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**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

FEB 24 2005

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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

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 BANK OF  
) AMERICA; 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 OF BANK OF AMERICA

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Please take notice that the Defendant does hereby move and will further move on a date determined by the Court, at 8:30 a.m., or as soon thereafter as counsel may be heard in Department 8 of the above entitled court, for an order quashing the subpoena duces tecum served on Bank of America on February 23, 2005, or, in the alternative, issue a protective order declaring that the subpoenaed records are inadmissible at trial, must be returned to the subpoenaed party, and that all copies in the possession of the District Attorney or law enforcement must be destroyed, and for such other relief as the Court may deem just and proper, and Defendant moves for an immediate stay of said subpoena until this motion can be heard on the merits. Counsel for Mr. Jackson have recently been made aware that the District Attorney has served a subpoena duces tecum on Bank of America seeking Mr. Jackson's financial records. Mr. Jackson was not served with a copy of the subpoena.

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

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

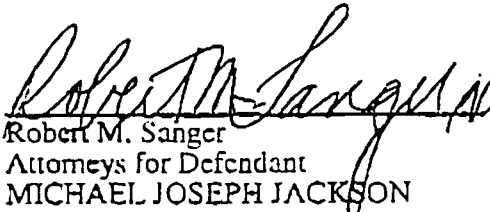
5 Respectfully submitted,

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

8 SANGER & SWYSEN  
 Robert M. Sanger

9 OXMAN & JAROSCAK  
 10 Brian Oxman

11  
 12 By:

  
 Robert M. Sanger  
 Attorneys for Defendant  
 MICHAEL JOSEPH JACKSON

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1                           **DECLARATION OF ROBERT M. SANGER**

2           I, Robert M. Sanger, 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 Sanger & Swysen, and co-counsel for Michael Jackson.

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

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

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

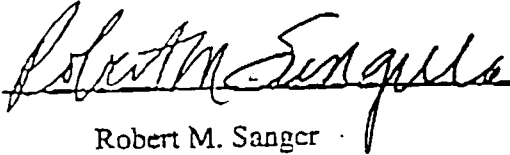
17       5.       Mr. Jackson is an international recording artist and a man who has varied and complex  
18 business relationships with numerous individuals and entities. The very nature of these types of  
19 business relationships is that the parties honor a commitment to their respective privacy.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

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

27       7.       The subpoena duces tecum is overbroad and seeks information that is covered by the  
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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 24<sup>th</sup> day of February, 2005, at Santa Barbara, California.

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7 Robert M. Sangcr

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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 show that Mr. Jackson "was facing a dire financial crisis at the time of the charged  
9 offenses" in order to show motive. (Declaration of Gordon Auchincloss, page 2.) On this basis,  
10 the District Attorney seeks:

11 ANY AND ALL RECORDS OR INFORMATION CONCERNING ASSETS,  
12 LIABILITIES, INCOME AND/OR PROTECTED INCOME, BANKRUPTCIES  
13 OR PROJECTED BANKRUPTCIES AND DEFAULTS ON ALL LOANS  
14 AFFILIATED TO MICHAEL JOE JACKSON; MJJ PRODUCTIONS; MJJ  
15 VENTURES; NEVERLAND VALLEY RANCH; NEVERLAND VALLEY  
16 ENTERTAINMENT; MJAC MUSIC OR ANY OTHER CORPORATION,  
17 PARTNERSHIP OR ENTITY OF WHICH MICHAEL JACKSON IS A  
18 KNOWN PRINCIPAL FROM 1998 TO PRESENT. ALSO, ANY AND ALL  
19 DOCUMENTS CONCERNING HOW THE PROCEEDS OF ANY OF THE  
20 ORIGINAL, UPDATED, OR REFINANCED LOANS WERE TO BE USED OR  
21 WERE IN FACT USED.

(Declaration of Gordon Auchincloss, page 1.)

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

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

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

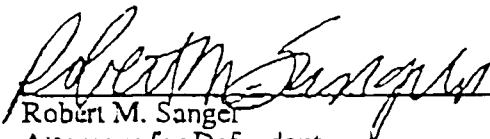
13 Dated: February 24, 2005

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

15 SANGER & SWYSEN  
 Robert M. Sanger

16 OXMAN & JAROSCAK  
 Brian Oxman

17 By:

18   
 19 Robert M. Sanger  
 20 Attorneys for Defendant  
 21 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; MOTION TO QUASH SUBPOENA TO BANK OF AMERICA; 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.

  
Bobette Tryon