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19 Attorneys for Defendant
20 **MICHAEL JOSEPH JACKSON**

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA
22 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

23 THE PEOPLE OF THE STATE OF
24 CALIFORNIA,

25 Plaintiffs,

26 vs.

27 **MICHAEL JOSEPH JACKSON,**

28 Defendant.

Case No. 1133603

EX PARTE APPLICATION TO FILE
DECLARATION OF ROBERT M. SANGER
UNDER SEAL, TO NOT SERVE THE
PROSECUTION (REQUEST FOR IN
CAMERA); PROPOSED ORDER

Honorable Rodney Melville

Date: November 4, 2004
Time: 8:30 am.
Dept: SM 2

TO THE CLERK OF THE ABOVE ENTITLED COURT:

Defendant requests that the Court issue an order that the accompanying

EX PARTE APPLICATION TO FILE DECLARATION OF ROBERT M. SANGER
UNDER SEAL AND IN CAMERA

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

NOV 01 2004

GARY M. BLAIR, Executive Officer
BY Carrie L. Wagoner
CARRIE L. WAGONER, Deputy Clerk

* Unsealed pursuant
to 1116105 Court
order

FILED UNDER SEAL
In Camera

1 DECLARATION OF ROBERT M. SANGER be filed under seal; and that the prosecution not
2 be served with said documents and for such other such further relief as the Court may deem just
3 and proper. This request is based on the overriding interests of attorney-client privilege and
4 Mr. Jackson's rights to due process and a fair trial under the Fifth, Sixth and Fourteenth
5 Amendments to the United States Constitution and Article I, Sections 1, 7, and 15 of the
6 California Constitution.

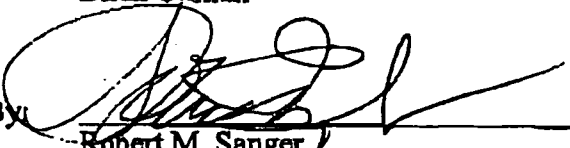
7
8 Dated: November 1, 2004

Respectfully submitted,

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

11 SANGER & SWYSEN
12 Robert M. Sanger

13 OXMAN & JAROSCAK
14 Brian Oxman

15 By: 
16 Robert M. Sanger
17 Attorneys for
18 MICHAEL JOSEPH JACKSON

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

28 **EX PARTE APPLICATION TO FILE DECLARATION OF ROBERT M. SANGER
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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 District Attorney has requested that this document
8 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 DECLARATION OF ROBERT M. SANGER be filed under seal and that
12 the prosecution not be served with said documents.

13 Dated: November 1, 2004

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19 By.


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