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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

OCT 25 2004

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

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11 Attorneys for Defendant
12 MICHAEL JOESEPH JACKSON

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

16 THE PEOPLE OF THE STATE OF
17 CALIFORNIA,

18 Plaintiffs,

19 vs.

20 MICHAEL JOSEPH JACKSON,

21 Defendant.

) Case No. 1133603

) EX PARTE APPLICATION TO FILE
) SUPPLEMENTAL PRIVILEGE LOG FOR
) ITEMS SEIZED PURSUANT TO SEARCH
) WARRANT 5135 UNDER SEAL, TO NOT
) SERVE THE PROSECUTION (REQUEST
) FOR IN CAMERA); PROPOSED ORDER

) Honorable Rodney Melville

) Date: November 5, 2004

) Time: 8:30 am.

) Dept: SM 2

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25 TO THE CLERK OF THE ABOVE ENTITLED COURT:

26 Defendant requests that the Court issue an order that the accompanying

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28 EX PARTE APPLICATION TO FILE SUPPLEMENTAL PRIVILEGE LOG FOR ITEMS
SEIZED PURSUANT TO SEARCH WARRANT 5135 UNDER SEAL AND IN CAMERA

ORIGINAL

1 SUPPLEMENTAL PRIVILEGE LOG FOR ITEMS SEIZED PURSUANT TO SEARCH
2 WARRANT 5135 be filed under seal; and that the prosecution not be served with said
3 documents and for such other such further relief as the Court may deem just and proper. This
4 request is based on the overriding interests of attorney-client privilege and Mr. Jackson's rights
5 to due process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the United
6 States Constitution and Article I, Sections 1, 7, and 15 of the California Constitution. The Court
7 previously ordered in open court that this document be filed under seal and in camera.


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9 Dated: October 25, 2004

Respectfully submitted,

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

12 SANGER & SWYSEN
13 Robert M. Sanger

14 OXMAN & JAROSCAK
Brian Oxman

15
16 By: 
17 Robert M. Sanger
18 Attorneys for
19 MICHAEL JOSEPH JACKSON
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **THE COURT HAS THE AUTHORITY TO ORDER THAT**
4 **A RECORD BE FILED UNDER SEAL**

5 Pursuant to California Rule of Court 243.1(d), the Court has the authority to order a
6 record be filed under seal if it expressly finds that:

- 7 1. There exists an overriding interest that overcomes the right of public access to the
8 record;
- 9 2. The overriding interest supports sealing the record;
- 10 3. A substantial probability exists that the overriding interest will be prejudiced if
11 the record is not sealed;
- 12 4. The proposed sealing is narrowly tailored; and
- 13 5. No less restrictive means exist to achieve the overriding interest.

14 (California Rule of Court 243.1(d).)

15 **II.**

16 **OVERRIDING INTERESTS EXIST THAT MEETS THE ABOVE CRITERIA FOR**
17 **SEALING A RECORD**

18 It is necessary to seal the record pursuant to California Rule of Court 243.1(d) based
19 on the overriding interests of attorney-client privilege, as well as Mr. Jackson's rights to due
20 process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the United
21 States Constitution and Article I, Sections 1, 7, and 15 of the California Constitution.

22 The overriding interest of attorney-client privilege justifies an order that the
23 accompanying document be filed under seal. Confidential communications between a
24 defendant and his or her lawyer are privileged. (California Evidence Code section 952.)
25 There is no right of public access to materials covered by the attorney client privilege. Mr.
26 Jackson, as the client, is the holder of the attorney-client privilege. (California Evidence
27

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**EX PARTE APPLICATION TO FILE SUPPLEMENTAL PRIVILEGE LOG FOR ITEMS
SEIZED PURSUANT TO SEARCH WARRANT 5135 UNDER SEAL AND IN CAMERA**

1 Code section 953.) Therefore, the filing should also be in camera without service to the
2 prosecution.

3 Furthermore, Mr. Jackson's rights to a fair trial and due process would be
4 compromised if the accompanying documents are disclosed to the public. A person accused
5 of a crime is entitled to due process and a fair trial under the Fifth, Sixth and Fourteenth
6 Amendments to the United States Constitution and Article I, Sections 1, 7, and 15 of the
7 California Constitution. Furthermore, the Court previously ordered in open court that this
8 document be filed under seal and in camera.

9 CONCLUSION

10 For the reasons stated above, Mr. Jackson requests that the Court issue an order that
11 the accompanying SUPPLEMENTAL PRIVILEGE LOG FOR ITEMS SEIZED
12 PURSUANT TO SEARCH WARRANT 5135 be filed under seal and that the prosecution
13 not be served with said documents.

14 Dated: October 25, 2004

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Susan Yu

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20 By: 

21 Robert M. Sanger
22 Attorneys for
23 MICHAEL JOSEPH JACKSON
24
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28 EX PARTE APPLICATION TO FILE SUPPLEMENTAL PRIVILEGE LOG FOR ITEMS
SEIZED PURSUANT TO SEARCH WARRANT 5135 UNDER SEAL AND IN CAMERA

1 DECLARATION OF ROBERT M. SANGER

2
3 I, Robert Sanger, declare:

- 4 1. I am an attorney at law duly licensed to practice law in the courts of the State of
5 California, a partner in the law firm of Sanger & Swysen, and co-counsel for Michael
6 Jackson.
- 7 2. It is necessary that the accompanying SUPPLEMENTAL PRIVILEGE LOG FOR
8 ITEMS SEIZED PURSUANT TO SEARCH WARRANT 5135 be filed under seal,
9 and that it not be served on the prosecution, in order to protect the overriding
10 interests of attorney-client privilege and Mr. Jackson's rights to due process and a
11 fair trial.
- 12 3. The Court previously ordered in open court that this detailed privilege log related to
13 Search Warrant 5135 would be filed in camera and under seal.
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15 I declare under penalty of perjury that the foregoing is true and correct and that this
16 declaration was executed this 25th day of October, 2004 at Santa Barbara, California.

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Robert M. Sanger