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17 Attorneys for Defendant
18 **MICHAEL JOSEPH JACKSON**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

OCT 29 2004

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

** Unsealed pursuant
to 6/16/05 Court
order*

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

21 THE PEOPLE OF THE STATE OF
22 CALIFORNIA,

23 Plaintiffs,

24 vs.

25 MICHAEL JOSEPH JACKSON,

26 Defendant.

Case No. 1133603

EX PARTE APPLICATION TO FILE UNDER
SEAL

Honorable Rodney S. Melville

Date: October 29, 2004

Time: 8:30 am.

Dept: SM 2

FILED UNDER SEAL + *In Camera*

27 TO THE CLERK OF THE ABOVE ENTITLED COURT:

28 Defendant requests that the Court issue an order that the accompanying Ex Parte Application
to Endorse Subpoena, and accompanying documents, be filed under seal and for such other such

EX PARTE APPLICATION TO FILE UNDER SEAL

1 further relief as the Court may deem just and proper. This request is based on the overriding
2 interests of Mr. Jackson's rights to due process and a fair trial under the Fifth, Sixth and Fourteenth
3 Amendments to the United States Constitution and Article I, Sections 1, 7, and 15 of the California
4 Constitution. Mr. Jackson further requests the Ex Parte Application be made without notice to the
5 prosecution pursuant to its Order of August 9, 2004, a copy of which accompanies this Ex Parte
6 Application, and the requirements of Teal v. Superior Court, 117 Cal. App. 4th 488 (2004), which
7 permit the defense to issue subpoenas and receive subpoenaed material without notice to the
8 prosecution.

9 Mr. Jackson has not submitted a redacted version of this Ex Parte Application because under
10 the procedures set forth in the court's August 9, 2004, Order, and the customary procedures for
11 issuing endorsed subpoenas or search warrants, no notice should be given to the public and the
12 application should not be placed in the Court's public file.

13 Dated: October 29, 2004

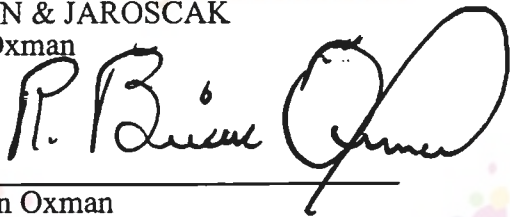
14 Respectfully submitted,

15 COLLINS, MESEREAU, REDDOCK & YU
16 Thomas A. Mesereau, Jr.
Susan C. Yu

17 SANGER & SWYSEN
18 Robert M. Sanger

19 OXMAN & JAROSCAK
20 Brian Oxman

21 By:

22 
23 R. Brian Oxman
24 Attorneys for Defendant
25 MICHAEL JOSEPH JACKSON

26
27
28 EX PARTE APPLICATION TO FILE UNDER SEAL

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 Mr. Jackson's rights to due process and a fair trial under the Fifth,
20 Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 1, 7,
21 and 15 of the California Constitution.

22 An inspection of the documents will reveal that they disclose the testimony of witnesses
23 or potential witnesses and disclose possible evidence, the admissibility of which, is yet to be
24 determined.

25 The overriding interests of Mr. Jackson's rights to a fair trial and due process would be
26 compromised if the accompanying document is not filed under seal. A person accused of a crime
27 is entitled to due process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the
28

1 United States Constitution and Article I, Sections 1, 7, and 15 of the California Constitution.
2 Material contained the accompanying document pertains to evidence and the testimony of
3 witnesses that, if made public, would compromise Mr. Jackson's these rights and would result in
4 prejudice to Mr. Jackson. In order to protect these overriding interests, it is necessary that the
5 accompanying document be filed under seal.

6 In addition, Mr. Jackson requests this application not be disclosed to the prosecution nor
7 placed in the Court's public file pursuant to the Court's Order of August 9, 2004. That Order
8 was made pursuant to Teal v. Superior Court, 117 Cal. App. 4th 488, 492 (2004), where the court
9 stated:

10 "[I]t is inappropriate to give a defendant "the Hobson's choice of going forth with his
11 discovery efforts and revealing possible defense strategies and work product to the
12 prosecution or refraining from pursuing these discovery materials to protect his
13 constitutional rights and prevent undesirable disclosures to his adversary.[Citation.]"
14 (Barrett [People v. Superior Court, 80 Cal. app. 4th 1305, 1321 (2000)]). The trial court's
15 order to reveal the subpoenaed materials to the prosecution placed Teal in this untenable
16 position. As such, we conclude that the trial court abused its discretion in ordering
17 defense counsel to provide the subpoenaed materials to the prosecution and that the error
18 impinged upon Teal's constitutional rights. (Id. at pp. 1320-1321, 96 Cal.Rptr.2d 264.)"

19 The subpoenaed material pertain to Mr. Jackson's defense strategy and reveal his
20 counsel's work product., The subocean itself sets forth a probable cause statement that reveals
21 information that would place Mr. Jackson in the "Hobson's choice" of going forth with discovery
22 or revealing his defense strategy. Mr. Jackson requests this Application and the endorsed
23 subpoena be sealed and not made part of the Court's public file.

24 **CONCLUSION**

25 For the foregoing reasons, Mr. Michael Jackson requests his Ex Parte Application to Seal

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27 ///

1 Application to Endorse Subpoena and accompanying documents be filed under seal and that no
2 redacted copy be placed in the Court's public file.

3 Dated: October 29, 2004

4 COLLINS, MESEREAU, REDDOCK & YU
5 Thomas A. Mesereau, Jr.
6 Susan C. Yu

7 SANGER & SWYSEN
8 Robert M. Sanger

9 OXMAN & JAROSCAK
10 Brian Oxman

11 By: 

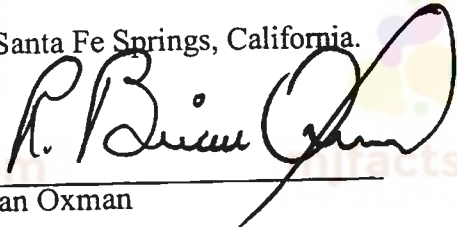
12 R. Brian Oxman
13 Attorneys for
14 MICHAEL JOSEPH JACKSON

1 DECLARATION OF BRIAN OXMAN

2
3 I, Brian Oxman, declare:

- 4 1. I am an attorney at law duly licensed to practice law in the courts of the State of
5 California, and an attorney for Michael Jackson.
- 6 2. It is necessary that the accompanying Ex Parte Application to Endorse Subpoena and
7 accompanying documents be filed under seal in order to protect the overriding interests of
8 Mr. Jackson's rights to due process and a fair trial, as well as to prevent the disclosure of
9 witnesses, potential witnesses and potential evidence.

10 I declare under penalty of perjury that the foregoing is true and correct and that this
11 declaration was executed this 29th day of October, 2004 at Santa Fe Springs, California.

12
13 
14 R. Brian Oxman

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JUL 09 2021

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF CALIFORNIA,) Case No.: 1133603

Plaintiff,

Protective Order Regarding Defendant's
Subpoenas Duces Tecum

vs.

MICHAEL JACKSON,

Defendant.

Good cause appearing, it is hereby ordered that the clerk of the court shall permit Defendant Michael Jackson, by and through his counsel, to subpoena materials without disclosing the nature of the subpoena, the person or items sought by the subpoena, or the response to the subpoena and any materials returned therewith.

It is further ordered, without limiting the generality of the foregoing, that:

1. The clerk of the court shall segregate and keep confidential and not disclose to the People any materials pertaining to the subpoena, including returns, documents, and other materials returned in response to said subpoena.

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1 2. The clerk of the court shall permit Counsel for the defendant to subpoena
2 materials to the court on days and times at which the case itself is not on calendar for
3 other purposes.

4 3. Persons or entities subpoenaed by the defendant shall not disclose directly or
5 indirectly to the People the fact that they have been subpoenaed or the nature of the
6 subpoena.
7

8 4. Any appearance, objection, compliance, or other communication by a party
9 subpoenaed by the defendant shall be filed under seal.

10 5. Any hearings involving the materials pertaining to the subpoena, including
11 returns, documents and other materials returned in response to the subpoena regarding
12 compliance, privacy or other issues shall be held in camera.
13

14 6. This order does not affect the right of any party whose records are subpoenaed
15 to assert any applicable claims of privilege.

16 7. Subject to the resolution of any issues of privilege that may be asserted, the
17 clerk of the court shall permit counsel for the defendant to inspect and copy the
18 subpoenaed materials.
19

20 8. A copy of this order shall be served with each subpoena to which it pertains.

21 DATED: JUL 09 2004

22 Rodney S. Melville
23 RODNEY S. MELVILLE
24 Judge of the Superior Court
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27
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