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Santa Fe Springs, CA 90670
10 Tel.: (562) 921-5058, Fax: (562) 921-2298

11 Attorneys for Defendant
MICHAEL JOSEPH JACKSON
12

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

16 THE PEOPLE OF THE STATE OF
17 CALIFORNIA,

18 Plaintiffs,

19 vs.

20 MICHAEL JOSEPH JACKSON,

21 Defendant.
22

) Case No. 1133603
)
)

) EX PARTE APPLICATION FOR AN
) ORDER THAT THE DEFENSE RESPONSE
) TO THE DISTRICT ATTORNEY'S
) MOTION IN LIMINE FOR ADMISSION OF
) EXPERT TESTIMONY ON DEFENDANT'S
) FINANCES, DATED JANUARY 21, 2005,
) BE WITHDRAWN

) ~~UNDER SEAL~~
)

) Honorable Rodney S. McIville
)

) Date: January 28, 2005
)

) Time: 9:30 a.m.
)

) Dept: SM 8
)

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28 EX PARTE APPLICATION FOR AN ORDER THAT THE RESPONSE TO THE DISTRICT ATTORNEY'S
MOTION IN LIMINE FOR ADMISSION OF EXPERT TESTIMONY ON DEFENDANT'S FINANCES BE
WITHDRAWN

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 24 2005

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

**Unsealed pursuant
to 666605 Court
order*

1 TO THE CLERK OF THE ABOVE ENTITLED COURT:

2 Mr. Michael Jackson respectfully requests that the Court issue an order that the defense
3 response to the District Attorney's "Motion in Limine for Admission of Expert Testimony on
4 Defendant's Finances," dated January 21, 2005, be withdrawn, and that the defense opposition, dated
5 January 24, 2005, and filed concurrently with this application, be filed in its place. This request is
6 based on inadvertence and upon Mr. Jackson's federal and state constitutional rights to a fair trial,
7 due process of law, equal protection, and effective assistance of counsel pursuant to the Fifth, Sixth
8 and Fourteenth Amendments to the United States Constitution and Article I, Sections 7, 15, 17 and
9 24 of the California Constitution.

10 Dated: January 24, 2005


11 Respectfully submitted,

12 COLLINS, MESEREAU, REDDOCK & YU
13 Thomas A. Mesereau, Jr.
Susan C. Yu

14 SANGER & SWYSEN
15 Robert M. Sanger

16 OXMAN & JAROSCAK
17 Brian Oxman

18 By:

19 
20 Thomas Mesereau, Jr.
21 Attorneys for Defendant
22 MICHAEL JOSEPH JACKSON

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MOTION IN LIMINE FOR ADMISSION OF EXPERT TESTIMONY ON DEFENDANT'S FINANCES BE
WITHDRAWN

1 DECLARATION OF THOMAS MESEREAU, JR.

2 I, Thomas Mesereau, Jr., 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 Collins, Mesereau, Reddock, & Yu, and lead counsel for
5 Mr. Michael Jackson.

6 2. I asked Susan Yu, a partner in my firm and co-counsel to Mr. Jackson, to prepare and file
7 a non-opposition to the District Attorney's "Motion in Limine for Admission of Expert
8 Testimony on Defendant's Finances." I instructed Ms. Yu on what to say in the non-opposition
9 and I am responsible for the content.

10 3. My position in the non-opposition was based upon a miscommunication with Mr.
11 Jackson. The non-opposition is inconsistent with Mr. Jackson's express wishes. The
12 undersigned has now cleared up the miscommunication with Mr. Jackson and Mr. Jackson does
13 not wish, nor has he ever, wished to waive these legal rights.


14 4. Having reviewed the District Attorney's motion and the law, it appears that it would be
15 highly prejudicial to Mr. Jackson if the testimony is admitted. Furthermore, the introduction of
16 this testimony would constitute an invasion of Mr. Jackson's privacy contrary to existing law.

17 5. We request relief from having filed this Response based on mistake, inadvertence,
18 surprise, or excusable neglect based on the miscommunication with Mr. Jackson.

19 6. This declaration is not a waiver of attorney-client privilege or the work product doctrine.

20 7. On January 24, 2005, Mr. Sanger, in my presence, made a request to the District
21 Attorney that the prosecution stipulate that the defense response be withdrawn. The District
22 Attorney, however, through his deputy Gordon Auchincloss, rejected this request.

23 I declare under penalty of perjury that the foregoing is true and correct and that this
24 declaration was executed this 24th day of January, 2005 at Santa Barbara, California.

25 
26 Thomas Mesereau, Jr.

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28 EX PARTE APPLICATION FOR AN ORDER THAT THE RESPONSE TO THE DISTRICT ATTORNEY'S
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WITHDRAWN

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 ALLOWING THE RESPONSE TO STAND WOULD DEPRIVE MR. JACKSON OF HIS
4 RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, PURSUANT TO THE SIXTH
5 AMENDMENT OF THE UNITED STATES CONSTITUTION

6 California law does not allow the admission of the type of testimony that the prosecution
7 seeks to admit. Furthermore, the admission of this testimony would constitute an invasion of Mr.
8 Jackson's privacy. As such, Mr. Jackson absolutely objects to the introduction of this testimony.
9 Counsel for Mr. Jackson are obligated to oppose the introduction of this evidence. We are
10 simply seeking to properly object.¹

11 Introduction of this purported evidence would be highly prejudicial to Mr. Jackson. The
12 undersigned filed the non-opposition as a result of a miscommunication with Mr Jackson. The
13 undersigned has now cleared up the miscommunication with Mr. Jackson and Mr. Jackson does
14 not wish, nor has he ever, wished to waive his legal rights. (Declaration of Thomas Mesereau,
15 Jr.)

16 Mr. Jackson should be afforded the same relief that is afforded to civil litigants pursuant
17 to California Code of Civil Procedure Section 473 when, due to mistake, inadvertence, surprise,
18 or excusable neglect, it becomes necessary to seek leave of Court to amend a pleading.

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24 ¹ Failure to object to the prosecution's introduction of evidence of a defendant's poverty
25 or indebtedness to show motive to commit a crime for financial gain may be found to constitute
26 ineffective assistance of counsel. (See *People v. Carrillo* (2004) 119 Cal.App.4th 94, 101 fn. 1.)
Moreover, the introduction of this type of testimony has been found to be reversible error.
(*People v. Carrillo* (2004) 119 Cal.App.4th 94.)

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2 II.

3 CONCLUSION

4 For the reasons stated above, Mr. Jackson requests that the Court issue an order that the
5 defense response to the District Attorney's "Motion in Limine for Admission of Expert
6 Testimony on Defendant's Finances," dated January 21, 2005, be withdrawn, and that the defense
7 opposition, dated January 24, 2005, and filed concurrently with this application, be filed in its
8 place.

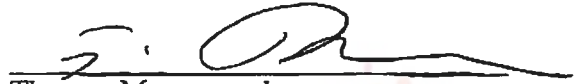
9 Dated: January 24, 2005

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

12 SANGER & SWYSEN
13 Robert M. Sanger

14 OXMAN & JAROSCAK
15 Brian Oxman

16 By:

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18 Thomas Mesereau, Jr.
19 Attorneys for
20 MICHAEL JOSEPH JACKSON

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WITHDRAWN

PROOF OF SERVICE

I, the undersigned declare:

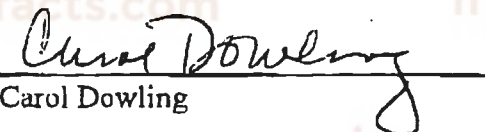
I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On January 24, 2005, I served the foregoing document entitled: **EX PARTE APPLICATION FOR AN ORDER THAT THE DEFENSE RESPONSE TO THE DISTRICT ATTORNEY'S MOTION IN LIMINE FOR ADMISSION OF EXPERT TESTIMONY ON DEFENDANT'S FINANCES, DATED JANUARY 21, 2005, BE WITHDRAWN: UNDER SEAL** 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
- STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed January 24, 2005, Santa Barbara, California.


Carol Dowling