

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

4 **SANGER & SWYSEN**
5 Robert M. Sanger, State Bar Number 058214
233 East Carrillo Street, Suite C
6 Santa Barbara, CA 93101
Tel.: (805) 962-4887, Fax: (805) 963-7311

7 **OXMAN & JAROSCAK**
8 Brian Oxman, State Bar Number 072172
14126 East Rosecrans
9 Santa Fe Springs, CA 90670
Tel.: (562) 921-5058, Fax: (562) 921-2298

10 Attorneys for Defendant
11 MICHAEL JOSEPH JACKSON

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

15 THE PEOPLE OF THE STATE OF)
16 CALIFORNIA,)

17 Plaintiffs,)

18 vs.)

19 MICHAEL JOSEPH JACKSON,)

20 Defendant.)

Case No. 1133603

) NOTICE OF MOTION AND MOTION TO
) QUASH SUBPOENA TO BERNSTEIN FOX
) WHITMAN & CO.; DECLARATION OF
) ROBERT M. SANGER

) ~~UNDER SEAL~~

) Honorable Rodney S. Melville

) Date: TBA

) Time: 8:30 am

) Dept: SM 8
)
)
)
)

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

NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA TO BERNSTEIN FOX WHITMAN & CO.

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

FEB 24 2005

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

1 Please take notice that the Defendant does hereby move and will further move on a date
2 determined by the Court, at 8:30 a.m., or as soon thereafter as counsel may be heard in Department
3 8 of the above entitled court, for an order quashing the subpoena duces tecum served on served on
4 Bernstein, Fox, Whitman & Company, on February 3, 2005, or, in the alternative, issue a protective
5 order declaring that the subpoenaed records are inadmissible at trial, must be returned to the
6 subpoenaed party, and that all copies in the possession of the District Attorney or law enforcement
7 must be destroyed, and for such other relief as the Court may deem just and proper, and Defendant
8 moves for an immediate stay of said subpoena until this motion can be heard on the merits. Counsel
9 for Mr. Jackson have recently been made aware that the District Attorney has served a subpoena
10 duces tecum on Bernstein, Fox, Whitman & Company seeking Mr. Jackson's financial records. Mr.
11 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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NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA TO BERNSTEIN FOX WHITMAN & CO.

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

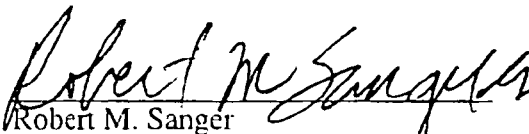
5 Respectfully submitted,

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

9 SANGER & SWYSEN
10 Robert M. Sanger

11 OXMAN & JAROSCAK
12 Brian Oxman

13 By:

14 
15 Robert M. Sanger
16 Attorneys for Defendant
17 MICHAEL JOSEPH JACKSON
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NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA TO BERNSTEIN FOX WHITMAN & CO.

DECLARATION OF ROBERT M. SANGER

I, Robert M. Sanger, declare:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Sanger & Swysen, and co-counsel for Michael Jackson.

2. The court ruled, on January 28, 2005, that the District Attorney cannot use detailed financial evidence to show motive.

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

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

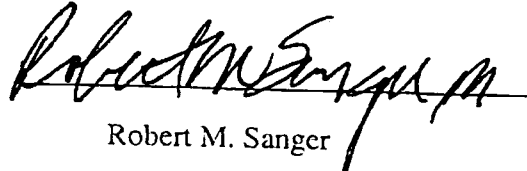
5. Mr. Jackson is an international recording artist and a man who has varied and complex business relationships with numerous individuals and entities. The very nature of these types of business relationships is that the parties honor a commitment to their respective privacy. Matters that are totally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

6. The District Attorney is seeking materials that includes information regarding entertainment industry deals including business contracts, licensing agreements, royalty payments, and other information that is confidential.

7. The subpoena duces tecum is overbroad and seeks information that is covered by the

1 trade secret privilege.

2 I declare under the penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct this 24th day of February, 2005, at Santa Barbara, California.
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7 Robert M. Sanger
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NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA TO BERNSTEIN FOX WHITMAN & CO.

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 on behalf of defendant for the charged offenses and to corroborate
9 the victims of the charged offenses." (Affidavit, page 2.) On this basis, the District Attorney
10 seeks:

11 Accountants Compilation Reports as of 12/31/03 and 12/31/04. Balances for all
12 Revenue and Expense accounts as of 12/31/03 and 12/31/04. Accounts Payable
13 Check Registers, in detail by vendor, for the 2003 and 2004 calendar years.
14 Unpaid Accounts Payable and Accrued Liabilities Balances, in detail by vendor,
15 from inception, and as of 12/31/03 and 12/31/04. Bank statements for all active
16 deposit, collection and loan collateral accounts, from inception, and as of
17 12/31/03 and 12/31/04. Periodic statements reporting music publishing activity
18 related to the Sony/ATV and MIJAC catalogs, including statements received from
19 inception through 12/31/04. Reports or statements providing evidence of value
20 for any music publishing catalogs, real estate or other real property, received
21 through 12/31/04.
22 (Affidavit, page 1.)

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

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

It is a well-established rule that a defendant's poverty or indebtedness may not be

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

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

16 II.

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

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

27 Mr. Jackson is an international recording artist and a man who has varied and complex
28

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

7 III.

8 **IF THE DISTRICT ATTORNEY COULD DEMONSTRATE GOOD CAUSE TO**
9 **OBTAIN THIS INFORMATION, IT COULD ONLY BE LAWFULLY OBTAINED**
10 **THROUGH THE STATUTORY DISCOVERY PROCESS**

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

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

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

19 IV.

20 **THE SUBPOENA IS OVERBROAD AND SEEKS INFORMATION THAT WOULD**
21 **COMPROMISE TRADE SECRETS, INTERFERE WITH CONTRACTS AND**
22 **INTERFERE WITH PROSPECTIVE ADVANTAGE**

23 The District Attorney is seeking materials that includes information regarding
24 entertainment industry deals including business contracts, licensing agreements, royalty
25 payments, and other information that is confidential. The owner of a trade secret has a privilege
26 to refuse to disclose and to prevent others from disclosing trade secrets so long as allowance of
27 the privilege will not tend to conceal fraud or otherwise work an injustice. (Evidence Code

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1 Section 1060.) A trade secret is information that: (1) derives independent economic value (actual
2 or potential) from not being generally known to the public or others who can obtain economic
3 value from its disclosure or use; and (2) is the subject of reasonable efforts to maintain its
4 secrecy. (Civil Code of Procedure Section 3426.1(d)(1)&(2).B) The subpoena duces tecum is
5 overbroad and seeks information that is covered by the trade secret privilege. (Declaration of
6 Robert M. Sanger.)

7 V.

8 CONCLUSION

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


13 Dated: February 24, 2005

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Thomas A. Mesereau, Jr.
Susan C. Yu

15 SANGER & SWYSEN
Robert M. Sanger

17 OXMAN & JAROSCAK
Brian Oxman

18
19 By:


Robert M. Sanger
Attorneys for Defendant
MICHAEL JOSEPH JACKSON

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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 SDT; MOTION TO QUASH SUBPOENA DUCES TECUM; 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

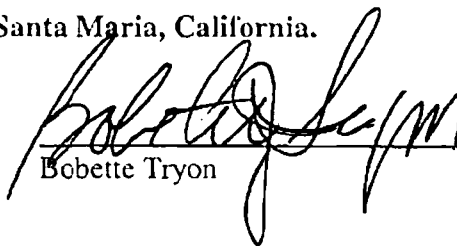
___ BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid 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.

X 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.

X 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.


Bobette Tryon