

1 **COLLINS, MESEREAU, REDDOCK & YU**
2 Thomas A. Mesereau, Jr., State Bar Number 091182
3 Susan C. Yu, State Bar Number 195640
4 1875 Century Park East, 7th Floor
5 Los Angeles, CA 90067
6 Tel.: (310) 284-3120, Fax: (310) 284-3133

7 **SANGER & SWYSEN**
8 Robert M. Sanger, State Bar Number 058214
9 233 East Carrillo Street, Suite C
10 Santa Barbara, CA 93101
11 Tel.: (805) 962-4887, Fax: (805) 963-7311

12 **OXMAN & JAROSCAK**
13 Brian Oxman, State Bar Number 072172
14 14126 East Rosecrans
15 Santa Fe Springs, CA 90670
16 Tel.: (562) 921-5058, Fax: (562) 921-2298

17 Attorneys for Defendant
18 **MICHAEL JOSEPH JACKSON**

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
20 **FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION**

21 **THE PEOPLE OF THE STATE OF**
22 **CALIFORNIA,**

23 Plaintiffs,

24 vs.

25 **MICHAEL JOSEPH JACKSON,**

26 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: February 28, 2005

) Time: ~~8:30 am~~

) Dept: SM 8

27 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT
28 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY
DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN AND GORDON
AUCHINCLOSS:

NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA OF BANK OF AMERICA

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB 17 2005

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

1 Please take notice that the Defendant does hereby move and will further move on ~~February~~
2 ~~28, 2005~~, at ~~8:30 a.m.~~, or as soon thereafter as counsel may be heard in Department 8 of the above
3 entitled court, for an order quashing the subpoena duces tecum served on Bank of America on
4 January 19, 2005, or, in the alternative, issue a protective order declaring that the subpoenaed records
5 are inadmissible at trial, must be returned to the subpoenaed party, and that all copies in the
6 possession of the District Attorney or law enforcement must be destroyed, and for such other relief
7 as the Court may deem just and proper, and Defendant moves for an immediate stay of said subpoena
8 until this motion can be heard on the merits. Counsel for Mr. Jackson have recently been made
9 aware that the District Attorney has served a subpoena duces tecum on Bank of America seeking Mr.
10 Jackson's financial records. Mr. Jackson was not served with a copy of the subpoena.

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

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

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NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA OF BANK OF AMERICA

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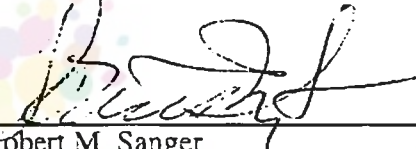
This motion is based on this Notice of Motion, and the Memorandum of Points and Authorities attached hereto, the papers, records and files in this case and such other matters as may be received by the Court at or after the hearing scheduled on this motion.

Dated: February 16, 2005

Respectfully submitted,
COLLINS, MESEREAU, REDDOCK & YU
Thomas A. Mesereau, Jr.
Susan C. Yu

SANGER & SWYSEN
Robert M. Sanger

OXMAN & JAROSCAK
Brian Oxman

By: 
Robert M. Sanger
Attorneys for Defendant
MICHAEL JOSEPH JACKSON

DECLARATION OF ROBERT M. SANGER

I, Robert M. Sanger, declare:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Sanger & Swysen, and co-counsel for Michael Jackson.

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

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

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

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

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

7. The subpoena duces tecum is overbroad and seeks information that is covered by the

NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA OF BANK OF AMERICA

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 16th day of February, 2005, at Santa Barbara, California.



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6 Robert M. Sanger
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NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA OF BANK OF AMERICA

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 "suffered from severe financial distress and could not
9 endure the repercussions to his career and finances if the public perceived him to be a child
10 molester." (Affidavit, page 2.) On this basis, the District Attorney seeks:

11 Records or information concerning assests. liabilities, income and/or projected
12 income, bankruptcies or projected bankruptcies and defaults on all loans affiliated
13 to Michael Joe Jackson; MJJ Productions; MJJ Ventures; Neverland Valley
14 Ranch; Neverland Valley Entertainment; MIJAC Music or any other corporation,
15 partnership or entity of which Michael Jackson is a known principal from 1998 to
16 present.
17 (Affidavit, 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
28 admitted to prove a motive to commit crimes of financial gain. (*People v. Koontz* (2002) 27
Cal.4th 1041, 1076, stating that "a defendant's poverty generally may not be admitted to prove a
motive to commit a robbery or theft . . ."; *People v. Wilson* (1992) 3 Cal.4th 926, 938-938.,
stating that evidence of defendant's debt, admitted for the purpose of establishing a motive to

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1 commit robbery and murder, was not admissible on any proper ground.) “[F]or over a century
2 courts have recognized the potential unfairness in admitting such evidence.” (*People v. Carrillo*
3 (2004) 119 Cal.App.4th 94, 101.) While there are obvious reasons for the prosecution to want to
4 use a defendant’s poverty “to provide a convincing harmony to the factual melody of the crime,”
5 such evidence deprives a defendant of a fair trial and constitutes reversible error. (*People v.*
6 *Carrillo, supra*, 119 Cal.App.4th 94, 97.)

7 Furthermore, there is no showing that the materials could corroborate the stories told by
8 the complaining witnesses. The charged offenses are child molestation and a conspiracy to
9 commit false imprisonment, extortion and child abduction. Mr. Jackson’s financial holdings or
10 evidence of potential entertainment contracts are not relevant to these charges under any
11 admissible theory. (Declaration of Robert M. Sanger.)

12 II.

13 **THE SUBPOENA THREATENS TO DEPRIVE MR. JACKSON OF HIS RIGHT TO**
14 **PRIVACY UNDER THE UNITED STATES CONSTITUTION AND CALIFORNIA**
15 **CONSTITUTION**

16 Mr. Jackson will be deprived of his right to privacy pursuant to the United States
17 Constitution and Article 1, Section 1, of the California Constitution, if the subpoena duces tecum
18 is not quashed. Records regarding Mr. Jackson’s financial affairs are protected by his right to
19 privacy. The District Attorney is prosecuting him for child molestation and conspiracy. As
20 argued above, Mr. Jackson’s financial records are not relevant to the charges against him. As
21 such, the prosecution has not demonstrated any interest that justifies invading Mr. Jackson’s right
22 to privacy.

23 Mr. Jackson is an international recording artist and a man who has varied and complex
24 business relationships with numerous individuals and entities. The very nature of these types of
25 business relationships is that the parties honor a commitment to their respective privacy. Matters
26 that are totally irrelevant to this case would be disclosed by compliance with this subpoena which
27 have been kept confidential. Disclosure would not only compromise the confidentiality of
28

1 existing contracts, but would unfairly restrict Mr. Jackson's ability to enter into pending and
2 future contracts in the entertainment industry. (Declaration of Robert M. Sanger.)

3 III.

4 **IF THE DISTRICT ATTORNEY COULD DEMONSTRATE GOOD CAUSE TO**
5 **OBTAIN THIS INFORMATION, IT COULD ONLY BE LAWFULLY OBTAINED**
6 **THROUGH THE STATUTORY DISCOVERY PROCESS**

7 The District Attorney is attempting to obtain what he cannot obtain through the discovery
8 process by a subpoena duces tecum. This is a blatant attempt to obtain documents from Mr.
9 Jackson and to circumvent the statutory scheme enacted by the voters as Penal Code section 1054
10 et seq., which very clearly states that:

11 [N]o discovery shall occur in criminal cases except as provided by this chapter,
12 other express statutory provisions, or as mandated by the Constitution of the
United States. (Penal Code section 1054 (e).)

13 The expressed terms of the statutes state that the prosecutor cannot use the subpoena process to
14 obtain discovery.

15 IV.

16 **THE SUBPOENA IS OVERBROAD AND SEEKS INFORMATION THAT WOULD**
17 **COMPROMISE TRADE SECRETS, INTERFERE WITH CONTRACTS AND**
18 **INTERFERE WITH PROSPECTIVE ADVANTAGE**

19 The District Attorney is seeking materials that includes information regarding
20 entertainment industry deals including business contracts, licensing agreements, royalty
21 payments, and other information that is confidential. The owner of a trade secret has a privilege
22 to refuse to disclose and to prevent others from disclosing trade secrets so long as allowance of
23 the privilege will not tend to conceal fraud or otherwise work an injustice. (Evidence Code
24 Section 1060.) A trade secret is information that: (1) derives independent economic value (actual
25 or potential) from not being generally known to the public or others who can obtain economic
26 value from its disclosure or use; and (2) is the subject of reasonable efforts to maintain its
27 secrecy. (Civil Code of Procedure Section 3426.1(d)(1)&(2).B) The subpoena duces tecum is
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1 overbroad and seeks information that is covered by the trade secret privilege. (Declaration of
2 Robert M. Sanger.)

3 V.

4 CONCLUSION

5 Therefore, based on the reasons set forth above, Mr. Jackson requests that the Court
6 quash the subpoena duces tecum, or, in the alternative, issue a protective order declaring that the
7 subpoenaed records are inadmissible at trial, must be returned to the subpoenaed party, and that
8 all copies in the possession of the District Attorney or law enforcement must be destroyed.

9 Dated: February 16, 2005

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

11 SANGER & SWYSEN
Robert M. Sanger

13 OXMAN & JAROSCAK
Brian Oxman

14
15 By: 

16 Robert M. Sanger
17 Attorneys for Defendant
18 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 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On February 17, 2005, I served the foregoing document EX PARTE APPLICATION FOR AN ORDER THAT NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA TO BANK OF AMERICA BE FILED UNDER SEAL and NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA TO BANK OF AMERICA and REDACTED VERSION on the interested parties in this action by depositing a true copy thereof as follows:

Santa Barbara District Attorney
Tom Sneddon
Ron Zonen
Jerry Franklin
Gordon Auchincloss
FAX 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.

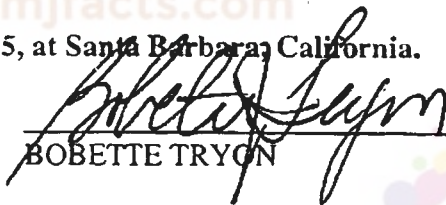
 X BY FACSIMILE - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties

 BY HAND - I caused the document to be hand delivered to the interested parties at the address above.

 X STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

 FEDERAL - I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Executed February 17, 2005, at Santa Barbara, California.



BOBETTE TRYON