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19 **MICHAEL JOSEPH JACKSON**

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

DEC 15 2004

GARY M. BLAIR, Executive Officer

By Carrie L. Wagner
CARRIE L. WAGNER, Deputy Clerk

* Unsealed pursuant
to 6/16/05 court order

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION**

22 **THE PEOPLE OF THE STATE OF**
23 **CALIFORNIA,**

24 Plaintiffs,

25 vs.

26 **MICHAEL JOSEPH JACKSON,**

27 Defendant.

Case No. 1133603

**DECLARATION OF BRIAN OXMAN IN
OPPOSITION TO PLAINTIFF'S
OBJECTION TO SUBPOENAS**

Honorable Rodney S. Melville

Date: December 20, 2004

Time: ~~8:30 p.m.~~ 9:30 AM

Dept: SM 2

FILED UNDER SEAL

I.

INTRODUCTION

I, Brian Oxman, declare and say:

1. I am an attorney at law admitted to practice before all the courts of the State of California and I am an attorney for Mr. Michael Jackson. Plaintiff has filed an Objection to Subpoenas in response to Mr. Jackson's Motion to Compel Compliance with Subpoena to UCLA Medical Center. In addition, plaintiff has added a new objection regarding Mr. Jackson's subpoena of the U.S. Army and medical records from Kaiser Hospital. Plaintiff's objections are without foundation because:

(1) There is no physician-patient privilege in criminal proceedings, and the complaining mother's medical records from UCLA Medical Center or Kaiser Hospital are relevant because she has placed her mental and physical conditions in issue by claiming injuries as a result of Mr. Jackson's conduct.

(2) The subpoena to the U.S. Army is relevant because Jay Jackson is a government informant who has placed his reliability as a government employee in issue by the prosecution vouching for his voracity, and he has apparently committed bankruptcy fraud by failing to disclose his military income on his bankruptcy petition;

(3) Plaintiff has no standing to assert the individual privacy rights of witnesses, and plaintiff again fails to address the fact the court issued an order finding the U.S. Army subpoena "material and relevant" on October 22, 2004.

II.

THE COURT SHOULD COMPEL PRODUCTION OF THE SUBPOENAED RECORDS

BECAUSE THEY ARE RELEVANT AND NOT COVERED

BY ANY PRIVILEGE

A. Plaintiff has No Standing to Raise Private Objections for Complaining Witnesses

1. The prosecutor represents the People not the witnesses.

2. Mr. Jackson has received no objections or responding papers from the complaining witnesses regarding his Motion To Compel Compliance with Subpoena to UCLA Medical Center. They were served with the subpoenas themselves on December 1, 2004, and a Notice setting forth their rights to complain on

1 December 3, 2004. (Exhibit "A"). Because they did not object within the five (5) court days set forth by
2 the court, the court should release all of the subpoenaed records.¹

3 3. The public prosecutor is not the attorney for the complaining witnesses.² Without statutory
4 authority a district attorney may not represent a third party in a criminal proceeding. Bullen v. Superior
5 Court, 204 Cal. App. 3d 22, 25 (1988). The district attorney's function is governed by statute and is
6 designated by statute as an officer of the County. Government Code section 24000(a). The duties and
7 restrictions imposed on a district attorney are prescribed by statute. Id. sec 26500 et seq. Government
8 Code section 26500 provides "[t]he district attorney is the public prosecutor .. [who] shall attend the courts,
9 and within his or her discretion shall initiate and conduct on behalf of the people all prosecutions for public
10 offenses."

11 4. In Shepard v. Superior Court, 17 Cal. 3d 107, 122 (1976), the court stated:

12 "The district attorney is not an 'attorney' who represents a 'client' as such. He is a public officer,
13 under the direct supervision of the Attorney General (Cal. Const. art. V. sec. 13), who 'represents
14 the sovereign power of the people of the state, by whose authority and in whose name all
15 prosecutions must be conducted.' (Fleming v. Hance (1908) 153 Cal. 162, 167.)"

16
17
18 ¹ Attorney Zonal complains that the Notice served on the complaining witnesses "contains an
19 advisement that they must object within 'five [calendar] days' rather than five court days." Zonen Dec., p.
20 4, line 5). When this apparent error was discovered, Mr. Jackson promptly served an Amended Notice on
21 the complaining witnesses on December 3, 2004, correcting the error. (Exhibit "A"). Complaining
witnesses had to December 10, 2004, to file an objection. They did not. There is no basis for plaintiff to
complain the complaining witness were properly notified.

22 ² Attorney Zonan stated under penalty of perjury:

23 "I have reviewed each of the subpoenas duces tecum issued by defendant to various entities,
24 a copy of which his counsel sent to the Doe family in compliance with the court's order dated
November 29, 2004." (Zonen Dec., p. 3, lines 6-8).

25 On November 29, 2004, the court ruled that it was not modifying the portions of the July 9, 2004,
26 Teal Order that required the recipient of subpoenas to maintain their confidentiality. Despite knowing the
27 Teal Order prohibited disclosure of the subpoenas to plaintiff, Attorney Zonen knowingly violated the July
28 9, 2004, Order by reviewing the subpoenas turned over to him from the Doe family. Not only did Attorney
Zonen and the entire District Attorney's office aid and abet the Doe family to violate the July 9, 2004,
Order, but also they directly violated the July 9, 2004, Order by viewing material they knew they were not
supposed to receive.

1 5. The district attorney does not have standing to file an objection to a subpoena involving a
2 witness. The complaining witnesses have an attorney who has appeared in this action to represent the
3 complaining witnesses. The public prosecutor is not the attorney for the witnesses

4 2. Plaintiff's cited authorities do not support its position.

5 6. Plaintiff cites Neal v. Bank of America, 93 Cal. App. 2d 678 (1949), for the proposition the court
6 has the authority to prevent an abuse of its process. (Plaintiff's Memo, p. 5, line 8-9). However, in Neal,
7 plaintiff brought a civil action against a bank claiming the bank and not paid to plaintiff the final
8 installment on a construction loan to build a house. The bank's demurrer to the complaint was sustained on
9 the grounds the loan was to the owner, not the contractor plaintiff, and the bank had no duty to plaintiff to
10 make any payment. Plaintiff then filed an amended complaint in which plaintiff omitted the facts of the
11 case and plead defendant held money belonging to plaintiff and owed plaintiff the unpaid balance. The trial
12 court sustained the demurrer, and the Court of Appeal affirmed, finding plaintiff could not withdraw
13 material allegations from the complaint or change facts without explanation. The court found "the courts
14 have inherent power, by summary means, to prevent frustration, abuse, or disregard of their processes." Id.
15 at 682. The amended complaint was filed without authority and the court ordered its stricken.

16 7. Neal had nothing to do with a subpoena and nothing in that case permits a court to reverse an
17 order finding a subpoena is material and relevant. The showing Mr. Jackson made that the subpoena to the
18 U.S. Army was material and relevant is not only powerful, it is a demonstration of the pervasive fraud
19 which forms the basis of the complaint in this action.

20 8. Plaintiff cites Mansel v. Otto, 108 Cal. App. 4th 265 (2003), for the proposition the prosecution
21 may request an order directing a crime victim's psychiatric records be returned to the victim. (Plaintiff's
22 Memo, p. 5, lines 14-16). However, in Mansel a civil plaintiff brought an tort claim against a criminal
23 defendant and the defendant's attorney claiming the defense violated her constitutional rights to privacy by
24 reading her psychiatric records. The criminal defendant subpoenaed the plaintiff's psychiatric records and
25 the hospital declined to produce them. The defendant then obtained a court order requiring their production
26 under seal. The court gave the records to the prosecution who then turned them over to the defense. The
27 trial court sustained defendant's demurrer, and the court of appeal affirmed finding there was no
28

1 constitutional violation. The court found the defense had received the records in the course of litigation
2 and their acts were protected by a litigation privilege under Civil Code section 47. Id. at 271-72.

3 9. In this case, Mr. Jackson subpoenaed Janet and Gavin Arvizo's medical and psychological
4 medical records on March 17, 2004. As discussed below, the records arrived in court and the prosecutor
5 took custody of them. The plaintiff then voluntarily turned over the records to the defense. The
6 prosecutor's claim that it now has standing to complain about follow up subpoenas to get full and complete
7 records such as billing records from hospitals is without merit.

8 **B. The Complaining Witnesses Waived Any Privilege to Kaiser Mental Health Records.**

9 **1. The mental health records were publically disclosed.**

10 10. Plaintiff argues:

11 "The records subpoenaed by the defense from Kaiser Hospital include records of mental
12 health therapies protected under Civil Code section 1014. Records of mental health therapies
13 should be redacted from those records to be furnished to the defense unless and until a waiver has
14 been established." (Plaintiff's Memo, p. 21-24).³

15 11. However, a waiver has been established because all of the complaining family's mental health
16 records were produced in connection with the case of Janet Arvizo and David Arvizo v. J.C. Penny, Inc.,
17 Los Angeles County Superior Court Case No. KC 027876. All of these records were previously reviewed
18 by Dr. John Hochman when they were disclosed to him. (See Motion for Mental Examination filed
19 November 19, 2004, and accompanying medical reports reviewing mental Kaiser mental health records).
20 There are no mental health records which were not fully disclosed in connection with that case, including
21 all medical and mental health records from Kaiser Hospital.

22 12. Privileged information previously disclosed in a public forum may no longer be claimed as
23 privileged. Klang v. Shell Oil Co., 17 Cal. App. 3d 933, 938 (1971). Once a privileged records have been
24 disclosed, the patient can no longer claim the communication or record to be privileged. Jasmine Networks.

25 _____
26 ³ Plaintiff has not attached a copy of the subpoena to Kaiser Hospital and without that document,
27 this court cannot assess the nature or quality of plaintiff's argument. For plaintiff to repeatedly ask this
28 court to assess subpoenas in a vacuum is improper. Plaintiff did the same thing in connection with it's
motion to modify the teal order regarding records from American Express, Attorney Feldman, and
Psychologist Katz.

1 Inc. v. Marvell Semiconductor, Inc., 117 Cal. App. 4th 794, 805 (2004) Once confidential medical records
2 or psychotherapist records have been disclosed, the patient may not claim the records privileged because
3 the prior disclosure eliminates claims of confidentiality. Roe v. Superior Court, 229 Cal. App. 3d 832, 838-
4 39 (1991).

5 13. All of the complaining witness family produced their psychiatric records in the J.C. Penny case.
6 The prosecution knew this because it got a copy of those records. Plaintiff's claim that the records are
7 confidential or that no waiver has been established is disingenuous.

8 **2. Plaintiff turned over these records to Mr. Jackson in this case.**

9 14. Attorney Zonen states:

10 "Defendant directed a subpoena duces tecum to Kaiser Foundation, seeking all medical
11 records of each member of the family since birth, including psychiatric records of Jane Doe that are
12 subject to legal privilege." (Zonen Dec., p. 3, lines 19-21).⁴

13 15. However, in this case plaintiff came into possession of the complaining family's mental and
14 medical records through a subpoena issued by former counsel Mr. Mark Geragos on March 17, 2004,
15 (Exhibit "B"), and through the subpoena of J.C. Penny's documents to this Court (Exhibit "C"). The
16 documents were produced in this court room, and the prosecution agreed to copy them and turn them over
17 to Mr. Jackson in April and May, 2004. Plaintiff made no objection before agreeing to turn the records
18 over to Mr. Jackson, and when the prosecution obtains privileged records of a witness, the prosecution is
19 obligated to disclose that information to the defense because the privilege has been breached. People v.
20 Hammon, 15 Cal. 4th 1117, 1125-28 (1997). See also Pennsylvania v. Ritchie, 480 U.S. 39 (1987);
21 California Criminal Defense Practice, sec. 70.07[7][b] to [c], at 70.66.4 to -.5 (2003 M. Millman, C. Sevilla
22 & B. Tarlow ed.). Both the complaining witnesses and the prosecution itself have waived all
23 psychotherapist privileges regarding records by turning them over to the defense.

24 16. Mr. Jackson's more recent subpoena to Kaiser Hospital was a follow up to a prior subpoena
25 dated March 17, 2004, served on Kaiser from Mr. Jackson's former counsel, Mr. Mark Geragos. It was Mr.
26 Geragos' subpoena that sought the complaining witnesses psychiatric records. Mr. Jackson's follow up
27

28 ⁴ Plaintiff's claim that ordinary medical records are privilege is without foundation. there is no
physician-patient privilege in criminal cases. Evidence Code section 998. See discussion pp.6-7 infra..

1 subpoena sought billings for medical services, including psychiatric services rendered to the complaining
2 witnesses.

3 17. If Attorney Zonan had any objections to turning over the records at that time, he should have
4 made the objection then and there. Instead, he freely and voluntarily turned all of the records over to Mr.
5 Sanger. He cannot now be heard to tell this court that a follow up subpoena seeking the billings for such
6 records is in any manner improper.

7 **C. The Subpoena to UCLA Medical Center Seeks Material and Relevant Information.**

8 18. Attorney Zonan states:

9 "Defendant directed a subpoena duces tecum to the UCLA Medical Center, seeking all
10 records of Jane Doe including prenatal, postnatal, birth records, baby health care etc." (Zonen Dec.,
11 p. 3, lines 19-21).

12 19. Once again Attorney Zonan fails to attach a copy of the subpoena for this court to assess what is
13 and what is not being sought in the subpoena. The Court is left to guess what the subpoena seeks. The
14 Objector has the burden of demonstrating the subpoena seeks improper information and by failing to show
15 the Court what is being sought, the Objector has failed to assume their burden in making the objection.

16 **1. Plaintiff has placed the family's medical condition in issue.**

17 20. Plaintiff produced a medical report dated August 12, 2004, from Janet Arvizo's physician, Dr.
18 Carol Archie, claiming the complaining mother was physically incapacitated and unable to attend court.
19 (Exhibit "D"). Plaintiff then asks this Court to block Mr. Jackson's subpoena that seeks to verify the
20 medical representations that the prosecution and the complaining witness made to this Court. There was no
21 limitation on the August 12, 2004, letter from Dr. Archie, and not only did plaintiff open the door to permit
22 Mr. Jackson's inquiry into the medical representations made in that letter, but also under Evidence Code
23 section 998, there is no physician-patient privilege in criminal proceedings. Evidence Code section 998.

24 21. The physician patient privilege did not exist at common law and is strictly controlled by statute.
25 Kramer v. Policy Holders Life Ins. Assn, 5 Cal. App. 2d 38, 384 (1935). Evidence Code section 998
26 provides, "There is no privilege under this article in a criminal proceeding." It is a fundamental tenant of
27 the physician patient privilege that it has no application in criminal proceedings. People v. Combes, 56
28

1 Cal. 2d 135, 149 (1961)(no individual may claim any privilege based on a physician-patient relationship in
2 any criminal proceeding).

3 22. The rule that there is no physician patient privilege has long been the law in California. People
4 v. Lane, 101 Cal. 513, 516 (1894); People v. West, 106 Cal. 89, 91 (1895). There is no doctor-patient
5 privilege in criminal cases. People v. Ditson, 57 Cal. 2d 415, 448 (1962), cert. denied, 371 U.S. 852, cert.
6 dismissed, 372 U.S. 933 (1963); People v. Gonzales, 182 Cal. App. 2d 276, 280 (1960); People v.
7 Griffith, 146 Cal. 339 (1905); People v. Dutton, 62 Cal. App. 2d 862 (1944). "There is no physician-
8 patient privilege for any communication sought to be disclosed in a criminal action. Evid C sec. 998." 2
9 Jefferson's California Evidence Benchbook, sec. 37.22, at 827 (3d ed. 2004).

10 23. In People v. Combes, 56 Cal. 2d 135, 149 (1961), the court stated:

11 "There is no physician-patient privilege in criminal cases. (Code of Civil Procedure, section 1881,
12 subdivision 4, provides for the privilege in civil cases only.) Testimony is admissible concerning
13 the results and findings of a physical examination of a defendant to which he has voluntarily
14 submitted. (People v. Gutierrez, 126 Cal.App. 526, 531.)"

15 24. The plaintiff's objections are without foundation. The plain fact is the complaining mother has
16 been prescribed powerful medications to control her schizophrenia, and she has not been taking them. The
17 records from UCLA will demonstrate both her psychotic state and her failure to take her medications.

18 **2. The subpoena is relevant and made in good faith.**

19 25. Plaintiff argues:

20 "If Attorney Oxman truly believes Jane Doe fabricated both a pregnancy and a C-section
21 delivery, never mind the existence of the baby boy currently in her household as a result of that
22 pregnancy and delivery, then the court scan review ad much of her medical records as is necessary
23 to determine that she really did deliver a baby boy on August 27."

24 Plaintiff's Memo, p. 7, lines 14-18).

25 26. However, it is not the fabrication of her pregnancy that concerns Mr. Jackson. Rather, it is the
26 medications, medical history, and prior injuries revealed in those records that concern Mr. Jackson.
27 Medical records recount prior medical history, along with the current impact of those injuries, and because

1 the complaining witness's paranoid schizophrenia with delusions and allegations of injuries Mr. Jackson
2 caused, Mr. Jackson has a right to those records, including when she does and not take her medication..

3 27. The subpoena seeks X-rays because the complaining mother has stated that her older son shot
4 her in the leg point blank in an unprovoked assault with a BB gun. (GJ Tr., p. 1209, lns 17-21; Police
5 Interview, 8-13-04, Exhibit "E," p. 13 ln 12 to p. 14, ln 7). The assault with a deadly weapon, according to
6 the mother, was Michael Jackson's fault because her older son was somehow changed by his experience at
7 Neverland Ranch, and ever since then he has been out of control, violent, and incorrigible. The mother
8 cannot put her and her family's medical condition in issue, tell the police she was shot with a weapon, and
9 then say to this Court don't release her medical records or X-rays.

10 28. While the charge that Mr. Jackson is at fault for the older son's criminal behavior is a classic
11 case of attempting to blame someone else for criminal conduct, the simple fact is the mother is blaming Mr.
12 Jackson for her injury. Mr. Jackson has every right to her X-rays. The prosecution should not be allowed
13 to hide them.

14 a. Laboratory tests are relevant and material.

15 29. The subpoena seeks lab tests because the mother is a paranoid schizophrenic with delusions.
16 Her use of medications, narcotics, and psychotropic drugs is documented throughout her medical records,
17 and Dr. Archie states she uses narcotics, Dr. John Hochman states in his reports the complaining mother

18 [REDACTED]
19 [REDACTED] (See Motion for Medical Examination filed
20 November 19, 2004). Laboratory tests will reveal her use and non-use of medications, and those tests also
21 reveal the non-existence of the various other illnesses and body complaints [REDACTED]
22 [REDACTED]

23 30. Laboratory tests for the complaining witnesses are critical in this case because the prosecution
24 has claimed that Mr. Jackson was part of a vast conspiracy to dump a urine sample jar so that alcohol
25 would not be detected in the older son's urine. Like the strawberries that Captain Queeg insisted were
26 missing in the Caine Mutiny, the missing urine is a product of the mother's delusion. There was sufficient
27 urine to test on the occasion in question, and the laboratory reports will demonstrate that fact.

1 31. The defense believes additional and other urine samples from both the mother and her children
2 will demonstrate the use of drugs and alcohol. It is the complaining witnesses who raised these issues and
3 opened the door to the examination of medical records. Mr. Jackson is entitled to subpoena those records.

4 **b. MRI films are relevant to show claimed injuries.**

5 32. MRI films of the mother will demonstrate if she has ever sustained a head injury. Her
6 paranoid-schizophrenia with delusions was diagnosed by a Board Certified Psychiatrist, and often blows to
7 the head result in the onset of schizophrenia. In the case of the younger son, he has an arachnoid cyst on
8 the brain that he claimed to Dr. Hochman was the product of a blow to the head, and Mr. Jackson is entitled
9 to MRI scans that demonstrate the nature and extent of brain injuries to these complaining witnesses. In
10 addition, MRI films will demonstrate the presence or absence of injury from the older son's assault with the
11 BB gun that the complaining mother says was Michael Jackson's fault.

12 **c. Gynecology records show the use or non-use of drugs**

13 33. Mr. Jackson's subpoena seeks the complaining mother's most recent medical treatments at
14 UCLA and seeks gynecological records only to the extent they reflect her treatment, prescription of drugs,
15 and her use or non-use of drugs. The subpoena seeks all of her medical records, and the mother's
16 gynecological records are relevant to this proceeding because the mother became pregnant at the same time
17 she has given testimony in this case. [REDACTED]

18 [REDACTED] the mother was unable to take medications
19 both before conception because they interfere with fertility, and after, because they are teratogenic to the
20 infant in utero. The records are relevant because they disclose other medical information dealing with the
21 truth of her claims and not for the sake of the gynecological portion of the records.

22 34. The mother testified before the Grand Jury without the benefit of medication [REDACTED]
23 [REDACTED] Her testimony was the product
24 of a delusion. No amount of protest from the prosecution can explain the bizarre conduct of this witness
25 before this Court on September 17, 2004, her inability to understand questions, her failure to answer
26 questions, and her act of praying before this Court in the middle of her testimony. The complaining
27 mother's gynecological records will demonstrate the fact she failed to take her medication.

28 **d. Billing records will disclose the mother's fraud.**

35. Billings are relevant to this case because all of the mother's and complaining family's medical bills are covered by insurance. The complaining witnesses have enlisted the assistance of Fritz Coleman, who is a newscaster and weatherman for KNBC Chanel 4 in Los Angeles, and many others to raise thousands and thousands of dollars to pay for her and her son's medical bills. However, all of those bills were covered by insurance and she paid none of them.

36. From the very start of her relationship in the year 2000, she defrauded Michael Jackson with the same misrepresentations of her need for money. The medical bills will demonstrate she paid none of them with the thousands of dollars she fraudulently obtained from the public. The medical bills from health care provides will demonstrate the mother defrauded Michael Jackson.

2. Mr. Jackson's right to a fair trial outweighs privacy claims.

37. The complaining mother has testified about her medical condition and accused Michael Jackson of injuring her. She offered a report from Dr. Archie saying she was on narcotics and physically unable to attend court on September 27, 2004. Mr. Jackson's interest in a fair trial far outweighs any of the mother's claims to privacy.

38. The constitutional right to privacy is not absolute and is outweighed by rights to a fair trial. Binder v. Superior Court, 196 Cal. App. 3d 893, 900 (1987). Other state interests, such as facilitating the ascertainment of truth in a criminal proceeding, outweigh privacy rights. Board of Trustees v. Superior Court, 119 Cal. App. 3d 516, 524-25 (1981). In Palay v. Superior Court, 18 Cal. App. 4th 919, 933 (1993), the court stated:

"The constitutional right to privacy is not absolute. ([Jones v. Superior Court,] 119 Cal.App.3d at p. 550; Board of Medical Quality Assurance v. Gherardini, supra, 93 Cal.App.3d at p. 679.) It may be outweighed by supervening concerns. (Ibid.) The state has enough of an interest in discovering the truth in legal proceedings, that it may compel disclosure of confidential material. (Jones v. Superior Court, supra, 119 Cal.App.3d at p. 550.) "[A]n individual's medical records may be relevant and material in the furtherance of this legitimate state purpose" (Board of Medical Quality Assurance v. Gherardini, supra, 93 Cal.App.3d at p. 679.) An "intrusion upon constitutionally protected areas of privacy requires a 'balancing of the juxtaposed rights, and the

1 finding of a compelling state interest.' [Citations.]" (Jones v. Superior Court, *supra*, 119 Cal.App.3d
2 at p. 550.)"

3 39. While the plaintiff claims the medical records are irrelevant to this proceeding, the mother is
4 the one who claims physical injuries to her and her children because of Michael Jackson. It is improper for
5 anyone to offer a doctor's report to a court of law stating they use narcotics and are unable to attend a
6 hearing because of physical impairment, and then to attempt to hide the medical records. Mr. Jackson has a
7 right to determine the veracity of not only the complaining mother, but also the physicians involved, and
8 the court should compel production of the medical records.

9 **C. The Court has Already Approved the Subpoena to the U.S. Army.**

10 40. Attorney Zonan states:

11 "The military records sought are those of Jane Doe's husband, the step-father of the victim.
12 The records are for any document ever generated by the United States Army during the 23 years Mr.
13 Doe has been associated with them either on active or inactive duty." (Zonen Dec., p. 3, lines 13-
14 15).

15 41. However, not only does Attorney Zonan fail to attach a copy of the subpoena for the court to
16 assess what is and is not being sought, but also the records Mr. Jackson seeks from the U.S. Army are
17 designed to demonstrate Major Jay Jackson has committed systematic fraud not only to the U.S.
18 government, but also the County of Los Angeles and this Court. The court cannot assess plaintiff's
19 objection without a copy of the subpoena. Plaintiff's objection lacks foundation.

20 42. On October 17, 2004, Mr. Michael Jackson made an application to this court requesting his
21 subpoena to the United States Army be approved as "material and relevant" under the rules and regulations
22 established by the Army, the U.S. Congress and United States ex rel. Touhy v. Ragen, 340 U.S. 462, 467
23 (1951). The application made a showing of both probable cause and materiality of the requested records
24 and set forth for the court the Army's requirements for the approval of a subpoena. On October 22, 2004,
25 the court signed an Order endorsing the subpoena which stated:

26 "The Court having permitted Counsel to submit an Ex Parte Application, Counsel having
27 done so and GOOD CAUSE APPEARING THEREFORE,

1 "IT IS HEREBY ORDERED that the evidence of witnesses, the Custodian of Records for
2 the 311 Component Corps Support Command (COSCOM), U.S. Army Reserve; 63rd Regional
3 Readiness Command (RRC), U.S. Army; Defense Finance and Accounting Service, U.S. Army; and
4 U.S. Army Human Resources Command, U.S. Army, is material and relevant, and the Subpoena
5 Duces Tecum for work records of Jay Daniel Jackson is necessary and relevant to this proceeding,
6 the Court hereby endorses the subpoena attached hereto dated October 14, 2004." (Exhibit "F").

7 43. In Mr. Jackson's application to the court, he made a showing of why Jay Jackson's work
8 records and personnel file are relevant to this proceeding. This United States Army Major was present and
9 repeatedly spoke to the complaining witnesses during the entire time period the vast conspiracy to falsely
10 imprison, abduct, and threaten the complaining family took place. Yet, this U.S. Army Major saw nothing
11 improper, nor did he raise any alarm, and he was completely helpless to stop the forces of Neverland from
12 abducting his family.

13 **b. Plaintiff placed Jay Jackson's reliability and background in issue.**

14 44. Plaintiff claims that Jay Jackson has a right to privacy over his military records and the
15 subpoena seeks irrelevant material. (Plaintiff's Memo, p. 8, lines 12-23). However, plaintiff makes no
16 showing of what in the subpoena is irrelevant, and when the Court entered its order on October 22, 2004,
17 the court found the subpoenaed information was "material and relevant." That finding was based on:

18 (1) Jay Daniel Jackson was identified by the District Attorney as the confidential reliable
19 government informant in at least six (6) search warrants in this case. The government has vouched for his
20 history of trustworthiness, voracity, and credibility. The act of representing to this court that this man is
21 reliable and trustworthy renders all of his background, training, and employment records relevant to this
22 proceeding;

23 (2) Jay Daniel Jackson testified before this Court about his 22 years of experience as a
24 United States military officer. He told the police he was in contact with Janet Arvizo at all times during the
25 period when the Arvizo family was being falsely imprisoned, yet despite his military background as a
26 United States Army Major, he did nothing regarding such false imprisonment. His failure to take action as
27 a military officer in the face of such a circumstance renders his military background, training, and
28 capabilities as a military officer relevant to this proceeding;

1 (3) Jay Daniel Jackson conducted surveillance of Bradley Miller prior to the search of his
2 office on November 18, 2003, with full knowledge that Mr. Miller was employed by Attorney Mark
3 Geragos because Jay Jackson was present at a tape recorded interview where Bradley Miller said he worked
4 for Attorney Geragos. However, according to his sworn testimony before this Court, Major Jay Jackson
5 never once disclosed that information to the government. This blatant omission, or more accurately
6 concealment, renders his military training, history of government service, and reliability as a government
7 employee relevant to this proceeding.

8 45. No United States Army officer, let alone a Major, would have stood idly by while his soon to be
9 wife and family were repeatedly abducted in front of his eyes or coerced to do interviews in his own home.
10 This scenario smacks of the absurd. Jay Jackson's military training and personal history is relevant to this
11 proceeding.

12 **c. Jay Jackson apparently committed bankruptcy fraud.**

13 46. Mr. Jackson believes Major Jackson committed bankruptcy fraud when he petitioned for
14 bankruptcy under Chapter 7 of the Bankruptcy Act, 11 U.S.C. section 101 et seq., by not disclosing his
15 military pay and benefits. On November 10, 1998, Jay Jackson filed a Voluntary Petition under Chapter 7
16 listing his income as \$745.34 a month from Advanced nutrition, Inc., which was a company he owned
17 with his mother. (Exhibit "G"). He claimed his income from employment was \$18,091.00 in 1998,
18 \$30,300.00 in 1997, and \$27,400.00 in 1996. He received a bankruptcy discharge on February 18, 1999.

19 47. However, Jay Jackson testified to this court on August 19, 2004, that he had been in the
20 military for the past 22 years. (Tr., p. 6, ln 23-28). Either Jay Jackson committed perjury in this Court by
21 claiming employment with the military for 22 years, or he lied on his bankruptcy filings where his military
22 pay was not included. Whatever the true facts, Mr. Jackson has a right to this material to demonstrate Jay
23 Jackson's total lack of respect for the an oath to tell the truth under penalty of perjury.

24 48. Mr. Jackson has the right to not only demonstrate Jay Jackson committed bankruptcy fraud,
25 which is a crime of moral turpitude, but also he has committed fraud in laundering Janet Arvizo's welfare
26 checks through his bank account where he deposits his military pay of \$8,000.00 a month. In addition,
27 Major Jackson deposited Janet Arvizo's signed welfare checks into his bank account on February 24, 2003,
28 right in the middle of the so called false imprisonment, child abduction, and extortion that he and his wife

1 have charged against Mr. Jackson. (Exhibit "H"). Mr. Jackson seeks Jay Jackson's military and pay
2 records to demonstrate the amount of money he received, and when he received it in order to demonstrate
3 the laundering of welfare payments through his account was a crime of moral turpitude he and Janet Arvizo
4 committed right in the middle of the non-existent false imprisonment, child abduction, and extortion.

5 **c. Jay Jackson concealed his criminal act in violation of Army rules.**

6 49. Plaintiff states that contrary to the position it took in its Motion to Modify Teal Order filed
7 November 17, 2004, it now has no objection to turning over Jay Jackson's records regarding drunk driving.
8 (Plaintiff's Memo, p. 8; lines 10-11). These records are relevant to this case because the subpoena seeks to
9 determine whether Jay Jackson reported his convictions to his superior as required by the Uniform Code of
10 Military Justice. (See Judge Advocate General Policy Memoranda and Regulations attached as Exhibit "I,"
11 "J," and "K"). Section 911, Article 111 of the Uniform Code of Military Justice makes driving while
12 intoxicated an offense subject to court marshal. The nature of any report Major Jackson did or did not
13 make of his criminal activity is relevant to this case because it is required of all military personnel.⁵

14 **d. No privacy interest is involved in a government employee's records.**

15 50. Jay Jackson undertook the role as a confidential government informant. When he did that he
16 waived any claim of privacy for his employment records. When he laundered Janet Arvizo's welfare checks
17 through his bank account, he lost any claims of privacy of his military background and pay records.

18 51. The constitutional right to privacy is not absolute. Jones v. Superior Court, 119 Cal. App. 3d
19 534, 550 (1981). It may be outweighed by supervening concerns such as a defendant's right to a fair trial.
20 Board of Medical Quality Assurance v. Gherardini, 93 Cal. App. 3d 669, 679 (1979). The state has enough
21 of an interest in discovering the truth in legal proceedings, that it may compel disclosure of confidential
22 material. Palay v. Superior Court, 18 Cal. App. 4th 919, 933 (1993).

23 52. Any claim Jay Jackson has to privacy of his military records is outweighed by Mr. Jackson's
24 right to a fair trial. An individual cannot have the government vouch for him as reliable and trustworthy

25 _____
26 ⁵ In a Policy Memorandum from the Army's Judge Advocate General's Office dated July 17, 2003,
27 Lt. Commander Eric F. Hazas stated:

28 "DWI/DUI is a serious offense and will be dealt with severely. It is a career stopper. I highly
encourage prudence and restraint when consuming alcohol. Common sense and moderation must always
prevail." (Exhibit "L").

1 and then hide his employment records. Jay Jackson cannot be permitted to hide his military background
2 and pay records when he declared bankruptcy without listing his military pay, let alone telling his superiors
3 about the welfare checks he was receiving.

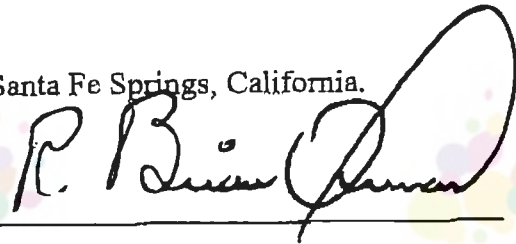
4 III.

5 CONCLUSION

6 For the foregoing reasons, Mr. Michael Jackson requests plaintiff's Objection to Subpoenas be
7 overruled.

8 I declare under penalty of perjury under the laws of the State of California the foregoing is true and
9 correct.

10 Executed this 15th day of December, 2004, at Santa Fe Springs, California.

11 
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13 R. Brian Oxman
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Exhibit "A"

COLLINS, MESEREAU, REDDOCK & YU
Thomas A. Mesereau, Jr., State Bar Number 091182
Susan C. Yu, State Bar Number 195640
1875 Century Park East, 7th Floor
Los Angeles, CA 90067
Tel.: (310) 284-3120, Fax: (310) 284-3133

SANGER & SWYSEN
Attorneys at Law
Robert M. Sanger, State Bar No. 058214
233 East Carrillo Street, Suite C
Santa Barbara, CA 93101
Tel.: (805) 962-4887, Fax: (805) 963-7311

OXMAN & JAROSCAK
Brian Oxman, State Bar No. 072172
14126 East Rosecrans
Santa Fe Springs, CA 90670
Tel.: (562) 921-5058, Fax: (562) 921-2298

Attorneys for Defendant
MICHAEL JOSEPH JACKSON

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

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiffs,

vs.

MICHAEL JOSEPH JACKSON,

Defendant.

Case No. 1133603

AMENDED NOTICE OF
SUBPOENAS

Honorable Rodney S. Melville

Date: None
Time: None
Dept: None

1 TO JANET ARVIZO, DAVELLIN ARVIZO, GAVIN ARVIZO, STAR ARVIZO, AND JAY
2 JACKSON:

3 PLEASE TAKE NOTICE that pursuant to the Court's Order of November 29, 2004, you are being
4 provided with notice of the subpoenas served on you on December 1, 2004. Pursuant to that Order, you are
5 not to disclose this information or permit any other person to make any disclosures of this information to
6 any third person not your agent. Nor are you to disclose this information to any member of the prosecution,
7 including but not limited to the Santa Barbara District Attorney, the Santa Barbara Sheriff's Office, or any
8 other person, business, or other entity.

9 You are hereby advised that you have five (5) court days from the service of this Notice to file any
10 objection and set a hearing regarding these documents. That time expires on the close of business on
11 December 10, 2004. The Court has ordered the parties to file papers by 3:00 p.m. on the date they are due.

12 Nothing in this Notice is intended to provide you with legal advice. Any legal advice regarding this
13 matter should come from your own attorney.

14
15 Dated: December 3, 2004

Respectfully submitted,

16 Thomas A. Mesereau, Jr.
17 Susan Yu
18 COLLINS, MESEREAU, REDDOCK & YU

19 Robert M. Sanger
20 SANGER & SWYSEN

21 Brian Oxman
22 OXMAN & JAROSCAK

23 By: 

24 R. Brian Oxman
25 Attorneys for Defendant
26 Michael Jackson
27
28

PROOF OF PERSONAL SERVICE

I, Vickie Distaso, declare and say:

I work for the Law Offices of Oxman and Jaroscak located at 14126 East Rosecrans Blvd., Santa Fe Springs, California. I am over 18 years of age and not a party to the within action. On December 3, 2004, at approximately 7:00 p.m., I served the following:

AMENDED NOTICE OF SUBPOENAS

on the interested parties by placing a true copy of the document in a sealed envelope, and personally serving it on:

Janet Arvizo
Davellin Arvizo
Gavin Arvizo
Star Arvizo
Jay Jackson

When I served this document and left the premises, Jay Jackson pursued me down the street for over 100 yards. I was fearful he was going to attack me. I was looking for someone to call for help. He finally stopped and returned to his home.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed this 3rd day of December, 2004, at Santa Fe Springs, California.


Vicki Distaso

Exhibit “B”

ORIGINAL

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): MARK J. GERAGOS (108325) GERAGOS & GERAGOS 350 S. GRAND AVE. 39TH FLOOR LOS ANGELES, CA 90071 TELEPHONE NO.: 213-625-3900		FOR COURT USE ONLY
ATTORNEY FOR (Name): MICHAEL JACKSON Insert name of court, judicial district or branch court, if any, and post office and street address: SANTA BARBARA COUNTY SUPERIOR COURT SANTA MARIA 312-C EAST COOK STREET P.O. BOX 5369 SANTA MARIA, CA 93456		
Title of case: PEOPLE vs. JACKSON		
SUBPENA (CRIMINAL OR JUVENILE) <input checked="" type="checkbox"/> DUCES TECUM		
		CASE NUMBER: 1133603

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME): Custodian of Records, Kaiser Hospital, 4867 Sunset Boulevard, Los Angeles, California 90027

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS you make a special agreement with the person named in item 3:

a. Date: April 2, 2004 Time: 8:30 a.m. ☒ Dept.: 2 ☐ Div.: ☐ Room:
b. Address: 312-C East Cook Street, Santa Maria, California 93456

2. AND YOU ARE


- a. ☐ ordered to appear in person.
b. ☒ not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose your original declaration with the records. Seal them. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number, your name and date, time, and place from item 1 (the box above). (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party shown at the top of the form.
c. ☐ ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena.
d. ☐ ordered to make the original business records described in the accompanying affidavit available for inspection at your business address by the attorney's representative and to permit copying at your business under reasonable conditions during normal business hours.

3. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name: Mark J. Geragos b. Telephone number: 213-625-3900
Attorney at law

4. WITNESS FEES: You may be entitled to witness fees, mileage, or both, in the discretion of the court. Contact the person named in item 3 AFTER your appearance.

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED BY A FINE, IMPRISONMENT, OR BOTH. A WARRANT MAY ISSUE FOR YOUR ARREST IF YOU FAIL TO APPEAR.

For Court Use Only	Date: March 17, 2004	 (SIGNATURE OF PERSON ISSUING SUBPENA) MARK J. GERAGOS (TYPE OR PRINT NAME) ATTORNEY AT LAW (TITLE)
(See reverse for proof of service)		

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) MARK J. GERAGOS (108325) GERAGOS & GERAGOS 350 S. GRAND AVE. 39TH FLOOR LOS ANGELES, CA 90071 BAR NO.: 108325 ATTORNEY FOR (Name): MICHAEL JACKSON	TELEPHONE NO.: 213-625-3900 FOR COURT USE ONLY
NAME OF COURT SANTA BARBARA COUNTY SUPERIOR COURT STREET ADDRESS: 312-C EAST COOK STREET MAILING ADDRESS: P.O. BOX 5369 CITY AND ZIP CODE: SANTA MARIA, CA 93456 BRANCH NAME: SANTA MARIA	
PLAINTIFF/PETITIONER: PEOPLE OF THE STATE OF CALIFORNIA DEFENDANT/RESPONDENT: MICHAEL JACKSON	
DECLARATION APPLICATION FOR SUBPENA DUCES TECUM	CASE NUMBER 1133603

The undersigned hereby applies for a subpoena duces tecum and declares:

1. Trial of this matter has been set for (date): **April 2, 2004** in Dept. No.: **2** of the above-entitled court
2. (Name): **Custodian of Records**
has in his or her possession or under his or her control the following (specify exact documents, matters, and things to be produced):

All medical and psychiatric files, records, charts and reports for Janet Arvizo.

3. The above are material to the issues in the case as follows (set forth facts fully detailing materiality):

The Documents sought are necessary for the examination and cross-examination of potential material witnesses, and are necessary for the proper and adequate defense of the defendant in the pending action.

4. Good cause exists for the production of the above documents, matters, and things as follows:

The documents sought are in the sole possession of the above-named custodian and are not otherwise available.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **March 17, 2004**

Mark J. Geragos

(TYPE OR PRINT NAME)



(SIGNATURE OF DECLARANT)

DECLARATION
APPLICATION FOR SUBPENA DUCES TECUM

22

Legal
Solutions
& Plus

LS-030

SHORT TITLE: PEOPLE vs. JACKSON

CASE NUMBER:

1133603

PROOF OF SERVICE OF SUBPENA

1. I served this ☐ Subpena ☒ Subpena Duces Tecum and supporting affidavit by personally delivering a copy to the person served as follows:

a. Person served (name): Angela Alexander

b. Address where served: Kaiser Hospital
4867 Sunset Boulevard
Los Angeles, CA 90027

c. Date of delivery: 3-17-04

d. Time of delivery: 11:30 AM

2. I received this subpena for service on (date): March 17, 2004

3. ☐ NON-SERVICE RETURN OF SUBPENA

a. ☐ After due search, careful inquiry, and diligent attempts at the dwelling house or usual place of abode or usual place of business, I have been unable to make personal delivery of this ☐ Subpena ☐ Subpena Duces Tecum in this county on the following persons (specify):

b. Reason:

- | | |
|---|--|
| (1) <input type="checkbox"/> Unknown at address. | (4) <input type="checkbox"/> Out-of-county address. |
| (2) <input type="checkbox"/> Moved, forwarding address unknown. | (5) <input type="checkbox"/> Unable to serve by hearing date. |
| (3) <input type="checkbox"/> No such address. | (6) <input type="checkbox"/> Other reasons (explanation required): |

4. Person serving:

- a. ☐ Not a registered California process server.
b. ☐ California sheriff, marshal, or constable.
c. ☐ Registered California process server.
d. ☐ Employee or independent contractor of a registered California process server.

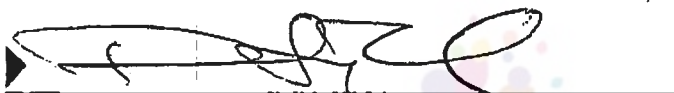
- e. ☒ Exempt from registration under Bus. & Prof. Code section 22350(b).

- f. Name, address, and telephone number and, if applicable, county of registration and number:

Robert Robledo
360 Granada Ave # 3900
LOS ANGELES, CA 90071

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: March 17, 2004


(SIGNATURE)

(For California sheriff, marshal, or constable use only)

I certify that the foregoing is true and correct.

Date:


(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): MARK J. GERAGOS (108325) GERAGOS & GERAGOS 350 S. GRAND AVE. 39TH FLOOR LOS ANGELES, CA 90071 ATTORNEY FOR (Name): MICHAEL JACKSON	TELEPHONE N 213-625-3900 FOR COURT USE ONLY
Insert name of court, judicial, district or branch court, if any, and post office and street address: SANTA BARBARA COUNTY SUPERIOR COURT SANTA MARIA 312-C EAST COOK STREET P.O. BOX 5369 SANTA MARIA, CA 93456	
Title of case: PEOPLE vs. JACKSON	
SUBPENA (CRIMINAL OR JUVENILE) <input checked="" type="checkbox"/> DUCES TECUM	CASE NUMBER: 1133603

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME): **Custodian of Records, Kaiser Hospital, 4867 Sunset Boulevard, Los Angeles, California 90027**

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS you make a special agreement with the person named in item 3:

a. Date: April 2, 2004	Time: 8:30 a.m.	<input checked="" type="checkbox"/> Dept.: 2	<input type="checkbox"/> Div.:	<input type="checkbox"/> Room:
b. Address: 312-C East Cook Street, Santa Maria, California 93456				

2. AND YOU ARE

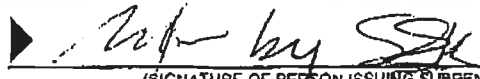
- a. ☐ ordered to appear in person.
- b. ☒ not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose your original declaration with the records. Seal them. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number, your name and date, time, and place from item 1 (the box above). (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in item 1. (4) Mail a copy of your declaration to the attorney or party shown at the top of the form.
- c. ☐ ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena.
- d. ☐ ordered to make the original business records described in the accompanying affidavit available for inspection at your business address by the attorney's representative and to permit copying at your business under reasonable conditions during normal business hours.

3. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

- a. Name: **Mark J. Geragos**
Attorney at law
- b. Telephone number: **213-625-3900**

4. WITNESS FEES: You may be entitled to witness fees, mileage, or both, in the discretion of the court. Contact the person named in item 3 AFTER your appearance.

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED BY A FINE, IMPRISONMENT, OR BOTH. A WARRANT MAY ISSUE FOR YOUR ARREST IF YOU FAIL TO APPEAR.

For Court Use Only	Date: March 17, 2004	<div style="text-align: center;">  (SIGNATURE OF PERSON ISSUING SUBPENA) MARK J. GERAGOS (TYPE OR PRINT NAME) ATTORNEY AT LAW (TITLE) </div>
--------------------	-----------------------------	---

(See reverse for proof of service)

SUBPENA
(CRIMINAL OR JUVENILE)

Legal
 Solutions
 & Plus

Penal Code, § 1326 et seq.
 Welfare and Institutions Code, §§ 341, 664, 1727

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) MARK J. GERAGOS (108325) GERAGOS & GERAGOS 350 S. GRAND AVE. 39TH FLOOR LOS ANGELES, CA 90071 BAR NO.: 108325 ATTORNEY FOR (Name): MICHAEL JACKSON		TELEPHONE NO.: 213-625-3900	FOR COURT USE ONLY
NAME OF COURT SANTA BARBARA COUNTY SUPERIOR COURT STREET ADDRESS: 312-C EAST COOK STREET MAILING ADDRESS: P.O. BOX 5369 CITY AND ZIP CODE: SANTA MARIA, CA 93456 BRANCH NAME: SANTA MARIA			
PLAINTIFF/PETITIONER: PEOPLE OF THE STATE OF CALIFORNIA DEFENDANT/RESPONDENT: MICHAEL JACKSON			
DECLARATION APPLICATION FOR SUBPENA DUCES TECUM		CASE NUMBER 1133603	

The undersigned hereby applies for a subpoena duces tecum and declares:

1. Trial of this matter has been set for (date): **April 2, 2004** in Dept. No.: **2** of the above-entitled court
2. (Name): **Custodian of Records** has in his or her possession or under his or her control the following (specify exact documents, matters, and things to be produced):

All medical and psychiatric files, records, charts and reports for Gavin Arvizo.

3. The above are material to the issues in the case as follows (set forth facts fully detailing materiality):

The Documents sought are necessary for the examination and cross-examination of potential material witnesses, and are necessary for the proper and adequate defense of the defendant in the pending action.

4. Good cause exists for the production of the above documents, matters, and things as follows:

The documents sought are in the sole possession of the above named custodian and are not otherwise available.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **March 17, 2004**

Mark J. Geragos

(TYPE OR PRINT NAME)

►  
 (SIGNATURE OF DECLARANT)

DECLARATION
APPLICATION FOR SUBPENA DUCES TECUM

Legal
Solutions
Co Plus

LS-030

SHORT TITLE: PEOPLE vs. JACKSON

CASE NUMBER:

1133603

PROOF OF SERVICE OF SUBPENA

1. I served this ☐ Subpena ☒ Subpena Duces Tecum and supporting affidavit by personally delivering a copy to the person served as follows:

a. Person served (name): ANGELA Alexander (Clerk III)

b. Address where served: Custodian of Record
Kaiser Hospital, Department of Psychiatry
4700 Sunset Boulevard

c. Date of delivery: 3-17-04

d. Time of delivery: 11:55 AM

2. I received this subpena for service on (date): March 17, 2004

3. ☐ NON-SERVICE RETURN OF SUBPENA

- a. ☐ After due search, careful inquiry, and diligent attempts at the dwelling house or usual place of abode or usual place of business, I have been unable to make personal delivery of this ☐ Subpena ☐ Subpena Duces Tecum in this county on the following persons (specify):

b. Reason:

(1) ☐ Unknown at address.

(2) ☐ Moved, forwarding address unknown.

(3) ☐ No such address.

(4) ☐ Out-of-county address.

(5) ☐ Unable to serve by hearing date.

(6) ☐ Other reasons (explanation required):

4. Person serving:

- a. ☐ Not a registered California process server.
b. ☐ California sheriff, marshal, or constable.
c. ☐ Registered California process server.
d. ☐ Employee or independent contractor of a registered California process server.

- e. ☒ Exempt from registration under Bus. & Prof. Code section 22350(b).

- f. Name, address, and telephone number and, if applicable, county of registration and number:


ROBERT Robledo
350 S. Grand Ave 3900
LOS ANGELES CA 90071

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date: March 17, 2004

Date:


(SIGNATURE)


(SIGNATURE)

TELEPHONE 1-800-

27

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) MARK J. GERAGOS (108325) GERAGOS & GERAGOS 350 S. GRAND AVE. 39TH FLOOR LOS ANGELES, CA 90071 BAR NO.: 108325 ATTORNEY FOR (Name): MICHAEL JACKSON	TELEPHONE NO.: 213-625-3900 FOR COURT USE ONLY
NAME OF COURT: SANTA BARBARA COUNTY SUPERIOR COURT STREET ADDRESS: 312-C EAST COOK STREET MAILING ADDRESS: P.O. BOX 5369 CITY AND ZIP CODE: SANTA MARIA, CA 93456 BRANCH NAME: SANTA MARIA	
PLAINTIFF/PETITIONER: PEOPLE OF THE STATE OF CALIFORNIA DEFENDANT/RESPONDENT: MICHAEL JACKSON	
DECLARATION APPLICATION FOR SUBPENA DUCES TECUM	CASE NUMBER 1133603

The undersigned hereby applies for a subpoena duces tecum and declares:

1. Trial of this matter has been set for (date): **April 2, 2004** in Dept. No.: **2** of the above-entitled court
2. (Name): **Eileen Connely, Custodian of Records** has in his or her possession or under his or her control the following (specify exact documents, matters, and things to be produced):

All medical and psychiatric files, records, charts and reports for Gavin Arvizo.

3. The above are material to the issues in the case as follows (set forth facts fully detailing materiality):

The Documents sought are necessary for the examination and cross-examination of potential material witnesses, and are necessary for the proper and adequate defense of the defendant in the pending action.

4. Good cause exists for the production of the above documents, matters, and things as follows:

The documents sought are in the sole possession of the above named custodian and are not otherwise available.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **March 17, 2004**

Mark J. Geragos

(TYPE OR PRINT NAME)

► 
 (SIGNATURE OF DECLARANT)

DECLARATION
 APPLICATION FOR SUBPENA DUCES TECUM

28

Legal
 Solutions
 & Plus

LS-030

SHORT TITLE: PEOPLE vs. JACKSON

CASE NUMBER:

1133603

PROOF OF SERVICE OF SUBPENA

1. I served this ☐ Subpena ☒ Subpena Duces Tecum and supporting affidavit by personally delivering a copy to the person served as follows:

- a. Person served (name): Eileen Connelly
b. Address where served: Custodian of Record
Kaiser Hospital, Department of Psychiatry
4700 Sunset Boulevard
c. Date of delivery: 3-17-04
d. Time of delivery: 3:55 PM

2. I received this subpena for service on (date): March 17, 2004

3. ☐ NON-SERVICE RETURN OF SUBPENA

- a. ☐ After due search, careful inquiry, and diligent attempts at the dwelling house or usual place of abode or usual place of business, I have been unable to make personal delivery of this ☐ Subpena ☐ Subpena Duces Tecum in this county on the following persons (specify):

b. Reason:

- (1) ☐ Unknown at address.
(2) ☐ Moved, forwarding address unknown.
(3) ☐ No such address.
(4) ☐ Out-of-county address.
(5) ☐ Unable to serve by hearing date.
(6) ☐ Other reasons (explanation required):

4. Person serving:

- a. ☐ Not a registered California process server.
b. ☐ California sheriff, marshal, or constable.
c. ☐ Registered California process server.
d. ☐ Employee or independent contractor of a registered California process server.

- e. ☒ Exempt from registration under Bus. & Prof. Code section 22350(b).

- f. Name, address, and telephone number and, if applicable, county of registration and number:


Robert Robles
350 S Grand Ave 5700
Los Angeles, CA 90071

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date: March 17, 2004

Date:


(SIGNATURE)


(SIGNATURE)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) MARK J. GERAGOS (108325) GERAGOS & GERAGOS 350 S. GRAND AVE. 39TH FLOOR LOS ANGELES, CA 90071 BAR NO.: 108325 ATTORNEY FOR (Name): MICHAEL JACKSON	TELEPHONE NO.: 213-625-3900 FOR COURT USE ONLY
NAME OF COURT SANTA BARBARA COUNTY SUPERIOR COURT STREET ADDRESS: 312-C EAST COOK STREET MAILING ADDRESS: P.O. BOX 5369 CITY AND ZIP CODE: SANTA MARIA, CA 93456 BRANCH NAME: SANTA MARIA	
PLAINTIFF/PETITIONER: PEOPLE OF THE STATE OF CALIFORNIA	
DEFENDANT/RESPONDENT: MICHAEL JACKSON	
DECLARATION APPLICATION FOR SUBPENA DUCES TECUM	CASE NUMBER 1133603

The undersigned hereby applies for a subpoena duces tecum and declares:

1. Trial of this matter has been set for (date): **April 2, 2004** in Dept. No.: **2** of the above-entitled court
2. (Name): **Eileen Connely, Custodian of Records** has in his or her possession or under his or her control the following (specify exact documents, matters, and things to be produced):

All medical and psychiatric files, records, charts and reports for Janet Arvizo.

3. The above are material to the issues in the case as follows (set forth facts fully detailing materiality):

The Documents sought are necessary for the examination and cross-examination of potential material witnesses; and are necessary for the proper and adequate defense of the defendant in the pending action.

4. Good cause exists for the production of the above documents, matters, and things as follows:

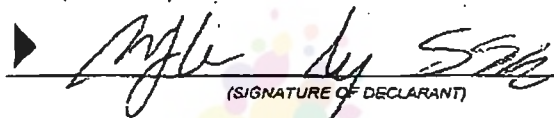
The documents sought are in the sole possession of the above named custodian and are not otherwise available.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **March 17, 2004**

Mark J. Geragos

(TYPE OR PRINT NAME)


 (SIGNATURE OF DECLARANT)

DECLARATION
 APPLICATION FOR SUBPENA DUCES TECUM

SHORT TITLE: PEOPLE vs. JACKSON

CASE NUMBER:

1133603

PROOF OF SERVICE OF SUBPENA

1. I served this ☐ Subpena ☒ Subpena Duces Tecum and supporting affidavit by personally delivering a copy to the person served as follows:

a. Person served (name): EILEEN Connelly

b. Address where served: Kaiser Hospital
4867 Sunset Boulevard
Los Angeles, CA 90027

c. Date of delivery: 3-17-04

d. Time of delivery: 3:00pm

2. I received this subpena for service on (date): March 17, 2004

3. ☐ NON-SERVICE RETURN OF SUBPENA

- a. ☐ After due search, careful inquiry, and diligent attempts at the dwelling house or usual place of abode or usual place of business, I have been unable to make personal delivery of this ☐ Subpena ☐ Subpena Duces Tecum in this county on the following persons (specify):

b. Reason:

(1) ☐ Unknown at address.

(2) ☐ Moved, forwarding address unknown.

(3) ☐ No such address.

(4) ☐ Out-of-county address.

(5) ☐ Unable to serve by hearing date.

(6) ☐ Other reasons (explanation required):

4. Person serving:

- a. ☐ Not a registered California process server.
b. ☐ California sheriff, marshal, or constable.
c. ☐ Registered California process server.
d. ☐ Employee or independent contractor of a registered California process server.

- e. ☒ Exempt from registration under Bus. & Prof. Code section 22350(b).

- f. Name, address, and telephone number and, if applicable, county of registration and number:

ROBERT Robledo
350 S. Grand Ave 3900
Los Angeles, CA 90071

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date: March 17, 2004

Date:


(SIGNATURE)


(SIGNATURE)

Exhibit "C"

COPY

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address):

TELEPHONE NO.:

213-625-3900

MARK J. GERAGOS (108325)
GERAGOS & GERAGOS
350 S. GRAND AVE.
39TH FLOOR
LOS ANGELES, CA 90071

ATTORNEY FOR (Name): MICHAEL JACKSON

Insert name of court, judicial district or branch court, if any, and post office and street address:

SANTA BARBARA COUNTY SUPERIOR COURT
SANTA MARIA
312-C EAST COOK STREET
P.O. BOX 5369
SANTA MARIA, CA 93456

Title of case: PEOPLE vs. JACKSON

SUBPENA (CRIMINAL OR JUVENILE)

☒ DUCES TECUM

CASE NUMBER:

1133603

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (NAME): MICHELLE M. MOYER, KIRTLAND & PACKARD,
2361 ROSECRANS AVE., 4TH FLOOR, EL SEGUNDO, CA 90245; (310)536-1000

1. YOU ARE ORDERED TO APPEAR AS A WITNESS in this action at the date, time, and place shown in the box below UNLESS you make a special agreement with the person named in Item 3:

a. Date: April 2, 2004

Time: 8:30 A.M.

☒ Dept.: 2☐ Div.:☐ Room:

b. Address: 312-C EAST COOK STREET
SANTA MARIA, CA 93456

2. AND YOU ARE

a. ☐ ordered to appear in person.

b. ☐ not required to appear in person if you produce the records described in the accompanying affidavit and a completed declaration of custodian of records in compliance with Evidence Code sections 1560, 1561, 1562, and 1271. (1) Place a copy of the records in an envelope (or other wrapper). Enclose your original declaration with the records. Seal them. (2) Attach a copy of this subpoena to the envelope or write on the envelope the case name and number, your name and date, time, and place from Item 1 (the box above). (3) Place this first envelope in an outer envelope, seal it, and mail it to the clerk of the court at the address in Item 1. (4) Mail a copy of your declaration to the attorney or party shown at the top of the form.

c. ☐ ordered to appear in person and to produce the records described in the accompanying affidavit. The personal attendance of the custodian or other qualified witness and the production of the original records is required by this subpoena. The procedure authorized by subdivision (b) of section 1560, and sections 1561 and 1562, of the Evidence Code will not be deemed sufficient compliance with this subpoena.

d. ☒ ordered to make the original business records described in the accompanying affidavit available for inspection at your business address by the attorney's representative and to permit copying at your business under reasonable conditions during normal business hours.

3. IF YOU HAVE ANY QUESTIONS ABOUT THE TIME OR DATE FOR YOU TO APPEAR, OR IF YOU WANT TO BE CERTAIN THAT YOUR PRESENCE IS REQUIRED, CONTACT THE FOLLOWING PERSON BEFORE THE DATE ON WHICH YOU ARE TO APPEAR:

a. Name: MARK J. GERAGOS
ATTORNEY AT LAW

b. Telephone number: 213-625-3900

4. WITNESS FEES: You may be entitled to witness fees, mileage, or both, in the discretion of the court. Contact the person named in item 3 AFTER your appearance.

DISOBEDIENCE OF THIS SUBPENA MAY BE PUNISHED BY A FINE, IMPRISONMENT, OR BOTH. A WARRANT MAY ISSUE FOR YOUR ARREST IF YOU FAIL TO APPEAR.

For Court Use Only

Date: March 17, 2004

► 
(SIGNATURE OF PERSON ISSUING SUBPENA)

MARK J. GERAGOS

(TYPE OR PRINT NAME)

ATTORNEY AT LAW

(TITLE)

(See reverse for proof of service)

SUBPENA
(CRIMINAL OR JUVENILE)

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& Plus

Penal Code, § 1326 et seq.
Welfare and Institutions Code, §§ 341, 604, 1727

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address) MARK J. GERAGOS (108325) GERAGOS & GERAGOS 350 S. GRAND AVE. 39TH FLOOR LOS ANGELES, CA 90071 BAR NO.: 108325 ATTORNEY FOR (Name): MICHAEL JACKSON		TELEPHONE NO.: 213-625-3900	FOR COURT USE ONLY
NAME OF COURT SANTA BARBARA COUNTY SUPERIOR COURT STREET ADDRESS: 312-C EAST COOK STREET MAILING ADDRESS: P.O. BOX 5369 CITY AND ZIP CODE: SANTA MARIA, CA 93456 BRANCH NAME: SANTA MARIA			
PLAINTIFF/PETITIONER: PEOPLE OF THE STATE OF CALIFORNIA DEFENDANT/RESPONDENT: MICHAEL JACKSON			
DECLARATION APPLICATION FOR SUBPENA DUCES TECUM		CASE NUMBER 1133603	

The undersigned hereby applies for a subpoena duces tecum and declares:

1. Trial of this matter has been set for (date): **April 2, 2004** In Dept. No.: **2** of the above-entitled court
2. (Name): **MICHELLE M. MOYER, KIRTLAND & PACKARD** has in his or her possession or under his or her control the following (specify exact documents, matters, and things to be produced): **YOUR FILE FROM THE CASE ENTITLED ARVIZO, ET AL vs. JC PENNY INC., ET AL, LASC CASE NUMBER KC027876, SUCH DOCUMENTS ARE TO INCLUDE, BUT ARE NOT LIMITED TO, VIDEOTAPED DEPOSITIONS, TRANSCRIBED DEPOSITIONS, WRITTEN RESPONSES TO DISCOVERY REQUESTS, DOCUMENTS PRODUCED IN RESPONSE TO DISCOVERY REQUESTS, STATEMENTS MADE BY PARTIES AND WITNESSES TO THE ACTION, AND ALL VERIFICATIONS AND DECLARATIONS TO DISCOVERY REQUESTS.**
3. The above are material to the issues in the case as follows (set forth facts fully detailing materiality):

THE DOCUMENTS SOUGHT ARE NECESSARY FOR THE EXAMINATION AND CROSS-EXAMINATION OF POTENTIAL MATERIAL WITNESSES, AND ARE NECESSARY FOR THE PROPER AND ADEQUATE DEFENSE OF THE DEFENDANT IN THE PENDING ACTION.
4. Good cause exists for the production of the above documents, matters, and things as follows:

THE DOCUMENTS SOUGHT ARE SOLELY IN THE POSSESSION OF THE ABOVE-NAMED CUSTODIAN AND ARE NOT AVAILABLE OTHERWISE.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: **March 17, 2004**

MARK J. GERAGOS

(TYPE OR PRINT NAME)


 (SIGNATURE OF DECLARANT)

35

DECLARATION

APPLICATION FOR SUBPENA DUCES TECUM

Legal Solutions

LS-030

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2361 Rosecrans Avenue, Fourth Floor, El Segundo, California 90245. I am "readily familiar" with my employer's practice of collection and processing of correspondence and documents for mailing with the United States Postal Service, mailing via overnight delivery, transmission by facsimile machine, and delivery by hand.

On April 6, 2004, I served a copy of each of the documents listed below by placing said copies for processing as indicated herein:

- (✓) U.S. MAIL: The correspondence or documents were placed in sealed, labeled envelopes with postage thereon fully prepaid on the above date and placed for collection and mailing at my place of business to be deposited with the U.S. Postal Service at El Segundo, California on this same date in the ordinary course of business.

PERSONS OR PARTIES SERVED:

Thomas Sneddon, District Attorney
Gerald McC. Franklin, Deputy District Attorney
Office of the District Attorney
1105 Santa Barbara Street
Santa Barbara, CA 93101

Mark J. Geragos, Esq.
Geragos & Geragos
350 S. Grand Avenue, 39th Floor
Los Angeles, California 90071-3480

- (✓) (State) I certify (or declare) under penalty of perjury that the foregoing is true and correct and that this declaration was executed on April 6, 2004.
- () (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.


Rebecca Thames, Declarant

Exhibit “D”



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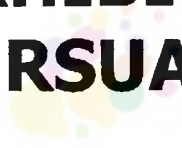


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Exhibit "E"

1 things so they can, you know -- that's what I did. They
2 were out of school all that time, so me and Jay put them
3 in the JEI Learning Center to bring them back up to
4 speed.

5 I barely was able to return the kids back into
6 their Naval Sea Program.

7 Prior to this, Gavin was so excited into
8 entering the rifle team and that put a halt to it, and
9 now he's not even in the rifle team which meant so much
10 to him. And so barely in June was I able to return him
11 into that.

12 Because mentally he was not -- I don't know. A
13 lot of things happened to Gavin and Star like different.
14 Different behavior. For example, me being shot at.

15 That's --

16 Q You were shot at?

17 A Yes.

18 Q By who?

19 A By Gavin.

20 Q Oh, okay.

21 A I have -- now my legs are shaven. Right there.

22 Q With what? With a BB?

23 A With a BB gun. Like it got -- he -- he -- like
24 angry for no reason. For no cause. For no -- and --
25 and Star, like clinging for no reason, you know.

26 Q This was a longtime ago?

27 A Yeah, this is after coming back from Neverland.
28 A lot of like strange things. Nightmares and just --

1 Q Okay. The kids were --
2 A Yeah.
3 Q This was after your very last visit there --
4 A Yes.
5 Q -- that this occurred?
6 A This was after being, you know, after being
7 taken away from Neverland. So -- so --
8 Q Which brings me to my next question.
9 A Okay. But --
10 Q Now, we answered the storage question. Why --
11 with the -- why did you return to -- after you guys
12 escaped --
13 A Wait. Wait a minute. I just -- this is very
14 important, okay.
15 So when they -- I didn't want to go to -- to
16 Brazil, as they wanted me and the kids to go.
17 Q Uh-huh.
18 A And I -- and I told them, "You know what, I
19 don't want to move, just leave my things there, it's
20 okay, just let it be." You know.
21 And I even had Jay pay my rent.
22 Q Uh-huh.
23 A And so he went and paid my rent.
24 Okay. So they wanted me to sign a paper that
25 said that I was -- want to move. I told them, "I'm not
26 signing anything."
27 So when Geragos -- when I was demanding for my
28 things, I wanted to know where there were, who moved my



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Exhibit "F"



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22

1 **COLLINS, MESEREAU, REDDOCK & YU**
2 Thomas A. Mesereau, Jr., State Bar Number 091182
3 Susan C. Yu, State Bar Number 195640
4 1875 Century Park East, 7th Floor
5 Los Angeles, CA 90067
6 Tel.: (310) 284-3120, Fax: (310) 284-3133

7 **KATTEN MUCHIN ZAVIS ROSENMAN**
8 Steve Cochran, State Bar Number 105541
9 Stacey McKee Knight, State Bar Number 181027
10 2029 Century Park East, Suite 2600
11 Los Angeles, California 90067-3012
12 Tel.: (310) 788-4455, Fax: (310) 712-8455

13 **SANGER & SWYSEN**
14 Robert M. Sanger, State Bar No. 058214
15 233 East Carrillo Street, Suite C
16 Santa Barbara, CA 93101
17 Tel.: (805) 962-4887, Fax: (805) 963-7311

18 **OXMAN & JAROSCAK**
19 Brian Oxman, State Bar No. 072172
20 14126 East Rosecrans
21 Santa Fe Springs, CA 90670
22 Tel.: (562) 921-5080, Fax: (562) 921-2298

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

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

28 **THE PEOPLE OF THE STATE OF**
29 **CALIFORNIA,**

30 **Plaintiffs,**

31 **vs.**

32 **MICHAEL JOSEPH JACKSON,**
33 **Defendant.**

Case No. 1133603

ORDER ENDORSING SUBPOENA DUCES
TECUM

Honorable Rodney S. Melville

Date: October 14, 2004
Time: 8:30 am.
Dept: SM 2

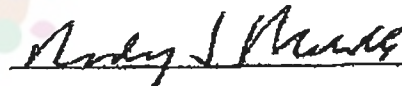
FILED UNDER SEAL

ORDER ENDORSING SUBPOENA DUCES TECUM

1 The Court having permitted Counsel to submit an Ex Parte Application, Counsel having done
2 so and GOOD CAUSE APPEARING THEREFORE,

3 IT IS HEREBY ORDERED that the evidence of witnesses, the Custodian of Records for the
4 311 Component Corps Support Command (COSCOM), U.S. Army Reserve; 63rd Regional Readiness
5 Command (RRC), U.S. Army; Defense Finance and Accounting Service, U.S. Army, and U.S. Army
6 Human Resources Command, U.S. Army, is material and relevant, and the Subpoena Duces Tecum
7 for work records of Jay Daniel Jackson is necessary and relevant to this proceeding, the Court hereby
8 endorses the subpoena attached hereto dated October 14, 2004.

9
10 DATED: OCT 22 2004

11 

12 The Honorable Rodney Melville
13 Judge of the Superior Court of California
14 County of Santa Barbara

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ORDER ENDORSING SUBPOENA DUCES TECUM

Exhibit “G”



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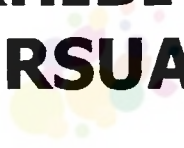


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Exhibit "H"

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Exhibit “I”

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26 October 2001

ATZR-H

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Reprimands for Alcohol and Drug-Related Traffic Offenses

1. PURPOSE: To establish administrative procedures for processing mandatory and discretionary reprimands pertaining to alcohol and drug-related traffic offenses.
2. APPLICABILITY: This regulation is applicable to subordinate commands and attached units and personnel to the Personnel & Support Battalion.
3. REFERENCES: AR 600-37, AR 190-5 (with USAFACFS Supplement 1.)
4. DEFINITIONS:
 - a. "Intoxicated Driving" - includes one or more of the following:
 - (1) Driving, operating, or being in actual physical control of a motor vehicle under any intoxication caused by alcohol or drugs in violation of Article 111 of the UCMJ or similar law of the jurisdiction in which the vehicle is being operated.
 - (2) Driving, operating, or being in actual physical control of a motor vehicle with a BAC of .10 or higher on a military installation or in an area where traffic operations are under military supervision.
 - (3) Driving, operating, or being in actual physical control of a motor vehicle with a BAC of .10 or higher in violation of the law of the jurisdiction in which the vehicle is being operated.
 - (4) Driving, operating, or being in actual physical control of a motor vehicle with a BAC of .05 or less than .10 in violation of the law of the jurisdiction in which the vehicle is being operated if the jurisdiction imposes a suspension or revocation solely on the basis of the BAC level. Oklahoma law does recognize this level (see definition in para 4c below.)
 - b. Driving Under the Influence (DUI) - Oklahoma law defines DUI as having a blood or breath alcohol concentration in excess of ten-hundredths (0.10) or more. Such alcohol concentration is considered prima facie evidence that the person was under the influence of alcohol. Other states may define this term differently, and the JAG office should be consulted when cases from other states arise.

ATZR-H

SUBJECT: Reprimands for Alcohol and Drug-Related Traffic Offenses

c. Driving While Impaired (DWI) - Oklahoma law defines DWI as having a blood or breath alcohol concentration in excess of five-hundredths (0.05) but less than ten-hundredths (0.10). Oklahoma requires additional evidence of impairment to convict of this offense. Other states may define this term differently, and the JAG office should be consulted when cases from other states arise.

5. ISSUANCE OF REPRIMANDS:

a. Mandatory Reprimand. Written general officer reprimands, administrative in nature, will be issued to active duty officer, warrant and commissioned, and noncommissioned officers (including corporals) in the following situations:

(1) Conviction of intoxicated driving (see definition above) or driving under the influence of alcohol or other drugs either on or off the installation.

(2) Refusal to take or failure to complete a law fully requested test to measure alcohol or drug content of the blood, breath, or urine, either on or off the installation, when there is reasonable belief of driving under the influence of alcohol or drugs.

(3) Driving or being in physical control of a motor vehicle on post when the blood alcohol content is .10 percent or higher, or off post when the blood alcohol content is in violation of state law.

(4) Driving or being in physical control of a motor vehicle, either on or off the installation, when lawfully requested chemical tests reflect the presence of illegal drugs.

b. Discretionary Reprimands: A written reprimand, administrative in nature, may be issued to active duty soldiers in the grade of E-4 (except corporals) and below in the cases described directly above. In these cases, if the chain of command decides to issue a reprimand, it may be filed in the MPRJ by the soldier's immediate commander or a higher commander in the soldier's chain of command. It may also be forwarding to a general officer for a decision on whether to file it in the soldier's OMPF. The specific rules regarding filing determinations are set out in AR 600-37.

6. PROCEDURES:

a. In the situations described in subparagraphs 5a(2), (3), or (4) above, the Policy Administration Branch of Department of Public Safety (PAB, DPS) will prepare a blotter extract and send it to the immediate commander of the soldier involved in the incident. This action is required whether or not a mandatory general officer reprimand is required. In other words, no matter what the rank of the soldier, the immediate commander will receive a blotter extract of the incident. In the situations in which a general officer written reprimand is mandatory, the PAB, DPS will also provide a cope to AG, Personnel Operations Branch (POB.)

ATZR-H

SUBJECT: Reprimands for Alcohol and Drug-Related Traffic Offenses

b. In situations where commander becomes aware of an incident that was not reported in the blotter (e.g. soldier was home on leave, soldier did not present military ID to police, soldier was not reported to MPS for some other reason), the commander is responsible for obtaining documentation about the incident from the appropriate jurisdiction and notifying PAB, DPS. If a general officer written reprimand is mandatory, PAB, DPS will notify AG, POB.

c. In the situation described in paragraph 5 above, where a general officer written letter of reprimand is mandatory, Battalion Legal Clerk will prepare the reprimand. The signature block of the first general officer in the soldier's chain of command will be typed in : however, the reprimand will not be dated. AG will then send the reprimand to the general officer for signature. The general officer will forward the reprimand to the soldier's immediate commander, who will refer it to the soldier. The soldier will normally have seven working days to respond. The reprimand and the soldier's response (if any) are the processed through the chain of command for recommendations before being sent back to the general officer for a decision as to where the reprimand should be filed. In any case in which the soldier disputed the validity of the reprimand (as opposed to a case where the soldier does not submit a rebuttal or merely requests clemency), the entire packet should be submitted to the Administrative Law Division of the Office of the Staff Judge Advocate (ATTN: ATZR-JA) for a legal review before being sent to the general officer for a filing determination.

d. Once a filing decision is made (whether by an immediate commander, an intermediate commander, or a general officer), the deciding official will prepare a memorandum stating the decision. The original reprimand and all enclosures are sent to AG, POB for filing. The deciding official will also provide a complete copy of the reprimand and all enclosures through the chain of command to the soldier being reprimanded.

e. The AG is responsible for ensuring that all mandatory general officer reprimands are issued in a timely fashion. On the fifth working day of each month, the AG will provide a report to the Post Chief of Staff. The report will include a list of all soldiers who had offenses or convictions occurring the previous month which required a mandatory general officer reprimand. The report will show the processing time for each reprimand from date of blotter entry to filing. A goal of 21 days has been established by the Chief of Staff. The report will also explain any notable discrepancies in processing time (e.g. general officer was TDY, soldier involved was on leave, etc.) The filing determination for each reprimand will be shown (OMPF, MPRI, or issued to the soldier with no official copy filed.)

f. The Chief of Staff will review the report to ensure that reprimands are being issued in every case where one is required, and that such action is being taken in a timely manner.

ATZR-H

SUBJECT: Reprimands for Alcohol and Drug-Related Traffic Offenses

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/Signed/
ALVEN JONES
LTC, AG
Commanding

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Cdr, A Btry
Cdr, 77TH AB
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CF:
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Exhibit “J”

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Judge Advocate Newsletter

Volume 9, Issue 11

Nov 2001

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JA DIVISION CONTACT

For now, JA Division is located in the Navy Annex. Room and phone numbers are as follows:

<u>Section</u>	<u>Room</u>	<u>Phone</u>
SJA to CMC/LAO/LSC	2028	614-8661/2737/1853
JAA	2028	614-8661/2737/1853
JAS	2028	614-1318/1242/3412
JAM	3217/3219	614-4250/3699/4197
JAR	1110	614-2510/1513/2532
JAI	1216	692-7433/7442/7436
JAO	3311	614-2793/6799
JAL	BLDG 29, HH	614-1266/3880

Planning is underway to move us back to the Pentagon when space becomes available.


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NAVAL MILITIA

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FRENCH TRAINING AGREEMENT

On 24 September, members of JAO attended a meeting on a proposed DIPNOTE regarding the issue of training in France. Chairman's Legal indicates that all of the services have now cleared on the proposal, and the package is moving forward to OSD (Policy) for a decision. The draft DIPNOTE, which the French also have cleared, will state that when U.S. forces conduct exercises in France, or their forces do so here, any claims relating to exercise activities will be settled pursuant to the NATO SOFA claims provisions. If goods and/or services are provided to the visiting force for the exercise through a contract or other agreement (i.e., FMS Letter of Offer and Acceptance), the NATO SOFA claims provisions will still apply to claims arising from the exercise activities, but any claims arising from the contract/agreement itself will be determined based on the contract/agreement's provisions.


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INS PROCESSING

We received an alert from INS regarding the processing of DCII reports for INS applications. Effective immediately, DCII reports should be generated using the SSN of the applicant, and not the name. Since our legal assistance program started assisting clients with naturalization applications nearly two years ago, Marine Corps attorneys have consistently submitted quality applications. In order to continue our tradition, here is an INS tip sheet to review.




"military tip
sheet.doc"

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A CALL FOR SHARING

Please do not forget to provide JAI your special photos for inclusion in the JA photo gallery. These pictures help cultivate camaraderie and contribute to the growth of our community. Soooooo.....send us your promotion photos, your special P.T. session photos, your unit function photos, your birthday ball photos, ect., so we can share them with the rest of the community.

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MILITARY PUNISHMENT FOR OFF-BASE DUI'S AND DWI'S

Off-base DUI/DWI's by Marines present significant disciplinary challenges for Marine commanders. Marine commanders know that they must deal swiftly with criminal

offenses or the morale or their unit will erode as offenders go unpunished. However, DUI/DWI prosecutions occurring off-base typically take more than a year to complete. Additionally, many Marine commanders believe that when punishments for off-base DUI/DWI's are finally handed out by the civilian courts, they are too lenient, or are otherwise inappropriate to serve the ends of good order and discipline, or both. These concerns often lead commanders to attempt to seek swifter and more militarily appropriate punishment under the Uniform Code of Military Justice (UCMJ). Commanders must however, be aware of the significant limitations upon simultaneous civilian and military prosecutions (including nonjudicial punishments (NJP)) that apply in these cases.

The policy and procedures for handling off-base DUI/DWI, as well as all other off-base offenses committed service members, are set forth in JAGMAN §0124. These policies and procedures are relatively complicated and are explained in detail below. Guidance specifically regarding off-base DUI/DWI is also set out in the Marine Corps Manual for Legal Administration (LEGADMINMAN), paragraph 4001.3. LEGADMINMAN 4001.3 suggests a strategy that Marine commanders may employ to avoid the administrative legal complexities presented by JAGMAN §0124 and is also discussed below.

JAGMAN § 0124 begins with a statement of policy that once a service member's civilian trial has begun, military charges shall not be referred to court-martial, or be the subject of NJP, for the same act, except in unusual cases. Three categories of criteria are provided to help a commander decide whether or not a case is "unusual."

The first category includes those cases that result in civilian punishments consisting only of a probation that is not rigidly enforced, or probation cannot be enforced because the military duties of the accused make enforcement of the probation impractical.

The second category includes those cases where the civilian prosecution concluded without a conviction for any reason other than an acquittal by a judge or jury.

The third category includes those cases where the interests of justice and discipline require additional action under the UCMJ. Two examples are given. The first is the situation where the conduct leading to the civilian trial has adversely reflected upon the Naval service. The second is where a particular and unique military interest was not or could not be adequately vindicated in the civilian court. Note that neither example includes the situation where the commander believes that civilian punishment was not severe enough to deter future misconduct by the service member. In other words, perceived lack of severity of punishment by the civilian court will not justify a follow-on court-martial or NJP initiated by the military commander. Looked at objectively, most civilian punishments for DUI/DWI are severe enough to deter future misconduct by the service member. For example, a civilian punishment that includes six months to one year of confinement, suspended, is, upon reflection, a severe punishment. Arguments have been also been made that civilian punishments cannot include reductions in grade and therefore a unique military interest, reducing DUI/DWI offenders in grade, has not been adequately vindicated. This argument has been rejected.

Further, §0124 states that even if a case falls into one of the three criteria, permission must be obtained from specific higher authorities before a case can be referred to trial by court-martial or be the subject of NJP. The opening section of §0124 concludes by

explaining that the policy was established as matter of maintaining a proper relationship between the Federal Government and state or foreign governments; and emphasizes that this statement of policy does not confer any additional rights on a service member than those already provided by the Uniform Code of Military Justice.

The second half of §0124 sets forth the procedures and permissions required to refer a case to trial or NJP that has been, or is being adjudicated by, civilian authorities.

If a commander wishes to refer a case to general or special court-martial, he must first obtain permission from the Judge Advocate General via the chain of command, which specifically includes the Commandant of the Marine Corps. If the commander is a special court-martial convening authority, the commander must also include the appropriate general court-martial convening authority in his chain of command.

A commander may refer these cases to summary court-martial and NJP if he first obtains permission from the officer exercising general court-martial jurisdiction over the command. Any such grants of authority must be reported to the Judge Advocate General. The report must set forth the criteria under which the case was justified as an exception to the general policy of not referring such cases to military trial or NJP.

Section 0124 closes by noting that if the civilian trial of the service member derives its authority from the United States, such as United States District Courts, the service member shall not, under any circumstances, be referred to trial by court-martial or be subject to NJP for the same at or acts.

LEGADMINMAN 4001.3 specifically addresses cases of DWI/DUI by officers, but the rationale behind the paragraph may be applied to all Marines. LEGADMINMAN 4001.3 begins by noting that civilian resolutions of DWI/DUI cases often take a long time and also that JAGMAN §0124 allows for NJP before the civilian trial takes place. LEGADMINMAN 4001.3 then suggests that commanders may employ a policy of imposing "immediate NJP" for cases of off-base DWI/DUI. This strategy has several advantages. First is the advantage of avoiding the complexities involved in securing the permissions required by JAGMAN §0124. Second, NJP allows commanders the option of reducing offenders in grade - - a punishment which, of course, may not be awarded by civilian authorities. Third, NJP is a relatively high-speed resolution of cases that would normally otherwise linger and erode unit morale. Fourth, ultimately nothing is lost if the NJP turns out to be an insufficient resolution of the case due to unforeseen and unknowable circumstances, such as later-discovered personal injuries or property damage - - the JAGMAN provides for trial by court-martial, even after NJP, under these circumstances.


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FACT SHEET

ATZR-JA
12 August 2002

SUBJECT: Ramifications for Soldiers with a Driving Under the Influence (DUI) or Driving While Impaired (DWI) Citation

PURPOSE: Advise commanders on regulatory requirements

1. The Installation Commander, through the Provost Marshal as his designee, will immediately suspend installation POV driving privileges pending resolution of an intoxicated driving incident in the following circumstances: refusal to take or complete chemical test for presence of alcohol or drugs, operating a motor vehicle with a Blood Alcohol Content (BAC) of .05 or higher, or based upon an arrest report or other official documentation of the circumstances of the apprehension. The soldier's commander will coordinate with Administration Branch of the Directorate of Public Safety (PAB, DPS) to present the written notice of suspension to the soldier. (See, generally, Army Regulation 190-5, Motor Vehicle Traffic Supervision, Chapter 4).
2. DPS will revoke the soldier's installation driving privileges for a mandatory term not less than 1 year if the soldier receives a conviction; nonjudicial punishment; or military or civilian suspension or revocation of his license for intoxicated driving; or if the Deputy Garrison Commander determines that the soldier refused to complete a lawfully administered test for the presence of alcohol during apprehension. The revocation may be extended until completion of both the remedial driver's course and alcohol counseling program.
3. Soldiers whose installation driving privileges are suspended or revoked are required to attend the Installation's Remedial Driver's Training Course. This course is a self-paced, computer-based program offered at the Education Center. Commanders should contact the Safety Office at 442-4215/4701 for times and dates of attendance.
4. The soldier may petition in writing through command channels to Commander, USAFACFS, ATTN: ATZR-FA, for restricted installation driving privileges. The privileges may be granted on a case-by-case basis to accommodate mission requirements, unusual personal or family hardships, delays in excess of 90 days in the disposition of the soldier's charges, or when there is no reasonably available alternate means of transportation to officially assigned duties. The restricted privileges will not be granted if the soldier's driver's license was suspended or revoked by any state, federal, or host nation authority. Restricted driving privileges will not be granted until the soldier successfully completes the Installation's Remedial Driver's Training Course.
5. Commanders will refer all active duty soldiers to the installation Army Substance Abuse Program (ASAP) within 10 days of the incident to determine if the person is dependent on alcohol. Commanders will use DA Form 8003 to make the referral. The soldier will take the form to Bldg. 2442 to get an initial screening appointment with a Counselor. The soldier may be escorted at the Commander's discretion. After the initial appointment, the Counselor will confer with the Commander to make recommendations for the soldier's further treatment. A 2-day Education/ Prevention class is mandatory.

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Optional treatments include outpatient treatment, group or one-on-one therapy sessions, and in-patient treatment. Commanders will decide the optional treatments, if any, in which the soldier will participate, based on the Counselor's recommendations. The soldier will successfully complete the ASAP program before installation driving privileges are reinstated.

6. Written General Officer Reprimands will be given to all active duty officers, warrant officers, and noncommissioned officers (including corporals) for conviction of intoxicated driving, refusing to take or complete a lawfully administered BAC test, or driving a motor vehicle with a BAC of .08 percent or more. (See, generally, Army Regulation 190-5, Motor Vehicle Traffic Supervision, Chapter 2). The PAB, DPS will prepare a blotter extract to send to the soldier's immediate commander. The PAB, DPS will also send a copy of the blotter to the AG, Personnel Operations Branch (AG, POB) and the Alcohol and Drug Control Officer (ADCO). Commanders in III d ACA will forward the blotter to G-1 shop to prepare the reprimand. AG, POB will prepare the mandatory reprimand for all other Fort Sill military personnel, and type in the name of the first general officer in the soldier's chain of command. The general officer will forward the reprimand back to the immediate commander for referral to the soldier. The soldier has 7 working days to respond, which is sent back through the chain of command for recommendations. If the soldier prepares a rebuttal, the entire packet will be sent to the Administrative Law Division of the Office of the Staff Judge Advocate (ATTN: ATZR-JA) for legal review before the general officer makes a filing determination. Nonjudicial punishment will not be imposed by subordinate commanders for on-post DUI offenses, except with the approval of Commander, USAFACFS. As an exception to policy, commanders who wish to impose nonjudicial punishment or prefer court-martial charges for on-post traffic offenses will submit a written request through SJA, ATTN: Criminal Law to Cdr, USAFACFS. Approval of these requests is at the discretion of Cdr, USAFACFS. (See, generally, USAFACFS Supplement 1 to AR 27-10, Military Justice, Chapter 2).

7. Written reprimands are discretionary for the grades of E4 and below (except corporals). If a written reprimand is given, the immediate or higher commander may file it in the soldier's MPRJ or forward the reprimand to a general officer for a decision to file the reprimand in the soldier's OMPF.

8. Commanders are required to report alcohol-related traffic incidents on DA Form 5248-R, Report of Unfavorable Information for Security Determination. These procedures apply to soldiers regardless of their security clearance. The Commander will give a complete description of the incident and evaluate the information in terms of its security significance. The form, along with supporting documents (to include records of any disciplinary measures taken) will be forwarded to the Security Division, DPTM. Guidance for this form is in AR 380-67, para. 8-101b(1).

9. Any questions regarding these matters should be sent to the Criminal Law Division of the Office of the Staff Judge Advocate, 442-3900.

Updated: Monday, September 09, 2002
[Click here for Word Document](#)

Exhibit “L”

ATSN-CBC

17 July 2003

MEMORANDUM FOR Personnel Concerned**SUBJECT: Policy Letter #7, Administrative Actions – DWI/DUI**

1. Jurisdiction for DUI/DWI offenses will be requested from the magistrate court IAW brigade policy and in other instances as directed by the undersigned. Should jurisdiction be granted, non-judicial punishment will be at the discretion of the battalion commander.
2. Letter of reprimand from the Commanding General for all drunk driving offenders (BAC of .08 or higher) will be initiated by the JAG office. Additional adverse administrative actions may be pursued by this command as applicable (bar to re-enlist, chapter, etc.).
3. DWI/DUI is a serious offense and will be dealt with severely. It is a career stopper. I highly encourage prudence and restraint when consuming alcohol. Common sense and moderation must always prevail.
4. This policy letter supersedes Policy Letter #7, dated 17 July 2001.

ERIC F. HAZAS
LTC, TC
Commanding

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