

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 CALIFORNIA,

22 Plaintiffs,

23 vs.

24 MICHAEL JOSEPH JACKSON,

25 Defendant.

) Case No. 1133603

) NOTICE OF MOTION AND MOTION FOR
) AN ORDER THAT THE DISTRICT
) ATTORNEY PROVIDE DEFENSE
) COUNSEL WITH WRITTEN
) COMMUNICATIONS BETWEEN THE
) GRAND JURORS AND THE DISTRICT
) ATTORNEY

) ~~UNDER SEAL~~

) Honorable Rodney S. Melville

) Date: November 29, 2004

) Time: 10:00 am

) Dept: SM 8 2

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

MOTION FOR AN ORDER THAT THE DISTRICT ATTORNEY PROVIDE DEFENSE COUNSEL WITH
WRITTEN COMMUNICATIONS BETWEEN THE GRAND JURORS AND THE DISTRICT ATTORNEY

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

NOV 19 2004

GARY M. BLAIR, Executive Officer

By *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

1 Please take notice that Mr. Michael Jackson will hereby does, and will move on
2 November 29th, 2004, at 8:30 a.m., or as soon thereafter as counsel may be heard, in Department
3 § of the above-entitled court, for an order that the District Attorney provide defense counsel with
4 any and all written communications between the grand jurors and the prosecution. This motion
5 is based on the grounds that, pursuant to *People v. Superior Court (Mouchaourab)* (2000) 78
6 Cal.App.4th 403, the Court may order the prosecution to produce copies of any and all written
7 communications between the grand jurors and the prosecution.

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

11 Dated: November 19, 2004

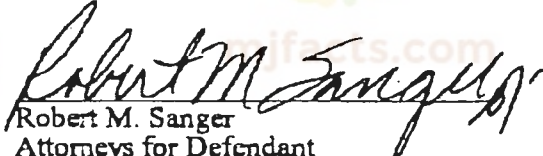
12 Respectfully submitted,

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

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16 Robert M. Sanger

17 OXMAN & JAROSCAK
18 Brian Oxman

19 By:

20 
21 Robert M. Sanger
22 Attorneys for Defendant
23 MICHAEL JOSEPH JACKSON

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 THE COURT MAY ORDER DISCOVERY OF WRITTEN COMMUNICATIONS
4 BETWEEN THE GRAND JURORS AND THE PROSECUTORS

5 *Johnson v. Superior Court* (1975) 15 Cal.3d 248 provides that a defendant may move for
6 dismissal of an indictment based on the prosecutor's failure to advise the grand jury of the
7 possible existence of exculpatory evidence. Such a motion, pursuant to Penal Code Section
8 939.7, may necessitate the disclosure of nontestimonial portions of the record of the proceedings.
9 (*People v. Superior Court (Mouchaourab)* (2000) 78 Cal.App.4th 403, 421.) "A court does not
10 abuse its discretion in compelling disclosure of nontestimonial portions of grand jury
11 proceedings to assist defendant in preparing a statutory motion to dismiss the indictment,
12 including advice, instruction, argument and other communications between the district attorney
13 and the grand jury such as questions and answers, readbacks of testimony, as well as questions
14 and answers between the court and jury." (*People v. Superior Court (Mouchaourab)*, *supra*, 78
15 Cal.App.4th 403, 436-437.)

16 Here, the grand jurors submitted written questions to the prosecutors throughout the
17 grand jury proceedings. The prosecutors instructed the Foreperson to have the questions placed
18 in an envelope. The record shows that the prosecutors responded to some questions and not to
19 others. When jurors ask questions, prosecutors have a duty to respond in the appropriate fashion.
20 (See *Cummiskey v. Superior Court* (1993) 3 Cal.4th 1018, 1034; *People v. Superior Court*
21 (*Mouchaourab*) (2000) 78 Cal.App. 4th 403; *People v. Gnass* (2002) 101 Cal.App. 1271.)

22 The written questions are nontestimonial portions of the grand jury proceedings. These
23 written questions, as well as any written answers if they exist, have not been provided to counsel
24 for Mr. Jackson. In order to assist counsel for Mr. Jackson in preparing a statutory motion to
25 dismiss, pursuant to Penal Code Section 939.7, it is necessary that the Court order the District
26 Attorney to turn over copies of any and all written communications between grand jurors and
27 prosecutors to counsel for Mr. Jackson.

1 II.

2 CONCLUSION

3 The Court should order the District Attorney to produce copies of any and all written
4 communications between the grand jurors and the prosecution to counsel for Mr. Jackson.

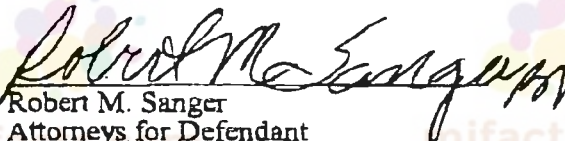
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6 Dated: November 19, 2004

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