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13	SUPERIOR COURT OF THE STATE OF CALIFORNIA	
14	FOR THE COUNTY OF SANTA	BARBARA, COOK DIVISION
15		
16	THE PEOPLE OF THE STATE OF (CALIFORNIA, (CALIFORNIA)	Case No. 1133603
17	Plaintiffs,	OPPOSITION TO DISTRICT ATTORNEY'S MOTION TO EXCLUDE
18	vs. mifacts.com )	REFERENCE TO JANE DOE'S REFUSAL TO WAIVE THE CONFIDENTIALITY OF
19		HER CONVERSATIONS WITH ATTORNEY WILLIAM DICKERMAN
20	MICHAEL JOSEPH JACKSON,	ATATTED SEAL
	Defendant.	UNDERSEASE G
21		Honorable Rodney S. Melville Date: February 10, 2005
22		Time: 9:30 a.m. Dept.: 8
23		
24	MEMORANDUM OF POINTS AND AUTHORITIES	
25	INTRODUCTION	
26	The prosecution asks this Court to exclude reference to Jane Doe's "refusal to waive the	
27		
28	OPPOSITION TO DISTRICT ATTORNEY'S MOTION TO EXCLUDE REFERENCE TO JANE DOE'S REFUSAL TO WAIVE THE CONFIDENTIALITY OF HER CONVERSATIONS WITH ATTORNEY WILLIAM	

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DICKERMAN

confidentiality of her conversations with attorney William Dickerman" and other attorneys. Ms. Doe waived the attorney-client privilege, with regard to Mr. Dickerman, when she disclosed the content of her conversations with Mr. Dickerman to the grand jury and to law enforcement. Furthermore, attorney-client privilege never covered discussions she had with Mr. Dickerman in the presence of Jaime Masada, a third party. To the extent that she holds attorney-client privilege with regard to other attorneys, defense counsel will comply with the Evidence Code. Evidence Code 913, however, does not prevent defense counsel from commenting on the fact that Ms. Doe has engaged counsel for various matters.

The exclusion of such relevant evidence threatens to deprive Mr. Jackson of his federal and state constitutional rights to a fair trial, the right to confront and cross-examine witnesses against him, due process of law, and equal protection pursuant to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1, Sections 7, 15 and 24 of the California Constitution.

### **ARGUMENT**

I.

### JANE DOE WAIVED THE ATTORNEY-CLIENT PRIVILEGE

Evidence Code Section 912 states:

(a) Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege) . . . is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has the legal standing and opportunity to claim the privilege.

Jane Doe waived the attorney-clients privilege, to the extent that it ever existed, with regard to her communications with William Dickerman. She disclosed a significant part of the communication she had with Mr. Dickerman to the grand jury. She testified that she discussed regaining possession of items that were allegedly removed from her apartment and her options

OPPOSITION TO DISTRICT ATTORNEY'S MOTION TO EXCLUDE REFERENCE TO JANE DOE'S REFUSAL TO WAIVE THE CONFIDENTIALITY OF HER CONVERSATIONS WITH ATTORNEY WILLIAM DICKERMAN

regarding the release of the Martin Bashir program. (RT 1148:12-22.) The District Attorney asked her about those communications and she opted not to take advantage of her opportunity to claim the privilege. She no longer holds any privilege as to those communications.

On September 17, 2004, Janet Arvizo testified before this court and disclosed extensive conversations between her and Attorney William Dickerman. (Jasmine Networks, Inc. v. Marvel Semiconductor, Inc. (2004) 117 Cal. App. 4th 794, 805 (once a confidential communication has been disclosed, the client can no longer claim the communication to be privileged).) When the District Attorney objected that there was an attorney-client privilege between them, Mr. Thomas Mesereau pointed out to the court the privilege had been waived by extensive prior testimony about conversations between the attorney and his client. The Court agreed, overruled the objection, and permitted Mr. Mesereau to ask and the witness to answer questions about her conversations and communications with Attorney Dickerman. (9-17-04 Tr., p. 8, ln 18 to p. 10, ln 10).

Furthermore, Ms. Doe disclosed a significant part of the communication with Mr. Dickerman to law enforcement. A police report dated August 13, 2003 reflects a videotaped interview of Ms. Doe in which she discusses the details of her communications with William Dickerman.

II.

## THERE IS NO PRIVILEGE WITH REGARD TO COMMUNICATIONS THAT OCCURRED IN FRONT OF A THIRD PARTY WITNESS

The communications between Ms. Doe and Mr. Dickerman are not privileged because they occurred in front of a third party witness, Jamie Masada. Communications made in the presence of third person who is present as a witness are not "privileged." (*People v. Hall* (1942) 55 Cal.App. 2d 343, 356.) According to his grand jury testimony, Jaime Masada was present during at least three meetings with Jane Doe and William Dickerman. (RT 306:7-309:1.) A police report dated December 23, 2003, contains a detailed summary of the communications

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between Jane Doe and William Dickerman. This report is based on Jamie Masada's account of those statements. He was clearly present during those meetings. Therefore, the communications that occurred during those meetings are not privileged.

III.

# REGARDLESS OF WHETHER OR NOT JANE DOE HOLDS A PRIVILEGE WITH REGARD TO OTHER ATTORNEYS, DEFENSE COUNSEL MAY COMMENT ON THE FACT THAT SHE HAS HIRED LAWYERS AND FILED LAWSUITS

Contrary to the prosecution's assertion (Motion, pages 4-5), Evidence Code Section 913 does not prevent opposing counsel from commenting on the fact that a witness has retained counsel or filed a lawsuit. Section 913 prohibits commenting on the exercise of attorney-client privilege, not commenting on the fact that one has engaged counsel or filed a lawsuit.

IV.

### CONCLUSION

For the above stated reasons, the Court should deny the District Attorney's motion.

Dated: February 4, 2005

COLLINS, MESEREAU, REDDOCK & YU

Thomas A. Mesereau, Jr.

Susan C. Yu

SANGER & SWYSEN Robert M. Sanger

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By: Robert M. Sanger

Attorneys for Defendant

MICHAEL JOSEPH JACKSON

While it is clear that Jane Doe's litigious nature is relevant to the case at bar, in part due to her own insistence that she is unsophisticated and not interested in filing lawsuits, this issue has been and will be the subject of other motions before the Court.

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#### 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 February 4, 2005, I served the foregoing document OPPOSITION TO DISTRICT ATTORNEY'S MOTION TO EXCLUDE REFERENCE TO JANE DOE'S REFUSAL TO WAIVE THE CONFIDENTIALITY on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon
Gordon Auchincloss
Ron Zonen
Jerry Franklin
District Attorney
568-2398

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

BY HAND - I caused the document to be hand delivered to the interested parties at the address above.

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

\_ FEDERAL - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed February 3, 2005, at Santa Marjar California

Bobette J. Tryon