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17 Attorneys for Defendant
18 MICHAEL JOSEPH JACKSON

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

21 THE PEOPLE OF THE STATE OF)
22 CALIFORNIA,)

23 Plaintiffs,)

24 vs.)

25 MICHAEL JOSEPH JACKSON,)

26 Defendant.)

Case No. 1133603

) NOTICE OF MOTION AND MOTION TO
) QUASH SUBPOENA TO BANK OF
) AMERICA DATED NOVEMBER 3, 2004;
) DECLARATION OF ROBERT M. SANGER

) ~~UNDER SEAL~~

) Honorable Rodney S. Melville

) Date: TBA

) Time: 8:30 am

) Dept: SM 8
)
)
)

27 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT
28 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY
DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN AND GORDON

NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA TO BANK OF AMERICA DATED
NOVEMBER 3, 2004

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 24 2005

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

CLERK OF COURT

1 AUCHINCLOSS:

2 Please take notice that the Defendant does hereby move and will further move on a date
3 determined by the Court, at 8:30 a.m., or as soon thereafter as counsel may be heard in Department
4 8 of the above entitled court, for an order quashing the subpoena duces tecum served on Bank of
5 America on November 3, 2004, or, in the alternative, issue a protective order declaring that the
6 subpoenaed records are inadmissible at trial, must be returned to the subpoenaed party, and that all
7 copies in the possession of the District Attorney or law enforcement must be destroyed, and for such
8 other relief as the Court may deem just and proper, and Defendant moves for an immediate stay of
9 said subpoena until this motion can be heard on the merits. Counsel for Mr. Jackson have recently
10 been made aware that the District Attorney has served a subpoena duces tecum on Bank of America
11 seeking Mr. Jackson's financial records. Mr. Jackson was not served with a copy of the subpoena.

12 The grounds for this motion are set forth in the attached Memorandum of Points and
13 Authorities, including:

- 14 1. The subpoena must be quashed because it fails to establish good cause for production of the
15 subpoenaed documents.
- 16 2. The subpoena duces tecum constitutes an invasion of Mr. Jackson's right to privacy pursuant
17 to the United States Constitution and Article 1, Section 1, of the California Constitution.
- 18 3. The subpoena seeks information that can only be lawfully obtained through the statutory
19 discovery process outlined in Penal Code Section 1054 *et seq.*
- 20 4. The subpoena is overbroad and seeks information that would compromise trade secrets,
21 would interfere with contracts and would interfere with prospective advantage.

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1 This motion is based on this Notice of Motion, and the Memorandum of Points and
2 Authorities attached hereto, the papers, records and files in this case and such other matters as may
3 be received by the Court at or after the hearing scheduled on this motion.

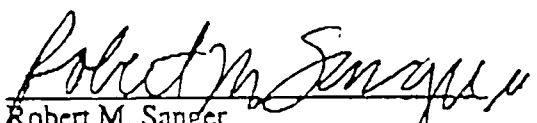
4 Dated: February 24, 2005

5 Respectfully submitted,

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

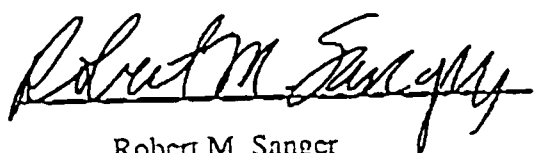
8 SANGER & SWYSEN
9 Robert M. Sanger

10 OXMAN & JAROSCAK
11 Brian Oxman

12 By: 
13 Robert M. Sanger
14 Attorneys for Defendant
MICHAEL JOSEPH JACKSON

1 7. The subpoena duces tecum is overbroad and seeks information that is covered by the
2 trade secret privilege.

3 I declare under the penalty of perjury under the laws of the State of California that the
4 foregoing is true and correct this 24th day of February, 2005, at Santa Barbara, California.

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8 Robert M. Sanger

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 THE SUBPOENA SHOULD BE QUASHED BECAUSE IT FAILS TO ESTABLISH
4 GOOD CAUSE

5 The subpoena must be quashed because it fails to satisfy the requirements of Code of
6 Civil Procedure 1985 or otherwise to establish with sufficient particularity that there is good
7 cause for production of the subpoenaed documents. The District Attorney is seeking to obtain
8 documents to "prove motive to engage in a conspiracy to falsely imprison; extort; and commit
9 child abduction of John Doe and his family in that defendant suffered from severe financial
10 distress and could not endure the repercussions to his career and finances if the public perceived
11 him to be a child molester." (Affidavit, page 2.) On this basis, the District Attorney seeks:

12 Business Records Summary of all loans made from Bank of America or its
13 affiliates to Michael Joe Jackson; MJJ Production; MJJ Ventures; Neverland
14 Valley Entertainment; MJAC Music or any other corporation, partnership or
15 entity of which Michael Jackson is a known principal. Information on such loans
16 to include: (1) The original loan application; (2) Type of loan; (3) The date of
17 inception; (4) The date of maturity; (5) The original amount; (6) The rate of
18 interest; (7) Security for loan including any hypothecated property; (8) The current
19 balance; (9) The payment schedule; (10) Dates and amounts of late payments or
20 non-payments; (11) The name of any co-debtors or guarantors; (12) Known
21 agreements between any co-debtors or guarantors with Mr. Jackson; (13) Any
22 conditions; and (14) Any renegotiations or anticipated renegotiations.
23 (Affidavit, pages 1-2.)

19 The court ruled, on January 28, 2005, that the District Attorney cannot use detailed
20 financial evidence to show motive. (Declaration of Robert M. Sanger.) The law is very clear in
21 that regard. Therefore there is not good cause to subpoena these materials.

22 None of these materials are relevant to the charges against Mr. Jackson. As argued in Mr.
23 Jackson's Opposition to District Attorney's Motion in Limine for Admission of Expert
24 Testimony on Defendant's Finances, and Mr. Jackson's Motion in Limine to Exclude Any
25 Reference to Mr. Jackson's Financial Status, evidence that Mr. Jackson was financially distressed
26 or in debt is inadmissible to show a motive to commit a crime for financial gain. (Declaration of
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1 Robert M. Sanger.)

2 It is a well-established rule that a defendant's poverty or indebtedness may not be
3 admitted to prove a motive to commit crimes of financial gain. (*People v. Koontz* (2002) 27
4 Cal.4th 1041, 1076, stating that "a defendant's poverty generally may not be admitted to prove a
5 motive to commit a robbery or theft . . ."; *People v. Wilson* (1992) 3 Cal.4th 926, 938-938.,
6 stating that evidence of defendant's debt, admitted for the purpose of establishing a motive to
7 commit robbery and murder, was not admissible on any proper ground.) "[F]or over a century
8 courts have recognized the potential unfairness in admitting such evidence." (*People v. Carrillo*
9 (2004) 119 Cal.App.4th 94, 101.) While there are obvious reasons for the prosecution to want to
10 use a defendant's poverty "to provide a convincing harmony to the factual melody of the crime,"
11 such evidence deprives a defendant of a fair trial and constitutes reversible error. (*People v.*
12 *Carrillo, supra*, 119 Cal.App.4th 94, 97.)

13 Furthermore, there is no showing that the materials could corroborate the stories told by
14 the complaining witnesses. The charged offenses are child molestation and a conspiracy to
15 commit false imprisonment, extortion and child abduction. Mr. Jackson's financial holdings or
16 evidence of potential entertainment contracts are not relevant to these charges under any
17 admissible theory. (Declaration of Robert M. Sanger.)

18 II .

19 THE SUBPOENA THREATENS TO DEPRIVE MR. JACKSON OF HIS RIGHT TO
20 PRIVACY UNDER THE UNITED STATES CONSTITUTION AND CALIFORNIA
21 CONSTITUTION

22 Mr. Jackson will be deprived of his right to privacy pursuant to the United States
23 Constitution and Article 1, Section 1, of the California Constitution, if the subpoena duces tecum
24 is not quashed. Records regarding Mr. Jackson's financial affairs are protected by his right to
25 privacy. The District Attorney is prosecuting him for child molestation and conspiracy. As
26 argued above, Mr. Jackson's financial records are not relevant to the charges against him. As
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1 such, the prosecution has not demonstrated any interest that justifies invading Mr. Jackson's right
2 to privacy.

3 Mr. Jackson is an international recording artist and a man who has varied and complex
4 business relationships with numerous individuals and entities. The very nature of these types of
5 business relationships is that the parties honor a commitment to their respective privacy. Matters
6 that are totally irrelevant to this case would be disclosed by compliance with this subpoena which
7 have been kept confidential. Disclosure would not only compromise the confidentiality of
8 existing contracts, but would unfairly restrict Mr. Jackson's ability to enter into pending and
9 future contracts in the entertainment industry. (Declaration of Robert M. Sanger.)

10 III.

11 IF THE DISTRICT ATTORNEY COULD DEMONSTRATE GOOD CAUSE TO
12 OBTAIN THIS INFORMATION, IT COULD ONLY BE LAWFULLY OBTAINED
13 THROUGH THE STATUTORY DISCOVERY PROCESS

14 The District Attorney is attempting to obtain what he cannot obtain through the discovery
15 process by a subpoena duces tecum. This is a blatant attempt to obtain documents from Mr.
16 Jackson and to circumvent the statutory scheme enacted by the voters as Penal Code section 1054
17 et seq., which very clearly states that:

18 [N]o discovery shall occur in criminal cases except as provided by this chapter,
19 other express statutory provisions, or as mandated by the Constitution of the
United States. (Penal Code section 1054 (c).)

20 The expressed terms of the statutes state that the prosecutor cannot use the subpoena process to
21 obtain discovery.

22 IV.

23 THE SUBPOENA IS OVERBROAD AND SEEKS INFORMATION THAT WOULD
24 COMPROMISE TRADE SECRETS, INTERFERE WITH CONTRACTS AND
25 INTERFERE WITH PROSPECTIVE ADVANTAGE

26 The District Attorney is seeking materials that includes information regarding
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1 entertainment industry deals including business contracts, licensing agreements, royalty
2 payments, and other information that is confidential. The owner of a trade secret has a privilege
3 to refuse to disclose and to prevent others from disclosing trade secrets so long as allowance of
4 the privilege will not tend to conceal fraud or otherwise work an injustice. (Evidence Code
5 Section 1060.) A trade secret is information that: (1) derives independent economic value (actual
6 or potential) from not being generally known to the public or others who can obtain economic
7 value from its disclosure or use; and (2) is the subject of reasonable efforts to maintain its
8 secrecy. (Civil Code of Procedure Section 3426.1(d)(1)&(2).B) The subpoena duces tecum is
9 overbroad and seeks information that is covered by the trade secret privilege. (Declaration of
10 Robert M. Sanger.)

11 V.

12 CONCLUSION

13 Therefore, based on the reasons set forth above, Mr. Jackson requests that the Court
14 quash the subpoena duces tecum, or, in the alternative, issue a protective order declaring that the
15 subpoenaed records are inadmissible at trial, must be returned to the subpoenaed party, and that
16 all copies in the possession of the District Attorney or law enforcement must be destroyed.

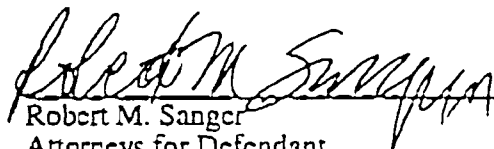
17 Dated: February 24, 2005

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

19 SANGER & SWYSEN
Robert M. Sanger

21 OXMAN & JAROSCAK
Brian Oxman

23 By:


Robert M. Sanger
Attorneys for Defendant
MICHAEL JOSEPH JACKSON

PROOF OF SERVICE

I, the undersigned declare:

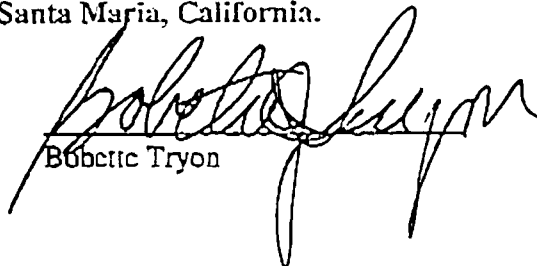
I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 301 East Cook Street, Suite A, Santa Maria, California 93454.

On February 24, 2005, I served the foregoing document: EXPARTE APPLICATION TO SEAL MOTION TO QUASH SUBPOENA TO BANK OF AMERICA DATED NOVEMBER 3, 2004; MOTION TO QUASH SDT TO BANK OF AMERICA DATED NOVEMBER 3, 2004; REDACTED VERSION 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.
- BY FACSIMILE - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties at the above-referenced number.
- BY HAND - I caused the document to be hand delivered to the interested parties at the address above.
- STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed February 24, 2005, at Santa Maria, California.


Bubbette Tryon