficient grounds for quashing the Subpoenas. (See Motion, 12:1-13:13.) Although the  
10 Executors acknowledge that Claimant sent the appropriate notices to all 37 of the interviewees  
11 whose witness statements are requested in the Subpoenas, Executors contend that this is  
12 insufficient because other interested parties whose personal information is "likely" contained in  
13 the statements did not receive a notice. However, apart from vaguely referring to the "guardians  
14 of Michael's minor children" and the "alleged victims," the Motion fails to identify any of these  
15 potentially interested parties. Furthermore, the Executors completely ignore the obvious fact that  
16 Claimant does not have access to these statements, and therefore has no way of knowing the  
17 identity of these other potentially interested parties. The Executors, on the other hand, most likely  
18 do have access to these files, or at the very least are in a much better position to know who these  
19 parties are; thus, they could easily have informed Claimant that notices needed to be sent to these  
20 parties instead of using this as grounds for quashing the Subpoenas in their entirety. To this end,  
21 the Executors cite to no authority (and the Claimant has found none) holding that a subpoena may  
22 be quashed on the basis of potential privacy concerns of unidentified third parties.

23 In addition, to date Claimant has received only one objection from all of the interviewees,  
24 and no grounds were given for the objection. (See Declaration of Maryann R. Márzano, ¶¶ 2-3.)  
25 If the Executors are truly concerned with protecting the privacy of these other unnamed parties,  
26 these concerns can be addressed through other means that do not prevent Claimant from obtaining  
27 the discovery needed to establish his equitable estoppel defense.  
28



1 . As a final point, at least ten of the witnesses whose statements are being sought by the  
2 subpoenas have already provided live testimony at Decedent's 2005 criminal trial, which  
3 testimony is publicly available in the transcript from the trial and readily accessible on numerous  
4 websites. (See, e.g., [http://www.mjfacts.info/2005\\_trial\\_transcripts.php](http://www.mjfacts.info/2005_trial_transcripts.php).) In light of this fact, the  
5 Executors' purported privacy concerns appear even less credible as grounds for quashing the  
6 subpoenas.

7 **V. THE EXECUTORS' PRIVILEGE CLAIMS ARE TOO VAGUE TO CONSTITUTE**  
8 **GROUND FOR QUASHING SUBPOENAS**

9 The Executors assert the physician-patient and psychotherapist-patient communication  
10 privileges under Evid. Code §§ 992 and 1012 as grounds for quashing the subpoenas for the  
11 witness statement of Decedent's physician Dr. William Barney Van Valin, II, and the witness  
12 statement of Dr. Stan Katz (who worked with one of the alleged victims of Decedent). According  
13 to the Motion, "The Subpoenas include communications with physicians and psychologists, and it  
14 is not unlikely that privileged (or otherwise private) materials are responsive to the Subpoenas."  
15 (Motion, 14:9-10.) Although the Executors are the holders of Decedent's physician-patient and  
16 psychotherapist-privileges pursuant to Evid. Code §§ 993(c) and 1013(c), the Motion fails to  
17 establish an adequate factual basis for asserting these privileges.

18 In order to claim the privileges under Evid. Code §§ 992 and 1012, the proponent must  
19 show that: 1) the communication was made in the course of the physician (or psychotherapist)  
20 relationship; 2) the communication was transmitted in confidence, and to no third parties other  
21 than those present to further the patient's interest in the consultation, or those to whom disclosure  
22 is reasonably necessary to accomplish the purpose of the consultation; and 3) the communication  
23 includes a diagnosis or advice given in the course of the relationship. (See, e.g., Evid. Code §§  
24 992, 1012; *Mahoney v. Superior Court* (1983) 142 Cal. App. 3d 937, 940-941 (party claiming  
25 psychotherapist-patient privilege has burden of establishing psychotherapist-patient relationship);  
26 *Horowitz v. Sacks* (1928) 89 Cal. App. 336, 344 (communication made by physician to patient  
27 was in front of patient's family members and therefore not privileged); *Ascherman v. Superior*  
28

1 Court (1967) 254 Cal. App. 2d 506, 515-516 (conversation between physician and patient  
2 regarding plaintiff in the matter was not privileged because it bore no relation to treatment by the  
3 physician). The Motion, however, presents no specific facts whatsoever to support these claims,  
4 and merely alludes to the likelihood of privileged information being contained in the subpoenaed  
5 witness statements. Thus, the Executors' claim of privilege falls considerably short of the  
6 required standard.

7 The vagueness of Executors' privilege claims is exacerbated by the fact that they are in a  
8 much better position than Claimant to know what Dr. Van Valin, II said in his witness statement,  
9 and whether the Santa Barbara County Sheriff's Office and District Attorney's Office are in  
10 possession of any documents which may "relate" to the statement (although the purpose of the  
11 subpoena was primarily to obtain the witness statement alone). The same is true of Executors'  
12 statements about the Subpoenas regarding the search of the Neverland Ranch; the Executors  
13 disingenuously claim that they "simply do not know what medical records, attorney-client  
14 communications and other privileged documents may have been uncovered during the search or  
15 may be "related" to it," (Motion, 14:14-16) and on this basis alone they seek to quash the  
16 subpoena and deny Claimant access to information which may prove vital to establishing his  
17 equitable estoppel defense. Thus, if Executors in fact have legitimate privilege concerns, they  
18 must specify which statements and documents the privilege applies to; then, the potentially  
19 privileged material can be submitted for an *in camera* review prior to production to Claimant.

20 **VI. THE EVIDENCE SOUGHT BY THE SUBPOENAS IS ADMISSIBLE UNDER**  
21 **EVIDENCE CODE §§ 1101(b) AND 1105 TO SHOW PLAN, INTENT, HABIT**  
22 **AND CUSTOM**

23 The Executors contend that the evidence sought by the Subpoenas is inadmissible  
24 evidence of Decedent's "prior bad acts" under Evid. Code § 1101(a). (Motion, 14:20-15:3.)  
25 However, Claimant is not seeking evidence to prove that Decedent acted in conformity with his  
26 character on a specific occasion, but rather to show that Decedent had a distinct and repeated  
27 "modus operandi" which is often the signature of serial pedophiles. Evid. Code § 1101(b)  
28

1 provides that "Nothing in this section prohibits the admission of evidence that a person  
2 committed a crime, civil wrong, or other act when relevant to prove some fact (such as motive,  
3 opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, or  
4 whether a defendant in a prosecution for an unlawful sexual act or attempted unlawful sexual act  
5 did not reasonably and in good faith believe that the victim consented) other than his or her  
6 disposition to commit such an act," and Evid. Code § 1105 further provides that "Any otherwise  
7 admissible evidence of habit and custom is admissible to prove conduct on a specified occasion in  
8 conformity with the habit or custom." Thus, any evidence that Decedent sought opportunities for  
9 his alleged crimes and planned and prepared them in a habitual, customary manner (or that  
10 Decedent did not reasonably and in good faith believe that any of his alleged victims consented to  
11 sexual acts) will be admissible, and the Subpoenas are reasonably calculated to lead to the  
12 discovery of such evidence.

13 **VIII. CONCLUSION**

14 For the foregoing reasons, Claimant respectfully requests that the Court deny Executors'  
15 Motion in its entirety.

16 Dated: May 21<sup>st</sup>, 2014.

Respectfully submitted,

GRADSTEIN & MARZANO, P.C.  
HENRY GRADSTEIN  
MARYANN R. MARZANO  
MATTHEW A. SLATER

By: 

Maryann R. Marzano  
Attorneys for Claimant/Creditor  
WADE ROBSON



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**DECLARATION OF MARYANN R. MARZANO**

I, Maryann R. Marzano, declare and state, as follows:

1. I am an attorney at law duly licensed to practice before all Courts in the State of California, and am a partner in the law firm of Gradstein & Marzano, P.C., counsel of record for Claimant Wade Robson ("Claimant"), and thus I am familiar with the facts and events of this action. I submit this Declaration in support of Claimant's Opposition to the Estate's Motion to Quash Subpoenas. I have personal knowledge of the facts and circumstances stated herein and if called as a witness, I could and would testify competently thereto.

2. On or around April 28, 2014, I received an Objection by Non-Party to Production of Records ("Objection") from Mr. Omer Bhatti in response to a Notice to Consumer or Employee ("Notice") which had been sent to Mr. Bhatti on March 26, 2014. A true and correct copy of the Objection is attached hereto as Exhibit A. The Notice to Consumer was sent to Mr. Bhatti in conjunction with subpoenas which were sent to the Santa Barbara County Sheriff's Department and Office of the Santa Barbara District Attorney requesting copies of the witness interview statement given by Mr. Bhatti during the criminal investigation and trial of Michael Joseph Jackson, the decedent in the instant probate action.

3. Mr. Bhatti's Objection did not set forth any grounds whatsoever for his objection. In addition, Mr. Bhatti's Objection was the only objection received in response to the thirty-seven (37) Notices to Consumer served on March 26, 2014.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


Executed this 21<sup>st</sup> day of May, 2014 at Los Angeles, California.

  
Maryann R. Marzano





US 7 2 2 0 1 4

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) Marysue Marzano (#06367) Henry Gramlein (#69747) Leticia Kimble (#262012) Grudstela and Marzano P.C. 6310 San Vicente Blvd, Suite 310 Los Angeles, CA 90048 TELEPHONE NO. [REDACTED]		FOR COURT USE ONLY 
NAME, ADDRESS (County) [REDACTED]		
ATTORNEY FOR (Name) Claimant Wade Robson		CASE NUMBER BP 117321
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS 111 North Hill Street MAILING ADDRESS 111 North Hill Street CITY AND ZIP CODE: Los Angeles, CA 90011 BRANCH NAME: Central District Stanley Mosk Courthouse		
PLAINTIFF / PETITIONER: Wade Robson DEFENDANT / RESPONDENT: Estate of Michael Joseph Jackson		
NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION (Code Civ. Proc., §§ 1285.3, 1285.5)		

NOTICE TO CONSUMER OR EMPLOYEE

TO (name): Omer Shalzzad Bhatti

- PLEASE TAKE NOTICE THAT REQUESTING PARTY (name): Claimant Wade Robson  
 SEEKS YOUR RECORDS FOR EXAMINATION by the parties to this action on (specify date): April 28, 2014  
 The records are described in the subpoena directed to witness (specify name and address of person or entity from whom records are sought): Santa Barbara Sheriff Department c/o County Board of Supervisor, Attn: Kevin Ready  
 A copy of the subpoena is attached.
- IF YOU OBJECT to the production of these records, YOU MUST DO ONE OF THE FOLLOWING BEFORE THE DATE SPECIFIED IN ITEM a. OR b. BELOW
  - If you are a party to the above-captioned action, you must file a motion pursuant to Code of Civil Procedure section 1987.1 to quash or modify the subpoena and give notice of that motion to the witness and the deposition officer named in the subpoena at least five days before the date set for production of the records.
  - If you are not a party to this action, you must serve on the requesting party and on the witness, before the date set for production of the records, a written objection that states the specific grounds on which production of such records should be prohibited. You may use the form below to object and state the grounds for your objection. You must complete the Proof of Service on the reverse side indicating whether you personally served or mailed the objection. The objection should not be filed with the court. WARNING: IF YOUR OBJECTION IS NOT RECEIVED BEFORE THE DATE SPECIFIED IN ITEM 1, YOUR RECORDS MAY BE PRODUCED AND MAY BE AVAILABLE TO ALL PARTIES.
- YOU OR YOUR ATTORNEY MAY CONTACT THE UNDERSIGNED to determine whether an agreement can be reached in writing to cancel or limit the scope of the subpoena. If no such agreement is reached, and if you are not otherwise represented by an attorney in this action, YOU SHOULD CONSULT AN ATTORNEY TO ADVISE YOU OF YOUR RIGHTS OF PRIVACY.

Date: March 26, 2014

Leticia Kimble

(TYPE OR PRINT NAME)

  
 SIGNATURE OF ☐ REQUESTING PARTY ☒ ATTORNEY

OBJECTION BY NON-PARTY TO PRODUCTION OF RECORDS

- ☒ I object to the production of all of my records specified in the subpoena.
- ☐ I object only to the production of the following specified records:

3. The specific grounds for my objection are as follows:

Date: 4/14/14  
 OMER BHATTI  
 (TYPE OR PRINT NAME)

  
 SIGNATURE OF ☐ REQUESTING PARTY ☒ ATTORNEY

(Print or write title)

Form Adopted for Mandatory Use  
 Superior Court of California  
 Subpoena form, January 1, 2008

NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION

Page 1 of 1  
 Code of Civil Procedure,  
 §§ 1285.3, 1285.5  
 2008-016-0000-010  
 www.courtinfo.ca.gov

EXHIBIT A

PLAINTIFF/PETITIONER: Wade Robson	CASE NUMBER
DEFENDANT/RESPONDENT: Estate of Michael Joseph Jackson	RP 117321

**PROOF OF SERVICE OF NOTICE TO CONSUMER OR EMPLOYEE AND OBJECTION**  
(Code Civ. Proc., §§ 1985.3, 1985.6)

☐ Personal Service ☒ Mail

- At the time of service I was at least 18 years of age and not a party to this legal action.
- I served a copy of the Notice to Consumer or Employee and Objection as follows (check either a or b):
  - ☐ Personal service. I personally delivered the Notice to Consumer or Employee and Objection as follows:
    - Name of person served:
    - Address where served:
    - Date served:
    - Time served:
  - ☒ Mail. I deposited the Notice to Consumer or Employee and Objection in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
    - Name of person served: Omer Shahzad Bharti
    - Address:
    - Date of mailing: March 26, 2014
    - Place of mailing (city and state): Los Angeles, CA
- I am a resident of or employed in the county where the Notice to Consumer or Employee and Objection was mailed.
  - My residence or business address is (specify):
  - My phone number is (specify):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
Date: March 26, 2014

Nicole Sekeres

(TYPE OR PRINT NAME OF PERSON WHO SERVED)

(SIGNATURE OF PERSON WHO SERVED)

**PROOF OF SERVICE OF OBJECTION TO PRODUCTION OF RECORDS**  
(Code Civ. Proc., §§ 1985.3, 1985.6)

☐ Personal Service ☒ Mail

- At the time of service I was at least 18 years of age and not a party to this legal action.
- I served a copy of the Objection to Production of Records as follows (complete either a or b):
  - ON THE REQUESTING PARTY**
    - ☐ Personal service. I personally delivered the Objection to Production of Records as follows:
      - Name of person served:
      - Address where served:
      - Date served:
      - Time served:
    - ☒ Mail. I deposited the Objection to Production of Records in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
      - Name of person served:
      - Address:
      - Date of mailing:
      - Place of mailing (city and state):
  - ON THE WITNESS**
    - ☐ Personal service. I personally delivered the Objection to Production of Records as follows:
      - Name of person served:
      - Address where served:
      - Date served:
      - Time served:
    - ☐ Mail. I deposited the Objection to Production of Records in the United States mail, in a sealed envelope with postage fully prepaid. The envelope was addressed as follows:
      - Name of person served:
      - Address:
      - Date of mailing:
      - Place of mailing (city and state):
- I am a resident of or employed in the county where the Objection to Production of Records was mailed.
- My residence or business address is (specify):
- My phone number is (specify):

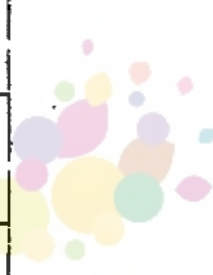
I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 4/14/14

OMER BHARTI

(TYPE OR PRINT NAME OF PERSON WHO SERVED)

(SIGNATURE OF PERSON WHO SERVED)

Maryann Marzano (#88867) Henry Gradstein (#89747) Leticia Kimble (#282012) Gradstein and Marzano P.C. 6310 San Vicente Blvd #510 Los Angeles, CA 90048 TELEPHONE NO: [REDACTED] FAX NO: [REDACTED] E-MAIL ADDRESS: [REDACTED] ATTORNEY FOR: Claimant Wade Robson		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles, CA 90011 JUDICIAL DISTRICT: Central District - Stanley Mosk		
PLAINTIFF/PETITIONER: Wade Robson		
DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS		
		CASE NUMBER: BP 117321

THE PEOPLE OF THE STATE OF CALIFORNIA, by and through the undersigned, the undersigned, do hereby certify that the following is a true and correct copy of the original as the same appears in the files of the Santa Barbara County Sheriff's Department, 4434 Calle Real, Santa Barbara, CA 93110

1. YOU ARE ORDERED TO PRODUCE THE BUSINESS RECORDS described in Item 3, as follows:

To (name of deposition officer): Leticia Kimble OR (name): APRIL 26, 2014 Location (address): [REDACTED] Los Angeles, CA 90048
--

Do not release the requested records to the deposition officer prior to the date and time stated above.

- a. ☐ by delivering a true, legible, and durable copy of the business records described in Item 3, enclosed in a sealed inner wrapper with the original information and a receipt, together with a copy of the subpoena, to the deposition officer at the address in Item 1.
- b. ☒ by delivering a true, legible, and durable copy of the business records described in Item 3 to the deposition officer at the witness's address, on receipt of payment in cash or by check of the reasonable costs of preparing the copy, as determined under Evidence Code section 1563(b).
- c. ☐ by making the original business records described in Item 3 available for inspection at your business address by the attorney's representative and permitting copying at your business address under reasonable conditions during normal business hours.
2. The records are to be produced by the date and time shown in Item 1 but not earlier than 70 days after the issuance of the deposition subpoena, or 15 days after service, whichever date is later. Reasonable costs of locating records, making copies available or copying them, and postage, if any, are recoverable as set forth in Evidence Code section 1563(b). The records shall be accompanied by an affidavit of the custodian or other qualified witness pursuant to Evidence Code section 1567.
3. The records to be produced are described as follows (if electronically stored information is demanded, the form or forms in which each type of information is to be produced may be specified):

See Attachment 3

☒ Continued on Attachment 3.

4. IF YOU HAVE BEEN SERVED WITH THIS SUBPOENA AS A CUSTODIAN OF CONSUMER OR EMPLOYEE RECORDS UNDER CIVIL PROCEDURE SECTION 1866.3 OR 1866.8 AND A MOTION TO QUASH OR AN OBJECTION HAS BEEN SERVED ON YOU, A COURT ORDER OR AGREEMENT BY THE PARTIES, FRIENDS, AND NEIGHBORS, AND A COURT ORDER OR AGREEMENT AFFECTED MUST BE OBTAINED BEFORE YOU ARE REQUIRED TO PRODUCE CONSUMER OR EMPLOYEE RECORDS.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: April 7, 2014

Leticia Kimble

(TYPE OR PRINT NAME)



(SIGNATURE OF PERSON ISSUING SUBPOENA)

Attorney for Claimant

(TYPE OR PRINT NAME)

Form Adopted by the Judicial Branch of California  
 SUBP-010 (Rev. January 1, 2012)

DEPOSITION SUBPOENA FOR PRODUCTION  
 OF BUSINESS RECORDS

Case of Civil Procedure, §§ 2020-210-2220-442  
 Government Code, § 26827.1  
 www.courtinfo.ca.gov

Page 1 of 4

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**PROOF OF SERVICE**

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 6310 San Vicente Boulevard, Suite 510, Los Angeles, California 90048.

On May 21, 2014 I served the document described as

**CLAIMANT WADE ROBSON'S OPPOSITION TO EXECUTORS' MOTION TO QUASH SUBPOENAS; DECLARATION OF MARYANN R. MARZANO IN SUPPORT THEREOF**

on the interested parties to this action by placing a true copy thereof in a sealed envelope for mailing address as follows

Howard Weitzman  
Jonathan P. Steinsapir  
KINSELLA WEITZMAN ISER KUMP &  
ALDISERT LLP  
808 Wilshire Blvd, 3<sup>rd</sup> Floor  
Santa Monica CA 90401

Paul Gordon Hoffman  
Jeryll S. Cohen  
HOFFMAN, SABBAN & WATENMAKER,  
P.C.  
10880 Wilshire Blvd, Suite 2200  
Los Angeles CA 90024

Counsel for the Executors of the Estate of  
Michael Joseph Jackson


Counsel for the Executors of the Estate of  
Michael Joseph Jackson

**BY MAIL:** I am readily familiar with the firm's practice for the collection and processing of correspondence, pleadings and notices for mailing. Under that practice it is deposited with the United States Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

**BY ELECTRONIC MAIL:** I also transmitted a true and correct copy of the document by electronic mail as indicated above and no error was reported.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed May 21, 2014 at Los Angeles, California.

  
Sidney Summers