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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA  
JUN 03 2004

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

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13 Attorneys for Defendant MICHAEL JOE JACKSON

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION  
16

17 THE PEOPLE OF THE STATE OF  
18 CALIFORNIA,

19 Plaintiffs,

20 vs.

21 MICHAEL JOE JACKSON,

22 Defendant.

) Case No. 1133603  
)  
) NOTICE OF MOTION AND MOTION FOR  
) CONFIDENTIAL SUBPOENA DUCES  
) TECUM PROCEEDINGS;  
) MEMORANDUM OF POINTS AND  
) AUTHORITIES; DECLARATION OF  
) ROBERT M. SANGER; PROPOSED  
) ORDER (*Teal Motion*)  
) ~~UNDER SEAL~~  
) Honorable Rodney Melville  
)  
) Date: June 25, 2004  
) Time: 8:30 am.  
) Dept: SM 2

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28 NOTICE OF MOTION AND MOTION FOR CONFIDENTIAL SUBPOENA DUCES TECUM  
PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF  
ROBERT M. SANGER; PROPOSED ORDER (*Teal Motion*)

1 TO THE CLERK OF THE ABOVE ENTITLED COURT AND TO THE DISTRICT  
2 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY  
3 DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN, AND GORDON  
4 AUCHINCLOSS:

5 Please take notice that the Defendant does hereby move and will further move on June 25,  
6 2004 at 8:30 a.m., or as soon thereafter as counsel may be heard, in Department 2 of the above  
7 entitled court, for an order that Mr. Jackson be permitted to subpoena materials without disclosing  
8 the nature of the subpoena, the person or items sought by the subpoena, or the response to the  
9 subpoena and any materials returned therewith, including, specifically:

- 10 1. An order to the clerk of the court that any materials pertaining to the subpoena,  
11 including returns, documents, and other materials returned in response to said  
12 subpoena be segregated and kept confidential and not disclosed to the People in any  
13 way;
- 14 2. An order to the clerk of the court that Counsel for the defendant be permitted to  
15 subpoena materials to the court on days and times at which the case itself is not on  
16 calendar for other purposes;
- 17 3. An order that persons or entities subpoenaed by the defendant not be permitted to  
18 disclose directly or indirectly to the People the fact that have been subpoenaed or the  
19 nature of the subpoena;
- 20 4. An order that any appearance, objection, compliance, or other communication by a  
21 party subpoenaed by the defendant be filed under seal; and
- 22 5. An order that any hearings involving the materials pertaining to the subpoena,  
23 including returns, documents, and other materials returned in response to the  
24 subpoena regarding compliance, privacy, or other issues be held in camera;

25 or any other such relief as the Court may deem just and appropriate.

26 This motion is based on this Notice Of Motion, the Memorandum of Points and Authorities

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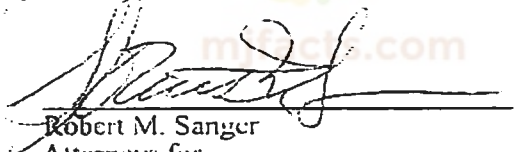
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NOTICE OF MOTION AND MOTION FOR CONFIDENTIAL SUBPOENA DUCES TECUM  
PROCEEDINGS; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF  
ROBERT M. SANGER; PROPOSED ORDER (*Teal Motion*)

1 and Declaration of Robert M. Sanger attached hereto, the papers, records and files in this case and  
2 such other matters as may be received by the Court at or after the hearing scheduled on this motion.

3 Dated: June 3, 2004

4 COLLINS, MFSEREAU, REDDOCK & YU  
5 Thomas A. Mesereau, Jr.  
6 Susan Yu  
7 KATTEN MUCHIN ZAVIS ROSENMAN  
8 Steve Cochran  
9 Stacey Knight  
10 SANGER & SWYSEN

11 By:   
12 Robert M. Sanger  
13 Attorneys for  
14 MICHAEL JOE JACKSON

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

**MR. JACKSON IS ENTITLED TO AN ORDER THAT HE BE PERMITTED TO SUBPOENA MATERIALS WITHOUT DISCLOSING THE NATURE OF THE SUBPOENA, THE PERSON OR ITEMS SOUGHT BY THE SUBPOENA, OR THE RESPONSE TO THE SUBPOENA AND ANY MATERIALS RETURNED THEREWITH.**

The defendant in a criminal action has constitutional rights under the Fifth, Sixth, and Fourteenth Amendments to the Federal Constitution and Article I, Sections 1, 7, 15, and 24 of the California Constitution when compelling the production of witnesses and evidence. Specifically, she or he is not required to disclose her or his potential defense strategies or work product to the prosecutor as a condition of receiving documents produced pursuant to a subpoena duces tecum. (See *Teal v. Superior Court* (2004) 117 Cal.App.4th 488, 492; *People v. Superior Court (Barrett)* (2000) 80 Cal.App.4th 1305, 1320.)

The defendant may not, however, subpoena the records directly; she or he must direct the producing party to bring the records to the court for a judicial determination that the defendant is entitled to receive them. (*People v. Superior Court (Barrett)*, *supra*, 80 Cal.App.4th 1305, 1316.) Any attempt to short-cut this process may constitute a constitutional violation by the defendant. (See, e.g., *Susan S. v. Israels* (1997) 55 Cal.App.4th 1290, 1299.)

Unless the court protects the entire subpoena duces tecum process from the prosecutor's gaze,<sup>1</sup> the public nature of the process would render Mr. Jackson's constitutional rights meaningless. Therefore, the court should order that the defendant be permitted to subpoena materials without disclosing the nature of the subpoena, the person or items sought by the subpoena, or the response to the subpoena and any materials returned therewith.

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<sup>1</sup>Mr. Jackson respectfully suggests, without limitation, that such protections should include those set forth in the attached [Proposed] Protective Order Regarding Defendant's Subpoenas Duces Tecum.

1 -A. Mr. Jackson has a Constitutional Right to Protection When Compelling the Production  
2 of Witnesses and Evidence.

3 In *People v. Superior Court (Barrett)*, *supra*, 80 Cal.App.4th 1305, the appellate court  
4 recognized that the defendant has a right to some protections when compelling the production of  
5 witnesses and evidence. (*Id.* at p. 1320.) Specifically, when a third-party produces records pursuant  
6 to a defendant's subpoena duces tecum, the defendant is entitled to make her or his relevancy  
7 arguments to the court in an in camera hearing. (*Id.* at pp. 1320-1321.) The court reasoned that  
8 requiring the defendant to argue the potential relevance of subpoenaed documents in the prosecutor's  
9 presence would violate the defendant's Fifth Amendment right against self-incrimination and her  
10 or his Sixth Amendment right to counsel because it would,

11 give [the defendant] the Hobson's choice of going forth with his discovery efforts  
12 and revealing possible defense strategies and work product to the prosecution, or  
13 refraining from pursuing these discovery materials to protect his constitutional rights  
14 and prevent undesirable disclosures to his adversary.

15 (*Ibid.*)

16 In *Teal v. Superior Court*, *supra*, 117 Cal.App.4th 488, the appellate court found that the  
17 reasoning in *Barrett* required greater protections. In *Teal*, the defendant issued third party subpoenas  
18 seeking material to assist in his defense. (*Id.* at p. 490.) After an in camera review of the produced  
19 records, the trial court allowed defense counsel to obtain the records. (*Ibid.*) The trial court then  
20 ordered the defendant to provide copies of the records to the prosecution, even though the defense  
21 did not yet know whether the records would be used at trial. (*Id.* at p. 491.) On review, the appellate  
22 court found that this order gave the defendant the same unconstitutional choice that the trial court  
23 gave the defendant in *Barrett*: to compel the production of witnesses and evidence and reveal  
24 possible defense strategies and work product or to refrain from doing so in order to protect his  
25 constitutional rights and prevent undesirable disclosures to the prosecution. (*Id.* at p. 492.) Because  
26 the trial court's order placed the defendant in this untenable position, the appellate court found that  
27 the order violated the defendants rights under the Fifth and Sixth Amendments to the Federal

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1 Constitution. (*Ibid.*)

2 **B. Unless the Court Grants the Relief Sought, Mr. Jackson's Constitutional Rights under**  
3 ***Teal* and *Barrett* Are Meaningless.**

4 *If Mr. Jackson decides to invoke his right to compel the production of witnesses and evidence*  
5 *and subpoena records from third-parties, he risks revealing possible defense strategies. The*  
6 *identities of persons or entities subpoenaed, the nature of the materials subpoenaed, and the nature*  
7 *of materials provided in response to defense subpoenas will disclose potential defense strategies or*  
8 *work product. Without the relief sought, the identities of persons or entities subpoenaed, the nature*  
9 *of the materials subpoenaed, and the nature of materials provided in response to defense subpoenas*  
10 *would be readily accessible to the prosecution.*

11 A public subpoena duces tecum process presents Mr. Jackson with the same unconstitutional  
12 "Hobson's choice" that the *Barrett* and *Teal* courts found untenable: to compel the production of  
13 witnesses and evidence, thereby revealing possible defense strategies and work product, or to refrain  
14 from doing so in order to protect his constitutional rights and prevent undesirable disclosures to the  
15 prosecution. Therefore, under *Teal* and *Barrett*, this Court should order that Mr. Jackson be  
16 permitted to subpoena materials without disclosing the nature of the subpoena, the person or items  
17 sought by the subpoena, or the response to the subpoena and any materials returned therewith.<sup>2</sup>

18  
19 **II.**

20 **CONCLUSION**

21 *For all of the foregoing reasons, Mr. Jackson respectfully requests an order that he be*  
22 *permitted to subpoena materials without disclosing the nature of the subpoena, the person or items*  
23 *sought by the subpoena, or the response to the subpoena and any materials returned therewith, or*

24  
25 <sup>2</sup> Subpoenaed documents would still be produced to the court for in camera inspection before  
26 being released to Mr. Jackson. The subpoenaed party would have an opportunity to assert its  
27 rights in opposition to the production or release of the subpoenaed records. In short, the  
28 subpoenaed party would still enjoy all of the protections that the otherwise-public process  
affords.

1 provide any other such relief as the Court may deem just and appropriate.

2 Dated: June 3, 2004

3 COLLINS, MESEREAU, REDDOCK & YU  
4 Thomas A. Mesereau, Jr.  
5 Susan Yu  
6 KATTEN MUCHIN ZAVIS ROSENMAN  
7 Steve Cochran  
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10 By: 

11 Robert M. Sanger  
12 Attorneys for  
13 MICHAEL JOE JACKSON

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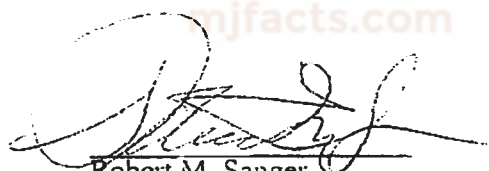
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DECLARATION OF ROBERT M. SANGER

I, Robert 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. I am certified as a Criminal Law Specialist by the State Bar of California Board of Legal Specialization.
3. Mr. Jackson's defense team intends to subpoena documents as part of the investigation and preparation for trial.
4. The identities of persons or entities subpoenaed, the nature of the materials subpoenaed, and the nature of materials provided in response to defense subpoenas will disclose potential defense strategies or work product.
5. Without the order of the court requested herein, the identities of persons or entities subpoenaed, the nature of the materials subpoenaed, and the nature of materials provided in response to defense subpoenas would be readily accessible to the prosecution.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 3<sup>rd</sup> day of June, 2004 at Santa Barbara, California.

  
Robert M. Sanger