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Attorneys for Defendant
MICHAEL JOE JACKSON

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 18 2003

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

REDACTED PURSUANT TO
CRC 2073

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

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

MICHAEL JOE JACKSON

Defendant.

) CASE NO. 1133603
)
) REQUEST FOR ATTENDANCE OF OUT-
) OF-STATE WITNESS (PEN. CODE §
) 1334); DECLARATION OF SUSAN C. YU
) IN SUPPORT THEREOF

) [CERTIFICATE OF REQUESTING STATE
) FOR ATTENDANCE OF WITNESS
) LOCATED OUTSIDE CALIFORNIA
) CONCURRENTLY FILED HEREWITH]

) HEARING : NOT REQUIRED

) DATE: N/A
) TIME: N/A
) Place: Dept. SM-2

FILED UNDER SEAL & BY FAX

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TO THE HONORABLE JUDGE RODNEY S. MELVILLE:

Defendant Michael Joe Jackson ("Mr. Jackson"), by and through his counsel, hereby requests this Court to issue a Certificate of Requesting State for Attendance of Witness Located Outside California to enable the defense to call Frank Tyson aka Frank Cascio ("Mr. Tyson") as a witness at trial. Mr. Tyson is a material witness whose testimony is essential to Mr. Jackson's defense.

This Request is made pursuant to the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings, codified at Penal Code Sections 1334 through 1334.6, and is based on the attached memorandum of points and authorities and the declaration of Susan C. Yu.


DATED: February 18, 2005 Respectfully submitted.

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

Robert M. Sanger
SANGER & SWYSEN

Brian Oxman
OXMAN & JAROSCAK

By:



Susan C. Yu
Attorneys for Mr. MICHAEL J. JACKSON

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 STATEMENT OF FACTS

4 The indictment imagines ten counts against Mr. Jackson: one count of conspiracy
5 to commit false imprisonment, child abduction and extortion (Count 1); four counts of
6 lewd conduct upon a child (Counts 2, 3, 4 and 5); one count of attempt to commit a lewd
7 act upon a child (Count 6); and four counts of administering alcohol to a minor to assist
8 in commission of a felony (Counts 7, 8, 9 and 10). (Yu Decl., ¶ 2.)

9 The indictment further imagines a conspiracy among Mr. Jackson, five named
10 but unindicted individuals, and other "uncharged" and "unknown" alleged co-
11 conspirators to commit child abduction, false imprisonment and extortion. Twenty-
12 eight overt acts in furtherance of this imaginary conspiracy are alleged. (Yu Decl., ¶ 3.)

13 Mr. Jackson has pled not guilty to all counts. He vehemently denies the false
14 allegations planted in the indictment and maintains his complete innocence. (Yu Decl.,
15 ¶ 4.)

16 Mr. Tyson is one of the 5 unindicted named co-conspirators in this case. The
17 defense is informed and believes and thereon submits that he currently resides in the
18 State of [REDACTED] His address is [REDACTED]
19 [REDACTED] (Yu Decl., ¶ 5.)

20 Mr. Tyson is a material witness in this case because he can testify to the issue of
21 Mr. Jackson's innocence to the charged crimes, particularly the alleged conspiratorial
22 acts. Mr. Tyson is intimately familiar with the accusers' activities and the activities of
23 various Prosecution's witnesses. (Yu Decl., ¶ 6.)

24 The Defense estimates that Mr. Tyson will be required to testify for
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1 approximately 1 court day. Depending on the duration of the jury selection and the
2 Prosecution's case in chief, the Defense could commence its case in chief on as early as
3 April 1, 2005. Accordingly, Mr. Tyson should be required to appear for his testimony on
4 this date. (Yu Decl., ¶ 7.)

5 II.

6 THIS COURT MAY ISSUE A CERTIFICATE RECOMMENDING THAT A COURT
7 IN THE STATE OF [REDACTED] ISSUE A SUBPOENA COMPELLING MR. FRANK
8 TYSON, A MATERIAL WITNESS IN THIS CASE, TO APPEAR AND TESTIFY

9 The presence of out-of-state witnesses can be secured through procedures
10 outlined in the Uniform Act to Secure the Attendance of Witnesses from Without A
11 State in
12 Criminal Proceedings ("Uniform Act"). (Pen. Code §§ 1334-1334.6; also see Vannier v.
13 Superior Court, 32 Cal.App.3d 163, 170-173 (1982); People v. Superior Court (Jans), 224
14 Cal.App.3d 1405, 1408-1412 (1990). The purpose of the Uniform Act is to make a
15 uniform law throughout the states that adopt it, so that procurement of witnesses
16 beyond state borders is possible.¹ (Pen. Code § 1334.6.)

17 The provisions of the Uniform Act do not constitute the power to subpoena the
18 out-of-state witness. Rather, they are merely a procedure to request that the other
19 state's court issue a subpoena. (People v. DuBose, 10 Cal.App.3d 544, 549 (1970);
20 People v. Cavanaugh, 69 Cal.2d 262, 265-266 (1968).) In order for the Uniform Act to
21 apply, the person who is located in another state and whose presence in court is desired,
22 must be a material witness in the case. (Pen. Code § 1334.2, 1334.3; People v.

23
24 ¹ Also, if a person comes into California to attend and testify in an action pursuant to
25 proceedings under the Uniform Act, the witness is not subject to arrest or service of civil or criminal
26 process in connection with matters that arose before his or her appearance in the matter. (Pen. Code
27 §§ 1334.4, 1334.5; Vannier v. Superior Court, *supra*, 32 Cal.2d at 170-173.) This statutory immunity
originally arose from public policy considerations to encourage voluntary appearances in cases where
the witness otherwise would not appear due to fear of arrest or service of process. (Murrey v.
Murrey, 216 Cal. 707, 710 (1932); Mattison v. Lichlyter, 162 Cal.App.2d 60, 63 (1958); Velkov v.
Superior Court, 40 Cal.2d 289, 292 (1953).)

1 Cavanaugh, supra, 69 Cal.2d at 266; People v. Newville, 220 Cal.App.3d 267, 274
2 (1963).)

3 A motion is made to the judge in the court in which the action is pending to
4 request the presence of the witness. (Pen. Code § 1334.3.) Upon a showing that the
5 witness is material, the judge of the court in which the action is pending may issue a
6 certificate under the seal of the court stating the facts showing that the witness is
7 material, and the number of days the witness will be required to appear. (Id.) This
8 certificate is then forwarded to a judge of a court of record in the county of the state in
9 which the witness is located. (Id.)

10 Pursuant to California Penal Code Section 1334.3, the witness, at the time the
11 trial subpoena is served on him, shall be tendered the sum of ten cents (\$ 0.10) for each
12 mile necessarily traveled (if he elects surface travel) or the minimum round trip
13 scheduled airlines fare plus twenty cents (\$ 0.20) a mile for necessary surface travel at
14 either end of the flight if the witness elects air travel, and except as provided in
15 subdivision (b) of Section 1334.3,² a per diem of twenty dollars (\$ 20) for each day that
16 he is required to travel and attend as a witness. Further, the witness shall be
17 reimbursed for any additional expenses which the Court finds reasonable and
18 necessary.

19 In this case, Mr. Tyson is a material witness whose presence is essential to
20 ensure Mr. Jackson a fair trial. Mr. Tyson is intimately familiar with the events
21 surrounding the alleged crimes in the Indictment, particularly the conspiratorial acts,
22 and can testify to Mr. Jackson's complete innocence. Accordingly, the requested

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24 ² Penal Code Section 1334.3(b) provides: "If the witness subpoenaed to attend and testify in this
25 state is at the time he or she is required to appear and testify an inmate of a state prison, county jail, or
26 other penal facility, the witness shall, while attending in this state as a witness, be furnished food and
lodging in the jail or other appropriate penal facility in the county in which the witness is attending
court, and food and lodging of that penal facility shall be rendered in lieu of the per diem specified in
subdivision (a)."

1 Certificate should issue. The defense will then take appropriate steps to forward this
2 Certificate to a Court in [REDACTED] in the county in which Mr. Tyson is located. (Yu
3 Decl., ¶ 7.)
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5 V.

6 CONCLUSION

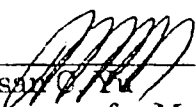
7 For all of the foregoing reasons, Mr. Jackson respectfully requests that the Court
8 grant this motion and issue the requested Certificate.

9 DATED: January 18, 2005 Respectfully submitted,

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

14 Robert M. Sanger
15 SANGER & SWYSEN

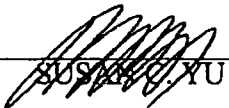
16 Brian Oxman
17 OXMAN & JAROSCAK

18 By: 
19 Susan C. Yu
20 Attorneys for Mr. MICHAEL J. JACKSON
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1 approximately 1 court day. Depending on the duration of the jury selection and the
2 Prosecution's case in chief, the Defense could commence its case in chief on as early as
3 April 1, 2005. Accordingly, Mr. Tyson should be required to appear for his testimony on
4 this date.

5 8. Pursuant to California Penal Code Section 1334.3, I will cause Mr. Tyson,
6 at the time the trial subpoena is served on him, to be tendered the sum of ten cents (\$
7 0.10) for each mile necessarily traveled (if he elects surface travel) or the minimum
8 round trip scheduled airlines fare plus twenty cents (\$ 0.20) a mile for necessary surface
9 travel at either end of the flight if the witness elects air travel, and except as provided
10 in subdivision (b) of Section 1334.3, a per diem of twenty dollars (\$ 20) for each day that
11 he is required to travel and attend as a witness. Further, I will cause Mr. Tyson to be
12 reimbursed for any additional expenses which this Court finds reasonable and
13 necessary.

14 I declare under penalty of perjury under the laws of the State of California that
15 the foregoing is true and correct and that this declaration was executed on this 18th day
16 of January 2005, at Los Angeles, California.

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19 SUSAN C. YU

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