

1 STEVEN GRAFF LEVINE
2 State Bar No. 140585
3 112 Montana Avenue #309
4 Santa Monica, CA 90403
5 310-497-1974

6 Attorney for GERAGOS & GERAGOS

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAY 27 2005

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

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8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 COUNTY OF SANTA BARBARA

10
11 PEOPLE OF THE STATE OF CALIFORNIA,) CASE NO. 1133603
12)
13 Plaintiff,) OBJECTIONS TO AND MOTION
14 v.) TO QUASH SUBPOENA
15) DUCES TECUM DIRECTED
16 MICHAEL JOE JACKSON,) TO LAW FIRM OF GERAGOS &
17) GERAGOS TO PRODUCE
18 Defendant.) MICHAEL JACKSON FILE
19)
20) Date: May 27, 2005
21) Time: 8:30 a.m.
22) Dept. "2M"

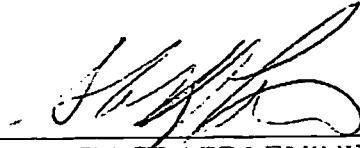
23 TO: THE HONORABLE RODNEY S. MELVILLE, JUDGE OF THE
24 SUPERIOR COURT, AND THE SANTA BARBARA COUNTY DISTRICT
25 ATTORNEY'S OFFICE:

26 NOTICE IS HEREBY GIVEN that the law firm of GERAGOS AND GERAGOS,
27 in the firm's capacity as the former attorneys for Michael Jackson, hereby move this
28 Court through counsel for an order to quash the subpoena duces tecum that was served on
29 the law firm of Geragos and Geragos.

1
OBJECTIONS OF GERAGOS & GERAGOS TO SUBPOENA

1 This motion will be made on the grounds that the District Attorney, without any
2 new showing, has requested documents that this Court has twice ruled are not to be
3 produced. The motion will also be made on the grounds that the subpoena is untimely,
4 overbroad, and burdensome in that it requests documents that are protected by the
5 attorney work-product privilege. The motion will also be made on the Statement of
6 Objections attached hereto, and on any evidence produced at the hearing of this motion.

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9 DATED: May 27, 2005


STEVEN GRAFF LEVINE
Attorney for the Law Firm of
GERAGOS & GERAGOS

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STATEMENT OF OBJECTIONS

I. FACTS

On or about May 11, 2005, defense attorney Thomas Mesereau, through his investigator, served a subpoena on Mark Geragos in the Santa Ana Courthouse, which directed him to testify in this Court on May 13, 2005. At the time, Mr. Geragos was, and remains engaged in, an 80 witness, 57-count fraud trial in Orange County that has resulted in a California Supreme Court opinion, and is based on events that span a 20-year period. Pursuant to that court's schedule, Mr. Geragos was afforded Fridays off to make appearances in other courts. Nonetheless, Mr. Geragos complied with the subpoena, which forced him to cancel a previously set preliminary hearing that had been calendared as a "must-go" date for over a month, a status conference before the Office of Administrative Hearings, as well as two appearances in the Van Nuys Superior Court – in one, the client was in custody, which had statutory priority under Penal Code section 1048(1).

During cross-examination, Mr. Geragos indicated that he did not keep copies of notes of conversations with Michael Jackson, and probably never took any. He also indicated that he made no notes concerning any of the other individuals who were working for Michael Jackson at the time. (RT 10315-10316.) He added that he did not have any e-mail communications with Michael Jackson, and generally did not save any e-mails, but that he might have saved e-mail communications with Brad Miller. To the extent they existed, Mr. Geragos indicated they would be in his Word Perfect file. (RT 10316-10318.) Thereafter, Mr. Geragos invoked the attorney-client privilege to a question that he believed was beyond the scope of the written waiver provided to him at the break by Mesereau. (RT 10331.) Mesereau then informed the Court, for the first time, that the attorney-client waiver he provided to Mr. Geragos was limited to events that occurred prior to Michael Jackson's arrest in November of 2003. (RT 10332,

1 10335.) Mr. Geragos informed the Court that State Bar rules compelled him to abide by
2 the terms of the waiver he was provided, despite whatever ruling the Court made as to the
3 efficacy of the waiver. (RT 10334.) The Court then agreed to take testimony as to topics
4 that were within the scope of the waiver and requested points and authorities from Mr.
5 Zonen if he needed to go into areas beyond the scope of the waiver. (RT 10335.)

6 **Mr. Zonen then orally requested that he be furnished with Mr. Geragos' file**
7 **that existed up to the date of arrest, including all of his billing records, his notes, his**
8 **e-mails, his handwritings, his reports. *The Court refused that request.* (RT 10336-**
9 **10337.)**

10 Testimony resumed. (RT 10338.) After Mr. Geragos invoked the privilege as to
11 several questions, the Court took its afternoon recess. (RT 10353.) Mr. Geragos
12 informed the Court that he was in a jury trial in Department C35, long cause court, in
13 Santa Ana, before the Honorable Judge Fasel. (RT 10354-10355.) The Court asked the
14 parties for points and authorities on the waiver issue, to be filed on Monday, and
15 continued Mr. Geragos' portion of testimony until May 20, 2005. (RT 10356-10359.)

16 During the period of May 13 through May 20, 2005, a period in which Mr. Zonen
17 knew Mr. Geragos would be returning to this Court to testify, the District Attorney's
18 Office did not subpoena the law firm of Geragos and Geragos for its records from the
19 Jackson file.

20 On May 20, 2005, Mr. Geragos returned to Santa Maria. Prior to his testifying,
21 the Court ruled that it would accept a limited waiver and require Mr. Geragos to assert
22 the privilege in front of the jury. (RT 11344.) The Court further indicated that it would
23 also entertain relevancy and beyond the scope objections. (RT 11345.)

24 Cross-examination resumed. It lasted almost four hours. Mr. Zonen, as he had on
25 May 13 (RT 10316-10317), inquired as to communications Mr. Geragos may have had
26 with Brad Miller. (RT 11441.) Repeating his May 13 testimony (RT 10318), Mr.
27 Geragos indicated that, had he saved any e-mails, they would be in his Word Perfect file.

1 (RT 11442.) Mr. Geragos informed Mr. Zonen that he had not determined whether such
2 e-mails existed. Cross-examination ended. Following redirect examination (RT 11444-
3 11463) and recross examination (11463-11471), Mr. Geragos' testimony concluded. The
4 parties then considered an additional issue. outside the presence of the jury.

5 **Despite the fact that this issue was raised by Mr. Zonen one week earlier and**
6 ***rejected*** (see page 4 above), Zonen orally requested, again, that the Court order Mr.
7 Geragos to produce the following documents, to the extent they were prepared during the
8 limited waiver period: (1) all e-mail communications between Brad Miller and Mr.
9 Geragos, (2) any notes in his file dealing with communications between Mr. Geragos and
10 Mr. Jackson, Mr. Konitzer, Mr. Weizner, Mr. Amen, Mr. Schaffel and Mr. Cascio, and
11 (3) "the computer files that have previously been the subject of litigation from Brad
12 Miller's office." (RT 11472.)

13 Initially, the Court ordered the defense to turn over information from Brad
14 Miller's computer hard drive, during the period of waiver, which was the subject of
15 earlier litigation. The Court specifically stated the defense was not required to turn over
16 information on Brad Miller's hard drive that related to other cases; instead, the Court
17 ordered the defense to turn over, by 5 p.m. Saturday, only that information on the hard
18 drive that related to this case. (11472-11473.)

19 Mr. Zonen then asked the Court if its order included e-mail communications on
20 the hard drive, and the Court indicated, "that's primarily what was on the [hard drive]."
21 While the Court did not limit its order to the e-mails, such e-mails were the only relevant
22 material of which it was aware. Nonetheless, it cautioned the defense to turn over "any
23 other material you held back because of the privilege between Mr. Geragos, Brad Miller
24 and Mr. Jackson." (RT 11473-11474.) Mr. Sanger then indicated that "there was a Word
25 Perfect document, not to get back into that," and Mr. Zonen mused, "I wonder how we'll
26 ever access it. No, we'll figure it out." The Court replied, "I'm not going to order Mr.
27 Geragos to do that." (RT 11474.)

1 Mr. Geragos voiced the concern that the defense not turn over e-mails unrelated to
2 the Jackson case, and the Court replied that an expert had previously gone through Brad
3 Miller's hard drive with software that does not disturb anything in the drive, then it had a
4 special master segregate privileged documents, and then it had the defense team review
5 those documents; it assured Mr. Geragos that only relevant documents would be turned
6 over. (RT 11475-11476) Mr. Sanger then assured Mr. Geragos and the Court that to the
7 extent any e-mail referenced two cases, the unrelated information would be redacted.
8 (RT 11476.) The Court then stated, "Exactly." Mr. Sanger replied, "Yes."

9 The Court then replied, "Okay. Then to the extent that that's what you're
10 asking, I grant that. And we have that straight. To the extent you're asking me to
11 order Mr. Geragos to turn over something, I'm not going to do that." (RT 11475.)
12

13 It is respectfully submitted that the Court quash the SDT because the District
14 Attorney's Office, without any new showing, has asked for information that this Court
15 has *twice* refused to order Mr. Geragos to produce. Additionally, it is also respectfully
16 submitted that the Court quash the SDT because it is untimely, burdensome, and
17 overbroad as it asks for information clearly beyond the scope of Mr. Geragos' direct and
18 cross-examination, and it asks for information protected by the attorney work privilege.
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II.
ARGUMENT

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1. The Law

5 In a criminal case, the “courts have inherent power to control the issuance of their
6 own process and to preclude abuse of the right to subpoena witnesses.” (*People v.*
7 *Manson* (1976) 61 Cal.App.3d 102, 154.) Courts have quashed witness subpoenas where
8 the person subpoenaed could offer no relevant testimony (*In re Finn* (1960) 54 Cal.2d
9 807, 813), and “a court may quash a subpoena that is regular on its face where the facts
10 justify such an action.” (*People v. Rhone* (1968) 267 Cal.App.2d 652, 657.)

11 Court have the power to quash a subpoena duces tecum by statute. (*Rhone, supra,*
12 267 Cal.App.2d at 657.) Section 1987.1 of the Code of Civil Procedure provides, in
13 relevant part:

14 “When a subpoena requires the attendance of a witness or the
15 production of books, documents or other things before a
16 court, or at the trial of an issue therein, . . . the court, upon
17 motion reasonably made by the party, the witness, . . . or upon
18 the court’s own motion after giving counsel notice and an
19 opportunity to be heard, may make an order quashing the
20 subpoena entirely, modifying it, or directing compliance with
21 it upon such terms or conditions as the court shall declare,
22 including protective orders. In addition, the court may make
23 any other order as may be appropriate to protect the parties,
24 [or] the witness . . . from unreasonable or oppressive demands
25 including unreasonable violations of a witness’s . . . right of
26 privacy.”¹

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¹ In *Fabricant v. Superior Court* (1980) 104 Cal.App.3d 905, the Court of Appeal held that, because the right to quash subpoenas in criminal cases predated section 1987.1, that section could not be read to sanction attorney’s fees in criminal cases where the court quashed a subpoena, but the statute has otherwise been applied to criminal actions. (See, e.g., *Department of Motor Vehicles v. Superior Court* (2002) 100 Cal.App.4th 363, 368.)

1 As stated by the California Supreme Court: "A witness upon whom has been
2 served a *subpoena duces tecum* has a right to question the validity of the writ and the
3 duty to produce the papers called for, and where a subpoena has been improperly issued
4 to enforce the production of documents which the witness is not bound to produce, and
5 his rights are invaded by it, he may properly apply to the court, whose duty it would be to
6 enforce the writ, to vacate it or set it aside." (*Southern Pacific Co. v. Superior Court*
7 (1940) 15 Cal.2d 206, 209.) As will be shown below, the subpoena in this case was
8 improperly issued and should be quashed.

9 10 **2. The Court has Previously Rejected the Same Document Request**

11 The most compelling reason to quash the subpoena is the fact that this Court has
12 rejected this request on two previous occasions and that no new showing has been made
13 by the People.

14 As noted, on May 13, 2005, Mr. Zonen orally requested that he be furnished with
15 Mr. Geragos' file that existed up to the date of arrest, including all of his billing records,
16 his notes, his e-mails, his handwritings, his reports. **The Court refused that request.**
17 (RT 10336-10337.)

18 On May 20, 2005, Zonen orally requested that the Court order Mr. Geragos to
19 produce the following documents: all e-mail communications between Brad Miller and
20 Mr. Geragos, any notes in his file dealing with communications between Mr. Geragos
21 and Mr. Jackson, Mr. Konitzer, Mr. Weizner, Mr. Amen, Mr. Schaffel and Mr. Cascio;
22 and the computer files from Brad Miller's office. (RT 11472.) The Court ordered the
23 **defense** to turn over e-mails contained in Brad Miller's computer hard drive. As to Mr.
24 Geragos, the court stated: "**To the extent you're asking me to order Mr. Geragos to**
25 **turn over something, I'm not going to do that.**" (RT 11475.)

26 "Successive applications upon the same statement of facts are to be discouraged
27 [citation], and a court will ordinarily refuse to consider repeated motions supported by

1 substantially the same showing as the one denied.” (*Josephson v. Superior Court* (1963)
2 219 Cal.App.2d 354, 359.)

3
4 **4. The Subpoena is Untimely**

5 As noted earlier, Mr. Zonen raised the issue of Brad Miller’s e-mails on May 13,
6 2005. (RT 10316-10318.) On that date, Mr. Geragos informed Mr. Zonen that he
7 generally did not save any e-mails, but that he might have saved e-mail communications
8 with Brad Miller. To the extent they existed, Mr. Geragos indicated they would be in his
9 Word Perfect file. (RT 10318.) At the end of the hearing, Mr. Zonen was aware that Mr.
10 Geragos was ordered to return to Court a week later on May 20; **yet, he chose not to**
11 **subpoena the documents at that time.** Instead, without making a new showing, Mr.
12 Zonen now seeks to obtain these documents after the Court has twice rejected his request
13 and *after* Mr. Geragos has completed his testimony. Whatever the intent behind the
14 subpoena, it has seriously disrupted Mr. Geragos’ law practice. Under Code of Civil
15 Procedure section 1987.2, a subpoena duces tecum that is oppressive, issued in bad faith,
16 or is without substantial justification, is subject to sanctions. Here, it is simply requested
17 that the Court quash the subpoena. As noted, “a court may quash a subpoena that is
18 regular on its face where the facts justify such an action.” (*Rhone, supra*, 267 Cal.App.2d
19 at p. 657.)

20
21 **5. The Subpoena is Overbroad**

22 In *Britt v. Superior Court* (1978) 20 Cal.3d 844, the Supreme Court addressed
23 itself to a discovery order that permitted inquiry into the lifetime of plaintiff’s medical
24 history without regard to the issues bearing on the litigation. The Court reaffirmed prior
25 decisions mandating a narrow scope of discovery where documents are being subpoenaed
26 under an exception to a privilege. (*Id.* at pp. 858-859.) The Court held that such an
27 overbroad request is not enforceable. (*Id.* at p. 859.) Similarly, in *Transamerica Title*

1 *Ins. Co. v. Superior Court* (1987) 188 Cal.App.3d 1047, 1052. the Court of Appeal held
2 that “the scope of a statutory or implied [attorney-client] waiver is narrowly defined and
3 the information required to be disclosed must fit strictly within the confines of the
4 waiver.”

5 Here, defendant executed a limited attorney-client waiver which must be narrowly
6 construed. (*Transamerica Title Ins. Co.*, *supra*. 188 Cal.App.3d at p. 1052.) Yet, the
7 subpoena requests, for the relevant period, “any and all records of Michael Jackson,
8 including the complete file, any notes, tapes, video-recordings, computer files, etc.” The
9 prosecution has made no attempt to narrowly tailor its subpoena as required by law.
10 Instead, without specificity, it requests documents that are unrelated to this proceeding,
11 documents that exceed the scope of Mr. Geragos’ direct and cross-examination,
12 documents that are immaterial to the charges, and documents that are still subject to the
13 attorney work-product privilege. The Court should not sanction this blunderbuss
14 approach to discovery.

15 16 **6. The Subpoena Violates the Attorney Work Product Privilege**

17 “Attorney work product protection is a separate and distinct doctrine from the
18 attorney-client privilege, and . . . is codified in criminal cases to preclude evidence of an
19 attorney’s writings that reflect his or her “impressions, conclusions, opinions or legal
20 research or theories” from being disclosed during discovery to the opponent in litigation.”
21 (*People ex el. Lockyer v. Superior Court* (2000) 83 Cal. App.4th 387, 398.) The attorney
22 work-product privilege has been codified in Penal Code section 1054.6, which provides
23 that neither the prosecutor nor defense attorney “is required to disclose any materials or
24 information which are work product” as defined in Code of Civil Procedure section 2018.

25 Most importantly, the attorney generating the work product is the exclusive holder
26 of the privilege in all circumstances, and there is no exception to this rule as between the
27 attorney and client. (*Lasky, Hass, Cohler & Munter v. Superior Court* (1983) 172

1 Cal.App.3d 264, 271.) As stated in the Points and Authorities previously submitted to
2 this Court by Mr. Geragos (page 3), he has not, at any time, waived his attorney work
3 product privilege. To the extent that the limited waiver executed by Michael Jackson
4 purports to waive Mr. Geragos' attorney work product privilege, it is without force or
5 effect.

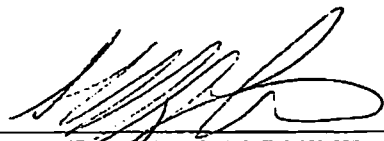
6 The subpoena's sweeping discovery requests fail to take into account the attorney
7 work-product privilege. In that the subpoena requests Mr. Geragos' entire file, including
8 his notes, "etc." it clearly encroaches upon that privilege. In the event that the Court is
9 considering the discovery requests contained in the subpoena, it is respectfully requested
10 that a special master be appointed to go through the entirety of the Geragos and Geragos
11 Michael Jackson file, segregate the privileged documents from non-privileged
12 documents, and turn over those documents to Mr. Geragos. To the extent there is a
13 disagreement as to which documents are privileged, the Court would be required to
14 resolve the issue before such documents are turned over to the prosecution. Simply
15 stated, the subpoena is burdensome.

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18 **III.**

19 **CONCLUSION**

20 For all of the foregoing reasons, it is respectfully requested that the Court quash
21 the subpoena that is the subject of this motion.

22
23
24 DATED: May 27, 2005

25 
26 STEVEN GRAFF LEVINE
27 Attorney for the Law Firm of
28 GERAGOS & GERAGOS