

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

MAR 03 2005

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

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara  
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Senior Deputy District Attorney  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SANTA BARBARA  
10 SANTA MARIA DIVISION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,

13 Plaintiff,

14 v.

16 MICHAEL JOE JACKSON,

17 Defendant.

No. 1133603

13 PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO  
14 QUASH SUBPOENAS D.T. TO  
HOLTHOUSE, CARLIN & VAN  
15 TRIGHT AND TO BERNSTEIN,  
FOX, WHITMAN & CO.

16 DATE: TBA  
17 TIME: 9:30 a.m.  
18 DEPT: SM 8

21 The People issued subpoenas duces tecum to Holthouse, Carlin & Van Tright, LLP,  
22 and to Bernstein, Fox, Whitman & Co., accountants, seeking certain records of defendant's  
23 income, expenditures and financial status during 2004.

24 Defendant moves to quash each subpoena on the ground that "1. [It] fails to establish  
25 good cause for production of the subpoenaed documents"; "2. [It] constitutes an invasion of  
26 Mr. Jackson's right of privacy pursuant to the [United] States Constitution and Article 1,  
27 Section one of the California Constitution"; "3. [It] seeks information that can only be lawfully  
28 obtained through the statutory discovery process outlined in Penal Code section 1054 *et seq.*"

1 and "4. The subpoena is overbroad and seeks information that would compromise trade secrets,  
2 would interfere with contracts and would interfere with prospective advantage."

3 Response:

4 1. The Suppoena Reflects Good Cause For  
5 Production Of The Subpoenaed Documents

6 Defendant notes that the subpoenas in question were issued "to obtain documents to  
7 prove motive on behalf of defendant for the charge offenses and to corroborate the victims of  
8 the charged offenses." Defendant argues that "The court ruled, on January 28, 2005, that the  
9 District Attorney cannot use detailed financial evidence to show motive. (Declaration of Robert  
10 M. Sanger. The law is very clear in that regard. Therefore there is not good cause to subpoena  
11 these materials." (Motion 6:7-21.)

12 As relates to "financial evidence," our copy of the Court's omnibus "Criminal  
13 Minute Order" dated January 28, 2005 reflects only the following:

14 Attorneys Auchincloss and Sanger addressed the Court re: Plaintiff's  
15 Motion in Limine for Admission of Expert Testimony on Defendant's  
16 Finances and Application for Order that the Defense Response to the  
17 District Attorney's Motion in Limine for Admission of Expert Testimony  
18 on Defendant's Finances, Dated January 21, 2005 be Withdrawn. **The**  
19 **Court finds that general testimony as it relates to this particular**  
20 **situation may be admissible**, but the Court shall reserve ruling at this  
21 time. The Court further orders that a 402 hearing shall be held if such  
22 witnesses are called."

21 (Emphasis added.)

22 2. The Subpoenas Do Not Threaten Defendant's  
23 Privacy Under The United States Constitution  
24 Or The California Constitution

25 Defendant argues that the subpoenas seek information protected by "his right of  
26 privacy pursuant to the United States Constitution and Article 1, Section 1, of the California  
27 Constitution." (Motion 7:21-22.)

28 Defendant has cited no authority for that argument. The contrary appears to be the

1 case.

2 Presumably, defendant's reference to his right of privacy under the United States  
3 Constitution is to the Fourth Amendment to the Constitution.

4 In opposition to a much earlier effort by defendant to traverse search warrants for  
5 bank and credit records, plaintiff noted that

6 Prior to enactment of Proposition 8 in 1983, a California defendant  
7 could assert a reasonable expectation of privacy in bank records, just as  
8 in telephone records, and enforce that expectation as a right under  
9 California's Constitution. Post-Proposition 8, our courts are governed by  
10 the binding authority of the United States Supreme Court in matters  
11 touching on the Fourth Amendment.

12 With respect to bank records (and, by extension, credit-card  
13 transaction records), an individual was held not to have reasonable  
14 expectation of privacy in them in *United States v. Miller* (1976) 425 U.S.  
15 435 [96 S.Ct. 1619, 48 L.Ed.2d 71]. *Miller* held that business records  
16 held by a bank are the bank's records, not its customers' records. In  
17 *People v. Meyer* (1985) 183 Cal.App.3d 1150, 1163, the Court of Appeal  
18 noted, "The [*Miller*] court reasoned that the bank customer has no  
19 legitimate expectation of privacy in those records since they are not  
20 confidential communications but negotiable instruments to be used in  
21 commercial transactions voluntarily conveyed to the banks and exposed  
22 to their employees in the ordinary course of business. The court  
23 concluded that the Fourth Amendment does not prohibit the obtaining of  
24 information revealed to a third party and conveyed by him by government  
25 authorities."

26 Plaintiff's research has not uncovered a decision discussing records of  
27 a defendant's own use of his legitimately-obtained credit card, but it is  
28 unlikely a different rule would apply to them.

29 In his opening statement, lead defense counsel told the jury that evidence would  
30 "prove" that defendant's relationship with various individuals alleged to be his co-conspirators  
31 would reveal that defendant was duped and taken advantage of by some or all of them, and that  
32 he had no sufficient knowledge of what they were doing in his name and upon his ostensible  
33 authority as to warrant a belief that he, too, was a conspirator.

1 The evidence of defendant's "varied and complex business relationships with  
2 numerous individuals and entities" (Motion 8:1-2) may show that, to the contrary, defendant  
3 was intimately involved in his dealings with them. It will certainly tend to disclose the state of  
4 his finances at the time "Living with Michael Jackson" aired in the United States, and to  
5 support the testimony of witnesses who have testified or stated that the effect of that broadcast  
6 would have an important impact on his future financial well-being.

7 3. Plaintiff Is Not Limited By The Discovery Provisions  
8 Of The Penal Code In Its Effort To Obtain Records  
9 In The Possession Of Third Parties

10 Defendant argues that Plaintiff's subpoenas are discovery tools, and that the  
11 provisions of Penal Code section 1054 et seq. limit the means of obtaining discovery in a  
12 criminal case so as to exclude the use of a subpoena duces tecum for records in the possession  
13 of a third party. "The express terms of the statutes state that the prosecutor cannot use the  
14 subpoena process to obtain discovery." (Motion 8:18-19.)

15 The "express terms of the statutes" say no such thing. Defendant may chose to infer  
16 that section 1054, subdivision (e)'s provision that "no discovery shall occur in criminal cases  
17 except as provided by this chapter, other express statutory provisions, or as mandated by the  
18 Constitution of the United States" may be so construed. But decisional law contradicts that  
19 assumption. (See *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1314 ["The  
20 statutory scheme does not apply to discovery from third parties"; defendant's use of subpoena  
21 duces tecum upheld]; *Teal v. Superior Court (People)* (2004) 117 Cal.App.4th 488, 491 [same,  
22 citing *Barrett*].)

23 4. To The Extent The Subpoenaed Documents May  
24 Reveal "Trade Secrets," Defendant Will Be  
25 Adequately Protected By The Court's Review  
26 Of Evidence The People May Seek To Admit  
27 Concerning The State Of Defendant's Finances

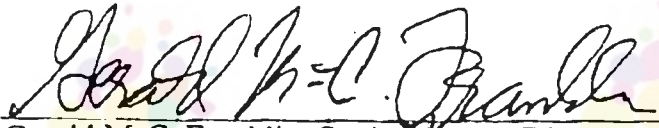
28 It seems unlikely that evidence in the possession of defendant's accountants and

1 business managers (including contracts) constitute "trade secrets," but assuming some of those  
 2 documents would come within the Civil Code section 3426.1, subdivision (d)'s definition of  
 3 "trade secret," there will be time enough for defendant to seek an appropriate protective order  
 4 concerning the prosecutor's use of such documents. Defendant will, of course, be made aware  
 5 of all documents obtained in obedience to the subpoenas duces tecum.

6 DATED: March 2, 2005

7 Respectfully submitted,

8 THOMAS W. SNEDDON, JR.  
9 District Attorney

10  
 11 By:   
 12 Gerald McC. Franklin, Senior Deputy District Attorney

13 Attorneys for Plaintiff

**PROOF OF SERVICE**

1  
2  
3 STATE OF CALIFORNIA  
4 COUNTY OF SANTA BARBARA } SS

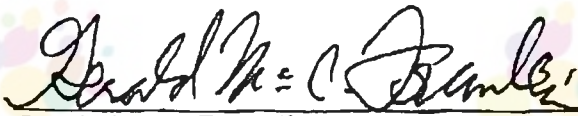
5  
6 I am a citizen of the United States and a resident of the County aforesaid; I am over  
7 the age of eighteen years and I am not a party to the within-entitled action. My business address  
8 is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara, California  
9 93101.

10 On March 2, 2005, I served the within PLAINTIFF'S OPPOSITION TO  
11 DEFENDANT'S MOTION TO QUASH SUBPOENAS D.T. TO HOLTHOUSE, CARLIN &  
12 VAN TRIGT AND TO BERNSTEIN, FOX, WHITMAN & CO." on Defendant, by THOMAS  
13 A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a  
14 true copy thereof to Mr. Sanger's office in Santa Barbara, and by transmitting a facsimile copy  
15 thereof to Attorney Mesereau at his confidential fax number in Santa Maria at the addresses  
16 shown on the attached Service List.

17 On the same date, I served Nasatir, Hirsch, Podberesky & Genego, Lawyers, and  
18 Michael Nasatir, Esq., counsel for Bernstein, Fox, Whitman & Co. and Holtman, Carlin & Van  
19 Tright, LLP, by transmitting a true copy thereof to Mr. Nasatir at the fax number shown on the  
20 Service List.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed at Santa Barbara, California on this 2nd day of April, 2005.

23   
24 \_\_\_\_\_  
25 Gerald McC. Franklin

SERVICE LIST

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2  
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