

SEP 16 2004

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

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23 Attorneys for Defendant  
24 **MICHAEL JOSEPH JACKSON**

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
26 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

*PROPOSED REDACTED*

27 THE PEOPLE OF THE STATE OF CALIFORNIA,

28 Plaintiffs,

vs.

MICHAEL JOSEPH JACKSON,

Defendant.

) Case No. 1133603

) EMERGENCY APPLICATION FOR AN  
) ORDER DIRECTING THAT MATERIALS  
) SEIZED FROM SEARCH WARRANT  
) NUMBER 5135 BE SEALED AND THAT  
) THE PROVISIONS OF PENAL CODE  
) SECTION 1524(C) BE IMPLEMENTED;  
) DECLARATION OF ROBERT M. SANGER;  
) [PROPOSED] ORDER

~~UNDER SEAL~~

) Honorable Rodney S. Melville  
) Date: September 17, 2004  
) Time: 1:00 pm  
) Dept: SM 8

EMERGENCY APPLICATION

1 TO THE CLERK OF THE ABOVE ENTITLED COURT:

2 Defendant requests that the Court issue an order directing that all items seized from [REDACTED]  
3 [REDACTED] the residence of Mr. Jackson's personal assistant,  
4 [REDACTED] on September 15, 2004, be sealed and that the provisions of California Penal Code  
5 Section 1524(c) be implemented, and such other and further relief as the court might deem just and  
6 proper, on the grounds that the materials seized are protected by the attorney-client privilege, the  
7 attorney work product doctrine, and the right of Mr. Jackson to communicate with counsel to prepare  
8 his defense. Mr. Jackson reserves the right to make other motions regarding these particular items  
9 and the search in general. This application is based on this application, the Memorandum of Points  
10 and Authorities and Declaration of Robert M. Sanger filed concurrently herewith as well as all  
11 papers, records and files herein and such supplemental and further papers, exhibits and evidence as  
12 may be filed hereafter and as may be adduced at the hearing on this application.

13 Dated: September 16, 2004

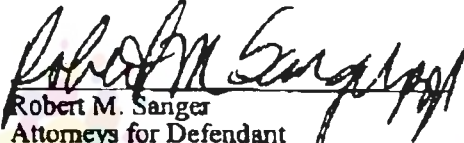
14 Respectfully submitted,

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19 SANGER & SWYSEN  
20 Robert M. Sanger

21 OXMAN & JAROSCAK  
Brian Oxman

22  
23 By:   
24 Robert M. Sanger  
Attorneys for Defendant  
25 MICHAEL JOSEPH JACKSON

26  
27  
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EMERGENCY APPLICATION

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 IT IS APPARENT FROM THE SHERIFF'S PROPERTY FORM THAT THE ITEMS  
4 SEIZED PURSUANT TO SEARCH WARRANT NUMBER 5135 ARE PROTECTED BY  
5 THE ATTORNEY-CLIENT PRIVILEGE AND MUST BE SEALED

6 It is known to the District Attorney and law enforcement that [REDACTED] is the  
7 personal assistant to Michael Jackson and that she maintains Mr. Jackson's personal papers and  
8 files. From the Sheriff's Department Property Form, it appears that some of the items seized  
9 relate to Mr. Jackson's attorneys' representation of him in this matter. It is apparent from the  
10 inventories that some, if not all of the items seized, are covered by the attorney client privilege.  
11 At this point we believe that at least one of the items, specifically, was a fax sent on behalf of the  
12 client to his lawyer regarding possible trial witnesses. Other items seized include 3 folders  
13 labeled "Mesereau."

14 The Fourth Amendment protects people not places. (*Katz v. United States* (1967) 389  
15 U.S. 347, 351.) Here, Mr. Jackson has an expectation of privacy with regard to materials in  
16 control of his personal assistant, including confidential legal documents.

17 Law enforcement and the District Attorney continue to attempt to use search warrants,  
18 after a case has been filed, and after a client has retained counsel, despite being aware that they  
19 run the risk of invading the defense camp. It is particularly peculiar that officers would seek a  
20 search warrant such as this, and that the District Attorney would approve of such a warrant,  
21 having been put on notice that their prior actions invaded the defense camp.

22 We seek immediate relief by way of an order that all of the materials he sealed until  
23 counsel for Mr. Jackson have the opportunity to review what was seized and further brief the  
24 issue of invading the defense camp. We request that this Court issue an order sealing these items  
25 and implementing the procedures of Penal Code Section 1524(c) so that a determination can be  
26 made if the materials seized are covered by the privilege and to fashion appropriate remedies.

27 Counsel for the prosecution, Deputy District Attorney Gordon Auchincloss, has been  
28

EMERGENCY APPLICATION

1 advised that Mr. Jackson will be seeking this relief and stated that he had no objection to the  
2 Court addressing this matter on Friday, September 17, 2004.

3 II.

4 CONCLUSION

5 For the reasons stated above, Mr. Jackson requests that the Court issue an order sealing  
6 these items and implementing the procedures of Penal Code Section 1524(c) so that a  
7 determination can be made if the materials seized are covered by the privilege and to fashion  
8 appropriate remedies.

9 Dated: September 16, 2004

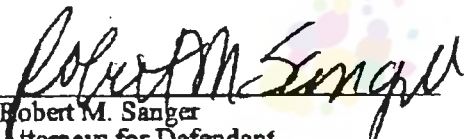
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18 By:

  
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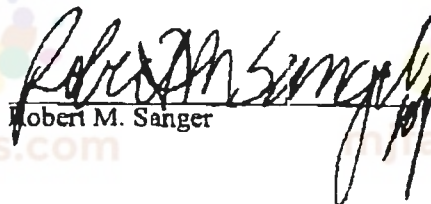
EMERGENCY APPLICATION

DECLARATION OF ROBERT M. SANGER

I, Robert Sanger, declare:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Sanger & Swysen, and co-counsel for Michael Jackson.
2. I was advised that law enforcement conducted a search of [REDACTED] home on September 15, 2004.
3. I have reviewed the "Resident Copy" of the search warrant and inventories served on [REDACTED] on September 15, 2004 during the execution of the search.
4. It is apparent from the inventories that some, if not all of the items seized, are covered by the attorney-client privilege. At this point we believe that at least one of the items seized, specifically, was a fax sent on behalf of the client to his lawyer regarding possible trial witnesses. Other items seized included 3 folders labeled "Mesereau."
5. On the afternoon of September 16, 2004, I spoke with Deputy District Attorney Gordon Auchincloss and advised him of my concerns regarding the seizure of attorney-client privileged material. Mr. Auchincloss said that the officer told him during a briefing that they seized what appeared to be attorney-client privileged materials and that they had sealed the materials and deposited them with the Court.
6. It was not possible to give standard notice of this ex parte application, as counsel for Mr. Jackson did not receive copies of the search warrant and inventories until September 16, 2004.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 16<sup>th</sup> day of September, 2004 at Santa Barbara, California.

  
Robert M. Sanger

EMERGENCY APPLICATION