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11 Attorneys for Defendant
12 **MICHAEL JOSEPH JACKSON**

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION**

16 **THE PEOPLE OF THE STATE OF**
17 **CALIFORNIA,**

18 Plaintiff,

19 vs.

20 **MICHAEL JOSEPH JACKSON,**

21 Defendant.

Case No. 1133603

EX PARTE APPLICATION TO FILE UNDER
SEAL, TO NOT SERVE THE PROSECUTION
(REQUEST FOR IN CAMERA) AND TO NOT
SERVE THE PUBLIC OR MEDIA WITH THE
APPLICATION, PROPOSED ORDER

~~FILED UNDER SEAL~~

Honorable Rodney Melville

Trial Date: January 31, 2005

Time: 8:30 am.

Dept: SM 2

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25 **TO THE CLERK OF THE ABOVE ENTITLED COURT:**

26 Defendant requests that the Court issue an order that the accompanying EX PARTE

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28 **EX PARTE APPLICATION TO FILE UNDER SEAL, TO NOT SERVE THE PROSECUTION
AND TO NOT SERVE THE PUBLIC OR MEDIA WITH THE APPLICATION**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

AUG 30 2004

GARY M. BLAIR, Executive Officer

BY *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

*Unsealed pursuant
to 66605 Court
Order*

1 REQUEST FOR SUBPOENAS be filed under seal, and that the prosecution not be served with said
2 documents and that the public including the media, not be served with this application; and for such
3 other such further relief as the Court may deem just and proper. This request is based on the
4 overriding interests of attorney-client privilege and Mr. Jackson's rights to due process and a fair trial
5 under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I,
6 Sections 1, 7, and 15 of the California Constitution.

7
8 Dated: August 30, 2004

Respectfully submitted,

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

11 SANGER & SWYSEN
12 Robert M. Sanger

13 OXMAN & JAROSCAK
14 Brian Oxman

15 By:

16 
17 Robert M. Sanger
18 Attorneys for
19 MICHAEL JOSEPH JACKSON

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28 EX PARTE APPLICATION TO FILE UNDER SEAL, TO NOT SERVE THE PROSECUTION
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **THE COURT HAS THE AUTHORITY TO ORDER THAT**
4 **A RECORD BE FILED UNDER SEAL**

5 Pursuant to California Rule of Court 243.1(d), the Court has the authority to order a
6 record be filed under seal if it expressly finds that:

- 7 1. There exists an overriding interest that overcomes the right of public access to the
8 record;
- 9 2. The overriding interest supports sealing the record;
- 10 3. A substantial probability exists that the overriding interest will be prejudiced if the
11 record is not sealed;
- 12 4. The proposed sealing is narrowly tailored; and
- 13 5. No less restrictive means exist to achieve the overriding interest.
14 (California Rule of Court 243.1(d).)

15 **II.**

16 **OVERRIDING INTERESTS EXIST THAT MEETS THE ABOVE CRITERIA FOR**
17 **SEALING A RECORD**

18 It is necessary to seal the record pursuant to California Rule of Court 243.1(d) based on
19 the overriding interests of attorney-client privilege, as well as Mr. Jackson's rights to due process
20 and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution
21 and Article I, Sections 1, 7, and 15 of the California Constitution.

22 The overriding interest of attorney-client privilege justifies an order that the accompanying
23 document be filed under seal. Confidential communications between a defendant and his or her
24 lawyer are privileged. (California Evidence Code section 952.) There is no right of public access
25 to materials covered by the attorney client privilege. As argued in the accompanying motion, Mr.
26 Jackson's former counsel were obligated to turn over any these materials to Mr. Jackson's present
27

28 **EX PARTE APPLICATION TO FILE UNDER SEAL, TO NOT SERVE THE PROSECUTION
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1 counsel, rather than submit them to the Court.

2 The privilege cannot be waived by former counsel for the defense because they do not
3 hold the attorney-client privilege. Mr. Jackson, as the client, is the holder of the attorney-client
4 privilege. (California Evidence Code section 953.) Therefore, the filing should also be in camera
5 without service to the prosecution.

6 Furthermore, Mr. Jackson's rights to a fair trial and due process would be compromised if
7 the accompanying document is disclosed to the public. A person accused of a crime is entitled to
8 due process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the United States
9 Constitution and Article I, Sections 1, 7, and 15 of the California Constitution. Releasing even the
10 name of the pleading would be detrimental to Mr. Jackson because it would infringe upon Mr.
11 Jackson's rights by tainting the jury pool with prejudicial information.

12 As argued in the accompanying moving papers, material contained therein implicates the
13 rights of the defendant and disclosure of said information to the prosecutor would further
14 compromise those rights..

15 In order to protect these overriding interests, it is necessary that the accompanying
16 document be filed under seal and not be served on the prosecution nor that this application be
17 served on the public and the media.

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1 CONCLUSION

2 For the reasons stated above, Mr. Jackson requests that the Court issue an order that the
3 accompanying EX PARTE REQUEST FOR SUBPOENAS be filed under seal and that the
4 prosecution not be served with said documents and that the public including the media, not be
5 served with this application.

6 Dated: August 30, 2004

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MICHAEL JOSEPH JACKSON

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