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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 24 2005

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

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11 Attorneys for Defendant
MICHAEL JOSEPH JACKSON

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

15
16 *REDACTED*

17 THE PEOPLE OF THE STATE OF
CALIFORNIA,

18 Plaintiffs,

19 vs.

20 MICHAEL JOSEPH JACKSON,

21 Defendant.

) Cause No. 1153603

)
) EX PARTE APPLICATION FOR AN
) ORDER THAT THE DEFENSE RESPONSE
) TO THE DISTRICT ATTORNEY'S
) MOTION IN LIMINE FOR ADMISSION OF
) EXPERT TESTIMONY ON DEFENDANT'S
) FINANCES, DATED JANUARY 21, 2005,
) BE WITHDRAWN

) ~~CONFIDENTIAL~~

) Honorable Rodney S. Melville

) Date: January 28, 2005

) Time: 9:30 a.m.

) Dept: SM 8

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28 EX PARTE APPLICATION FOR AN ORDER THAT THE RESPONSE TO THE DISTRICT ATTORNEY'S
MOTION IN LIMINE FOR ADMISSION OF EXPERT TESTIMONY ON DEFENDANT'S FINANCES BE
WITHDRAWN

1 TO THE CLERK OF THE ABOVE ENTITLED COURT:

2 Mr. Michael Jackson respectfully requests that the Court issue an order that the defense
3 response to the District Attorney's "Motion in Limine for Admission of Expert Testimony on
4 Defendant's Finances," dated January 21, 2005, be withdrawn, and that the defense opposition, dated
5 January 24, 2005, and filed concurrently with this application, be filed in its place. This request is
6 based on inadvertence and upon Mr. Jackson's federal and state constitutional rights to a fair trial,
7 due process of law, equal protection, and effective assistance of counsel pursuant to the Fifth, Sixth
8 and Fourteenth Amendments to the United States Constitution and Article 1, Sections 7, 15, 17 and
9 24 of the California Constitution.

10 Dated: January 24, 2005

11 Respectfully submitted,

12 COLLINS, MESEREAU, REDDOCK & YU
13 Thomas A. Mesereau, Jr.
Susan C. Yu

14 SANGER & SWYSEN
15 Robert M. Sanger

16 OXMAN & JAROSCAK
17 Brian Oxman

18 By: 

19 Thomas Mesereau, Jr.
20 Attorneys for Defendant
MICHAEL JOSEPH JACKSON

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WITHDRAWN

1 DECLARATION OF THOMAS MESEREAU, JR.

2 I, Thomas Mesereau, Jr., declare:

3 1. I am an attorney at law duly licensed to practice law in the courts of the State of
4 California, a partner in the law firm of Collins, Mesereau, Reddock, & Yu, and lead counsel for
5 Mr. Michael Jackson.

6 2. [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 3. [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]


14 4. Having reviewed the District Attorney's motion and the law, it appears that it would be
15 highly prejudicial to Mr. Jackson if the testimony is admitted. Furthermore, the introduction of
16 this testimony would constitute an invasion of Mr. Jackson's privacy contrary to existing law.

17 5. We request relief from having filed this Response based on mistake, inadvertence,
18 surprise, or excusable neglect based on the miscommunication with Mr. Jackson.

19 6. This declaration is not a waiver of attorney-client privilege or the work product doctrine.

20 7. On January 24, 2005, Mr. Sanger, in my presence, made a request to the District
21 Attorney that the prosecution stipulate that the defense response be withdrawn. The District
22 Attorney, however, through his deputy Gordon Auchincloss, rejected this request.

23 I declare under penalty of perjury that the foregoing is true and correct and that this
24 declaration was executed this 24th day of January, 2005 at Santa Barbara, California.

25 
26 Thomas Mesereau, Jr.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 ALLOWING THE RESPONSE TO STAND WOULD DEPRIVE MR. JACKSON OF HIS
4 RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL PURSUANT TO THE SIXTH
5 AMENDMENT OF THE UNITED STATES CONSTITUTION

6 California law does not allow the admission of the type of testimony that the prosecution
7 seeks to admit. Furthermore, the admission of this testimony would constitute an invasion of Mr.
8 Jackson's privacy. As such, Mr. Jackson absolutely objects to the introduction of this testimony.
9 Counsel for Mr. Jackson are obligated to oppose the introduction of this evidence. We are
10 simply seeking to properly object.¹

11 Introduction of this purported evidence would be highly prejudicial to Mr. Jackson. The
12 undersigned filed the non-opposition as a result of a miscommunication with Mr Jackson. The
13 undersigned has now cleared up the miscommunication with Mr. Jackson and Mr. Jackson does
14 not wish, nor has he ever, wished to waive his legal rights. (Declaration of Thomas Mesereau,
15 Jr.)

16 Mr. Jackson should be afforded the same relief that is afforded to civil litigants pursuant
17 to California Code of Civil Procedure Section 473 when, due to mistake, inadvertence, surprise,
18 or excusable neglect, it becomes necessary to seek leave of Court to amend a pleading.

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24 ¹ Failure to object to the prosecution's introduction of evidence of a defendant's poverty
25 or indebtedness to show motive to commit a crime for financial gain may be found to constitute
26 ineffective assistance of counsel. (See *People v. Carrillo* (2004) 119 Cal.App.4th 94, 101 fn. 1.)
Moreover, the introduction of this type of testimony has been found to be reversible error.
(*People v. Carrillo* (2004) 119 Cal.App.4th 94.)

1
2 II.

3 CONCLUSION

4 For the reasons stated above, Mr. Jackson requests that the Court issue an order that the
5 defense response to the District Attorney's "Motion in Limine for Admission of Expert
6 Testimony on Defendant's Finances," dated January 21, 2005, be withdrawn, and that the defense
7 opposition, dated January 24, 2005, and filed concurrently with this application, be filed in its
8 place.

9 Dated: January 24, 2005

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

12 SANGER & SWYSEN
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Brian Oxman

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16 By: 

17 Thomas Mesereau, Jr.
18 Attorneys for
19 MICHAEL JOSEPH JACKSON
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EX PARTE APPLICATION FOR AN ORDER THAT THE RESPONSE TO THE DISTRICT ATTORNEY'S
MOTION IN LIMINE FOR ADMISSION OF EXPERT TESTIMONY ON DEFENDANT'S FINANCES BE
WITHDRAWN

PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 255 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On January 24, 2005, I served the foregoing document entitled: **REDACTED EX PARTE APPLICATION FOR AN ORDER THAT THE DEFENSE RESPONSE TO THE DISTRICT ATTORNEY'S MOTION IN LIMINE FOR ADMISSION OF EXPERT TESTIMONY ON DEFENDANT'S FINANCES, DATED JANUARY 21, 2005, BE WITHDRAWN** on the interested parties in this action by depositing a true copy thereof as follows:

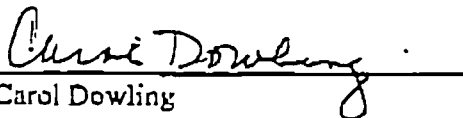
Tom Sneddon
Gerald Franklin
Ron Zonen
Gordon Auchincloss
District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2398

 BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

 X BY FACSIMILE - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties

 X STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed January 24, 2005, Santa Barbara, California.


Carol Dowling