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FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

JUL 27 2004

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

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA BARBARA  
10 SANTA MARIA DIVISION

REDACTED COPY

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

15  
16  
17 MICHAEL JOE JACKSON,

18 Defendant.

No. 1133603

NOTICE OF MOTION AND  
PLAINTIFF'S MOTION TO  
QUASH SUBPOENAS ISSUED

ON BEHALF OF DEFENDANT;  
MEMORANDUM OF POINTS  
AND AUTHORITIES;  
DECLARATIONS OF [REDACTED]  
AND [REDACTED] RONALD ZONEN

(Code Civ. Proc., § 1987.1; Pen.  
Code, § 1330)

DATE: July 27, 2004  
TIME: 8:30 a.m.  
DEPT: TBA (Melville)

~~UNDER SEAL~~

24 TO: DEFENDANT MICHAEL JOE JACKSON, AND TO THOMAS A.  
25 MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER AND BRIAN OXMAN, HIS  
26 ATTORNEYS OF RECORD:

27 PLEASE TAKE NOTICE that on July 27, 2004, at 8:30 a.m. or as soon thereafter as  
28 the matter may be heard, Plaintiff will move to quash the subpoena served at the then-residence

1 of [REDACTED] on July 18, 2004, the subpoena duces  
2 tecum served, in two parts. on Attorney [REDACTED] or his receptionist, on July 16th  
3 and on July 19, 2004, and the exhaustive subpoena duces tecum served on [REDACTED] on  
4 Wednesday afternoon, July 21.

5 This motion will be based on the arguments that follow in the Memorandum of  
6 Points and Authorities, and on the attached Declarations of [REDACTED] and Ronald  
7 Zonen, and on the attached Exhibits, and on the records and pleadings in this matter and on  
8 such argument as may be permitted at the time of the hearing.

9 DATED: July 23, 2004

10 THOMAS W. SNEDDON, JR.  
11 District Attorney

12 By: \_\_\_\_\_  
13 Gerald McC. Franklin, Senior Deputy  
14 Attorneys for Plaintiff  
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1 MOTION TO QUASH SUBPOENAS

2 Introduction

3 On July 18, 2004, defendant caused a subpoena to be delivered to [REDACTED]  
4 the daughter of [REDACTED], at their then-residence at [REDACTED] in Los  
5 Angeles. A copy of the subpoena is attached to this Motion as Exhibit A..

6 On July 16, 2004, a subpoena duces tecum was served on attorney [REDACTED]  
7 [REDACTED] (followed, on July 19th, by service of the supporting affidavit on his receptionist) at  
8 his office in Los Angeles. A copy of the subpoena and its affidavit is attached to this Motion  
9 as Exhibit B. The affidavit claims that [REDACTED] testimony and the subpoenaed  
10 documents constitute "information that is relevant to the issues to be litigated during the  
11 Motion to Suppress Pursuant to Penal Code section 1538.5 and Non-statutory Grounds (Part  
12 I)."

13 On July 19, 2004, Senior Deputy District Attorney Ronald Zonen sent an e-mail to  
14 Robert Sanger, one of defendant's several defense counsel, asking, among other things, "As to  
15 which pending motion scheduled for the 27th do you anticipate [REDACTED] testimony will be  
16 relevant? On what subject do you intend to question her?" (A copy of that e-mail transmission  
17 is attached to this Motion as Exhibit C.)

18 On July 19, 2004, Thomas Mesereau responded to Mr. Zonen's inquiry in part as  
19 follows: "[REDACTED] was subpoenaed to be a witness at the hearing on the illegal break-in and  
20 search of investigator Brad Miller's office. The police reports, search warrants and Grand Jury  
21 testimony explain her direct relevance to this hearing." (A copy of that e-mail transmission is  
22 attached to this Motion as Exhibit D.)

23 In mid-afternoon on July 21, 2004, [REDACTED] was personally served with a  
24 subpoena duces tecum and an 8-page "Declaration by Thomas A. Mesereau, Jr. In Support Of  
25 Subpena To [REDACTED]" listing in exhaustive detail an exhaustive number of documents  
26 [REDACTED] was commanded to bring with him to court at 8:30 a.m. on Tuesday, July 23rd. (A  
27 copy of that subpoena and its supporting declaration is attached as Exhibit E.) [REDACTED]  
28 personal presence in court was not excused.

1 In his supporting declaration, attorney Mesereau describes the purported "good  
2 cause" in these words: "The information requested by this Subpoena discloses the motive,  
3 intent, and conscious state of mind of persons making claims in the Santa Barbara Superior  
4 Court, along with persons directing, counseling and controlling the complaints in the Santa  
5 Barbara Superior Court action." (Mesereau Declaration 8:14-17.)

6 The People move to quash the subpoenas on the following grounds:

7 (1) The suppression motion scheduled for hearing on July 27 is not a motion to traverse  
8 the warrant (a separate motion to that distinct end was filed and is calendared for hearing on  
9 August 16). A challenge to the search of investigator Miller's office is limited to the four  
10 corners of the warrant that authorized the search and its supporting affidavit, and to the scope  
11 and intensity of the search undertaken by the peace officers who executed the warrant. Neither  
12 [REDACTED] nor attorney [REDACTED] is a peace officer, and neither of them witnessed the  
13 execution of the warrant. Neither of them can be expected to give competent evidence in  
14 connection with the pending, statutorily limited motion.

15 (2) As [REDACTED] explains in his declaration (attached as Exhibit F), the  
16 subpoena duces tecum does not describe the documents with the required precision. Many of  
17 the documents generally described in the subpoena are privileged. Further, an intelligible  
18 subpoena duces tecum was not served upon him personally. In any event, [REDACTED] has  
19 long-scheduled and non-cancelable plans to be on vacation in Canada from July 25 through  
20 August 2, 2004. And July 27 is Tisha b'Av, a holy day of fasting and contemplation for [REDACTED]  
21 [REDACTED], an observant Orthodox Jew.

22 (3) As is described more fully in Mr. Zonen's declaration (attached as Exhibit G), [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

26 [REDACTED] She will be in no condition to travel to Santa Maria on July 27, let alone to be  
27 subjected to hostile examination by one or another of defendant's several attorneys on that date.

28 (4) As is described more fully in [REDACTED] declaration (attached as Exhibit H), he



1 received no advance notice of the fact that he would be obliged to appear in the Superior Court  
2 in Santa Maria next Tuesday morning, and given his professional obligations to patients and  
3 others between the date and time he received the subpoena duces tecum and next Tuesday  
4 morning, it would be impossible for him to gather the information sought by the subpoena.  
5 Apart from that, the Court was not informed that such a subpoena would issue and that [REDACTED]  
6 [REDACTED] would be present in court next Tuesday, nor was time requested on Tuesday's calendar to  
7 consider the likely objections that subpoena would elicit, from [REDACTED] and plaintiff.

8 In next Tuesday's court session, the Court is scheduled to take up defendant's Penal  
9 Code section 995 motion and "Part I" of his Penal Code section 1538.5 motion. Hearing on  
10 those matters promises to take considerable time. In our respectful submission, the timing of  
11 the subpoena duces tecum for [REDACTED] records, the breathtaking scope of the subpoena's  
12 demand, and defendant's insistence that [REDACTED] bring the records with him in person, all  
13 suggest an abuse of process. It plainly exceeds the limits of criminal discovery, and plaintiff  
14 believes it goes well beyond what would be countenanced, over objection, in a civil  
15 proceeding. We respectfully request time to consider and draft an appropriate objection to the  
16 [REDACTED] subpoena.

17 (5) Neither [REDACTED] nor [REDACTED] is obliged to attend proceedings in a court  
18 located in a different county and more than 150 miles distant from their respective residences,  
19 unless the subpoena is endorsed by a judge for such service. (Pen. Code, § 1330.) Neither of  
20 the subpoenas in question displays such an endorsement.

21 For those reasons, discussed more fully below, the subpoenas duces tecum should  
22 be quashed.

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1  
2 MEMORANDUM OF POINTS AND AUTHORITIES

3 I

4 THE COURT MAY QUASH A SUBPOENA WHEN IT  
5 APPEARS THAT THE WITNESS CANNOT TESTIFY  
6 COMPETENTLY CONCERNING THE ISSUES TO BE  
7 ADDRESSED IN THE PENDING PROCEEDINGS

8 In *People v. Superior Court (Long)* (1976) 56 Cal.App.3d 374, the Court of Appeal  
9 observed:

10 "There is no statutory authority to quash a subpoena, other than a  
11 subpoena duces tecum. It was held in an early case that in the  
12 absence of a statutory provision for such an order, an order quashing  
13 a subpoena was a nullity. [Citation.] It has since been established  
14 that the court may quash a subpoena that is regular on its face where  
15 *the facts justify such action.*" (*People v. Rhone* (1968) 267  
16 Cal.App.2d 652, 657; italics added.) A subpoena may properly be  
17 quashed where the witness would not have contributed material  
18 evidence. (See, e.g., *In re Finn* (1960) 54 Cal.2d 807, 813; *People v.*  
19 *Singletary* (1969) 276 Cal.App.2d 601, 604; *People v. Rhone, supra*,  
20 at pp. 656-657.) (*Id.*, at p. 378.) (Underlined emphasis added.)

21 Code of Civil Procedure section 1987.1, added by the Legislature in 1976 to remedy  
22 its oversight, provides, in relevant part, "When a subpoena requires the attendance of a witness  
23 . . . before a court, . . . the court, upon motion reasonably made by the party . . ., may make an  
24 order quashing the subpoena entirely, modifying it, or directing compliance with it upon such  
25 terms or conditions as the court shall declare, including protective orders." Whether section  
26 1987.1 has application in criminal cases is not determinative; *People v. Superior Court (Long)*,  
27 *supra*, 56 Cal.App.3d 374 and the cases it cites make it plain that a motion to quash a rogue  
28 subpoena is available to a subpoenaed witness who could give no relevant testimony.

29 We will show that neither [REDACTED] could testify  
30 competently to issues properly raised in the pending suppression motion.

II

THE 1538.5 MOTION SCHEDULED FOR HEARING ON JULY 27TH IS LIMITED TO AN EXAMINATION OF THE FACIAL SUFFICIENCY OF THE WARRANT AND THE AFFIDAVIT SUPPORTING IT, AND THE SCOPE OF THE RESULTING SEARCH OF MR. MILLER'S OFFICE ON NOVEMBER 18, 2003. IT IS NOT A *FRANKS* MOTION TO TRAVERSE THAT WARRANT. NEITHER [REDACTED] WAS PRESENT WHEN THE WARRANT WAS EXECUTED; NEITHER CAN PLAUSIBLY OFFER COMPETENT TESTIMONY ON THE LIMITED ISSUES TO BE RESOLVED IN THE UPCOMING HEARING. NO "NON-STATUTORY" GROUND FOR SUPPRESSING EVIDENCE EXISTS IN CALIFORNIA LAW

A. The Pending 1538.5 Motion Is Limited In Its Scope

Defendant has filed not one but *two* motions to suppress in this matter, each of them seeking, in whole or in part, to challenge the search of the offices of Bradley Miller, a private investigator whose activities, directly or indirectly in the service of Michael Jackson, figure importantly in the events between February 6, 2003 and the search of his office on November 18 of that year.

The first motion to suppress (identified by defense counsel as "Part I" and referred to here as "Motion Part I"), was filed on or about June 21, 2004, as both a substitute for and an adjunct to the objection raised by Mark Geragos, defendant's earlier lead counsel, that the property seized in the search was protected by the attorney-client or attorney work-product privileges.<sup>1</sup> The pending motion was limited to the search of Mr. Miller's office because it was contemplated that the Court, at that hearing, would be considering related arguments concerning the assertedly "privileged" status of evidence seized in the search. Defendant

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<sup>1</sup> In defendant's "1538.5 motion, Part I," counsel noted, "Former counsel for Mr. Jackson, Mark Geragos, originally represented to the Court that he would proceed regarding the search of Bradley Miller's office by attorney-client privilege log, under the core work-product doctrine. We must respectfully withdraw that request in light of further developments including testimony of witnesses before the Grand Jury." (Motion, Part I 9:21-24.)



1 promised that "additional motions to suppress would be heard in August, 2004." (Motion Part  
2 I 2:20-22.)

3 A motion to suppress evidence pursuant to Penal Code section 1538.5 is limited in  
4 its reach. A search pursuant to a warrant is presumed to be lawful, and the defendant assumes  
5 the burden of showing otherwise. (*Williams v. Justice Court* (1964) 230 Cal.App.2d 87, 97;  
6 *People v. Acosta* (1956) 142 Cal.App.2d 59, 62.) Defendant has noticed his intention to mount  
7 a "subfacial" challenge to the truth of the facts alleged by the affiant pursuant to *Franks v.*  
8 *Delaware* (1978) 438 U.S. 154, but that separate motion is calendared for hearing on August  
9 16. The present statutory suppression motion must be confined to the affidavit's demonstration  
10 of probable cause for a search and, if appropriate, the lawfulness of the search made on the  
11 purported authority of the warrant.

12 Assuming, strictly for the sake of argument, that the testimony of [REDACTED]  
13 [REDACTED] might be relevant to the Court's consideration of defendant's separately  
14 calendared *Franks* motion, such testimony plainly would not be relevant to the adjudication of  
15 the more limited motion presently calendared for hearing on July 27.

16 B. There Are No "Non-Statutory Grounds" For Suppressing  
17 Evidence In A Criminal Case

18 The caption of defendant's suppression motion declares it is made "Pursuant To  
19 Penal Code Section 1538.5 And Non-Statutory Grounds." (Emphasis added.)

20 The purported "non-statutory grounds" for suppression appear to be defendant's  
21 belief that the search of investigator Miller's office constituted "an invasion of Mr. Jackson's  
22 defense camp" (Motion, Part I, pp. 10:2-3; 10); an invasion so "blatantly illegal" that it "denied  
23 Mr. Jackson's fundamental due process rights and impaired his right to the effective assistance  
24 of counsel under the Fifth and Sixth Amendments to the United States Constitution" (Motion,  
25 Part I, pp. 10:6; 10:19-22; 11:24-27). Defendant may believe that [REDACTED]  
26 [REDACTED] have relevant evidence to give on his "due process" theory of suppression.

27 In our opposition to the pending motion, Plaintiff pointed out that government  
28 conduct so "outrageous" as to violate due process "bars prosecution," and that "dismissal of the



1 case is the only sanction. (*People v. Wesley* (1990) 224 Cal.App.3d 1130, 1138.)”  
2 (Opposition 6:2-8.) Plaintiff observed, “The suggested ‘lesser’ sanction of suppression of the  
3 evidence against [defendant] is not available for that reason, and because relevant evidence  
4 seized in the course of a search may not be ‘suppressed’ unless that evidence was seized in  
5 violation of the accused’s rights under the Fourth Amendment.” We noted, “‘Challenges to the  
6 reasonableness of a search by government agents clearly fall under the Fourth Amendment, and  
7 not the Fourteenth.’” (*Conn v. Gabbert* (1999) 526 U.S. 286, 293 [119 S.Ct. 1292, 1296.]”<sup>2</sup>

8 Defendant responded, “The violation of the sanctity of the attorney-client  
9 relationship gives rise to its own remedies” (Reply 2:9-10), and “Suppression is that remedy”  
10 (*Id.*, 4:4-6). Defendant did not cite any authority in support of that statement, and it is contrary  
11 to the authorities just cited.

12 Penal Code section 1538.5, subdivision (m), declares, in pertinent part:

13 (m) The proceedings provided for in this section, and Section 871.5,  
14 995, 1238, and 1466 shall constitute the sole and exclusive remedies  
15 prior to conviction to test the unreasonableness of a search or seizure  
16 where the person making the motion for return of property or the  
17 suppression of evidence is a defendant in a criminal case and the  
18 property or thing has been offered or will be offered as evidence  
against him or her.

19 Appellate review of this Court’s disposition of the pending motion will be informed  
20 by the record made in this Court. The People respectfully request that the Court explicitly  
21 address defendant’s argument that suppression of evidence is a remedy for a claimed violation  
22 of the Fourteenth Amendment. We respectfully request that the Court quash the subpoenas for  
23 [REDACTED] if it determines that their evidence would not be relevant to  
24 the Court’s consideration of a properly limited and focused suppression motion.

25 ////

26 \_\_\_\_\_  
27 <sup>2</sup>The *Conn* decision, incidentally, involved attorney Gabbert’s claim in his civil rights lawsuit that two  
28 California prosecutors’ search of his person, even as his client was testifying before a criminal grand  
jury, violated his due process right to practice his profession without unreasonable government  
interference. The United States Supreme Court did not agree with Gabbert’s theory.

1 C. Neither [REDACTED] Is Likely To Provide  
2 Relevant Evidence On The Issue Whether The Presumptively Valid  
3 Warrant For The Search Of Mr. Miller's Office Was Lawfully Executed

4 Neither [REDACTED] was present when Mr. Miller's office  
5 was searched, and it does not appear either of them has relevant evidence to give in support of  
6 a claim that the search of Mr. Miller's office violated the Fourth Amendment. The subpoenas  
7 for their attendance should be quashed unless defendant satisfies the Court to the contrary.

8 Under the circumstances, the subpoena commanding [REDACTED] personal  
9 presence in court on July 27 should be quashed, and defense counsel should be admonished  
10 concerning their apparent willingness to use the Court's process for inappropriate ends.

11 III

12 DEFENDANT'S SUBPOENA TO [REDACTED]  
13 SHOULD BE QUASHED BECAUSE SHE IS NOT  
14 PHYSICALLY ABLE TO OBEY IT

15 Please see the attached Declaration of Senior Deputy District Attorney Ronald  
16 Zonen. Even assuming [REDACTED] could testify competently to the narrow issues framed by  
17 defendant's pending suppression motion, she will not be able to attend court on July 27 because  
18 she will have given birth on or before that date. The subpoena commanding her attendance  
19 should be quashed.

20 IV

21 THE SUBPOENA DUCES TECUM FOR [REDACTED]  
22 [REDACTED] WAS NOT PERSONALLY SERVED ON  
23 HIM, AND IT SHOULD BE QUASHED FOR THAT  
24 REASON ALONE

25 Please see [REDACTED] declaration.

26 [REDACTED] may not be correct in his belief that Code of Civil Procedure section  
27 1987.5's requirement that a subpoena duces tecum and its affidavit be served together to be  
28 effective makes the service in this case improper for that reason alone. See *Michael B. v.*  
*Superior Court* (2002) 103 Cal.App.4th 1384, 1394-1395, holding that that statute's provision

1 that "The service of a subpoena duces tecum is invalid unless at the time of such service a copy  
2 of the affidavit upon which the subpoena is based is served on the person served with the  
3 subpoena" is not applicable to either criminal trials or criminal grand jury proceedings.

4 On the other hand, defendant's only identification of the "records" he seeks from  
5 [REDACTED] is in the affidavit, making that document an indispensable part of the subpoena  
6 itself. That essential document was not served on him personally.

7 Penal Code section 1328, rather than Code of Civil Procedure section 1987, governs  
8 service of subpoenas in criminal cases, but each requires delivery of the subpoena "to the  
9 witness personally." (*Id.*, subd. (a); emphasis added.) Assuming a subpoena was personally  
10 served on [REDACTED], an intelligible subpoena duces tecum was not. Therefore, the  
11 subpoena duces tecum should be quashed on that ground.

12  
13 V  
14 THE SUBPOENAS FOR [REDACTED]  
15 [REDACTED] ARE INEFFECTIVE, BECAUSE  
16 EVEN IF THOSE INDIVIDUALS WERE PERSONALLY  
17 SERVED, THE SUBPOENAS DO NOT BEAR THE  
18 ENDORSEMENT OF A JUDGE REQUIRED BY  
19 PENAL CODE SECTION 1330 WHEN, AS IS THE  
20 CASE FOR EACH OF THEM, THE WITNESS RESIDES  
21 MORE THAN 150 MILES FROM THE COURT

22 "No person is obliged to attend as a witness before a court or magistrate out of the  
23 county where the witness resides, or is served with the subpoena, unless the distance be less  
24 than 150 miles from his or her place of residence to the place of trial . . .," unless a judge in  
25 this state, upon a proper showing by affidavit of the materiality of the witness's evidence,  
26 endorses the subpoena for service. (Pen. Code, § 1330.)

27 [REDACTED] resides at an address in Los Angeles, California 90035. He wishes  
28 his residence address to remain confidential. Using his residence address and accessing the

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1 MapQuest" website on the Internet ([www.mapquest.com](http://www.mapquest.com)),<sup>3</sup> the undersigned determined [REDACTED]  
2 [REDACTED] residence is 166.63 miles from the Superior Court in Santa Maria, or 154.72 miles  
3 if one proceeds over State Route 154.

4 [REDACTED] resided at [REDACTED] when her  
5 daughter was served with a subpoena. "Mapquest" reports the distance between that address  
6 and the courthouse in Santa Maria as 163.29 miles; or 151.39 miles via State Route 154.

7 Neither of the subpoenas in question was judicially endorsed as required in the  
8 circumstances. They are ineffective.

9 CONCLUSION

10 For each of the reasons discussed above, the subpoenas for the attendance of [REDACTED]  
11 [REDACTED] should be quashed.

12 DATED: July 23, 2004

13 Respectfully submitted,

14 THOMAS W. SNEDDON, JR.  
15 District Attorney

16 By: \_\_\_\_\_  
17 Gerald McC. Franklin, Senior Deputy  
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25 \_\_\_\_\_  
26 <sup>3</sup> We respectfully ask the court to take judicial notice of the distances pursuant to Evidence Code  
27 section 452, subdivisions (g) and (h) and section 454, subdivision (a)(1), utilizing Mapquest as the  
28 source of that information. A researcher who accesses LexisNexis and types in the word "Mapquest"  
will discover that a number of appellate courts and federal trial courts utilize that source for such  
information quite routinely.



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3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA }  
5 COUNTY OF SANTA BARBARA } SS

6 I am a citizen of the United States and a resident of the County aforesaid; I am over  
7 the age of eighteen years and I am not a party to the within-entitled action. My business  
8 address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara,  
9 California 93101.

10 On July 23, 2004, I served the within PLAINTIFF'S MOTION TO QUASH  
11 SUBPOENAS ISSUED TO [REDACTED] etc. on  
12 Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, ROBERT SANGER, and  
13 BRIAN OXMAN by faxing a true copy to counsel (except Mr. Sanger and Mr. Oxman) at the  
14 facsimile number shown with the address of each on the attached Service List, and then by  
15 causing to be mailed a true copy to each counsel at that address (except Mr. Sanger, to whom a  
16 copy was delivered by hand).

17 I declare under penalty of perjury that the foregoing is true and correct.

18 Executed at Santa Barbara, California on this 23rd day of July, 2004.

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20 \_\_\_\_\_  
21 Gerald McC. Franklin  
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## SERVICE LIST

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