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FILED
 SUPERIOR COURT of CALIFORNIA
 COUNTY of SANTA BARBARA

NOV 23 2004

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 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

MR. JACKSON'S OPPOSITION TO
 DISTRICT ATTORNEY'S REQUEST
 THAT THE COURT MODIFY ITS *TEAL*
 ORDER: DECLARATION OF BRIAN
 OXMAN

~~UNDER SEAL~~

Honorable Rodney S. Melville
 Date: November 29, 2004
 Time: 10:00 am
 Dept: SM # 2

26 ///

27 ///

28 MR. JACKSON'S OPPOSITION TO DISTRICT ATTORNEY'S REQUEST THAT COURT MODIFY ITS *TEAL*
 ORDER

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 **MR. JACKSON IS ENTITLED TO USE THE COURT'S SUBPOENA POWER TO**
4 **OBTAIN INFORMATION WITHOUT DISCLOSING DEFENSE STRATEGY AND**
5 **WORK PRODUCT TO THE PROSECUTION**

6 Before the Court issued its *Teal* order, the prosecution had an opportunity to respond to
7 Mr. Jackson's *Teal* motion. They did so and now they wish to revisit the issue. The District
8 Attorney's position is not well taken.

9 Defense counsel is not required to disclose potential defense strategies or work product to
10 the prosecutor as a condition of receiving documents produced pursuant to a subpoena duces
11 tecum. (See *Teal v. Superior Court* (2004) 117 Cal.App.4th 488, 492; *People v. Superior Court*
12 (*Barrett*) (2000) 80 Cal.App.4th 1305, 1320.) Mr. Jackson's constitutional rights under the Fifth,
13 Sixth, and Fourteenth Amendments to the Federal Constitution and Article I, Sections 1, 7, 15,
14 and 24 of the California Constitution when compelling the production of witnesses and evidence
15 would be rendered meaningless if his subpoena requests are disclosed to the District Attorney
16 because doing so would reveal defense strategies and work product.

17 *Teal* recognized that defense lawyers have a right to develop and investigate their cases
18 without telegraphing their intentions to the prosecution. The holding of *Teal* would be
19 meaningless if the District Attorney is provided with information regarding each subpoena and is
20 allowed to be heard on each subpoena. There are two parties to this lawsuit. The other party has
21 used more than 80 search warrants to promote their interpretation of the facts of the case. Mr.
22 Jackson is entitled to investigate the case and prepare a defense. Counsel for Mr. Jackson should
23 be allowed to continue issuing subpoena's without providing the prosecution with information
24 regarding those subpoenas in order to protect Mr. Jackson's right to investigate and develop his
25 defense.

26 The District Attorney cites *Department of Corrections v. Superior Court* (1988) 199
27 Cal.App.3d 1087. First, *Teal* was decided 16 years after *Department of Corrections* by the same
28

MR. JACKSON'S OPPOSITION TO DISTRICT ATTORNEY'S REQUEST THAT COURT MODIFY ITS *TEAL*
ORDER

1 court. *Teal* incorporates the more recent jurisprudence stated in *Barrett*. Therefore, *Department*
2 *of Corrections* no longer reflects the current law on the subject.

3 Second, the prosecution argues based on *Department of Corrections* that "the prosecutor
4 may not be excluded from any participation whatsoever in defendant's discovery efforts." It is
5 distinguishable in that the court of appeal, in *Department of Corrections*, specifically stated that
6 its holding was based on the circumstances of that case. (*Department of Corrections v. Superior*
7 *Court, supra*, 199 Cal.App.3d 1087, 1092.) In that case, the District Attorney was not provided
8 with an opportunity to be heard on the court's orders regarding the defendant's subpoena.

9 The District Attorney has already been heard on the issue of the Court's *Teal* procedure.
10 The District Attorney was served with Mr. Jackson's *Teal* motion prior to the June 25, 2004
11 hearing on the motion. The District Attorney opted to not file an opposition in writing. Instead,
12 the District Attorney made oral argument regarding Mr. Jackson's *Teal* motion at the hearing, in
13 chambers. Now, the District Attorney claims that he did not "give what hindsight reveals would
14 have been appropriate attention to the particulars of the order Defendant proposed on the
15 supposed authority of *Teal* in his 'Motion for Confidential Subpoena Duces Tecum Proceedings'
16 last June." (Motion, page 11.) Therefore, unlike Department of Corrections, the prosecution was
17 involved in the creation of the proper order. Both sides were heard on the issue of defense
18 subpoenas and the Court made an appropriate order based on the holdings of *Teal* and *Barrett*.
19 The District Attorney has not provided the Court with grounds to change its order.

20 II.

21 THE DISTRICT ATTORNEY IS NOT THE LAWYER FOR THE COMPLAINING 22 WITNESSES AND DOES NOT HAVE STANDING TO ASSERT THEIR INTERESTS

23 The essence of the District Attorney's request that the Court modify its *Teal* order is
24 inappropriate. The prosecutors do not represent the complaining witnesses. The complaining
25 witnesses are represented by more than competent counsel. This Court's *Teal* procedure allows
26 counsel for the complaining witnesses, and other witnesses, the opportunity to be heard on the
27 subpoenas. The existing *Teal* order adequately protects the interests of the complaining
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MR. JACKSON'S OPPOSITION TO DISTRICT ATTORNEY'S REQUEST THAT COURT MODIFY ITS *TEAL*
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1 witnesses and other third parties to this litigation. The Court's procedure allows parties subject
 2 to the subpoenas to move to quash the subpoenas based on an alleged lack of good cause,
 3 overbreadth, and any other proper basis for quashing a subpoena.¹ The District Attorney is not
 4 entitled to assert those interests on behalf of the complaining witnesses or anyone else.

5 The District Attorney claims that he is not attempting to act as an attorney for the
 6 complaining witnesses and that he is merely bringing facts to the Court's attention. (Motion,
 7 page 8.) This claim is belied by fact that the District Attorney repeatedly asserts the rights of the
 8 witnesses as a basis for his motion. (Motion, pages 17-20.) Under the guise of "protecting" the
 9 interests of the complaining witnesses the District Attorney is attempting to shield the witnesses
 10 from cross-examination by counsel for Mr. Jackson and appropriate scrutiny by the Court and the
 11 trier of fact. The District Attorney has no legitimate interest in hiding deception, bias and a
 12 motive to mislead the Court or the jury on the part of critical witnesses.

13 III.

14 CONCLUSION

15 For the above stated reasons, the Court should not modify its *Teal* procedure.

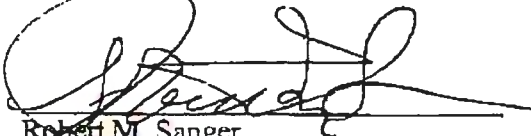
16 Dated: November 23, 2004

17 COLLINS, MESEREAU, REDDOCK & YU
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 Susan C. Yu

18 SANGER & SWYSEN
 Robert M. Sanger

19 OXMAN & JAROSCAK
 Brian Oxman

22 By:



23 Robert M. Sanger
 Attorneys for Defendant
 MICHAEL JOSEPH JACKSON

27 ¹ A declaration of Attorney Brian Oxman setting forth the basis for the individual
 subpoenas will be filed separately.

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 November 23, 2004, I served the foregoing document MR. JACKSON'S OPPOSITION TO DISTRICT ATTORNEY'S REQUEST THAT THE COURT MODIFY ITS *TEAL* ORDER AND EXPARTE APPLICATION TO SEAL on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon
District Attorney
1105 Santa Barbara Street
Santa Barbara, CA 93101
805-568-2398

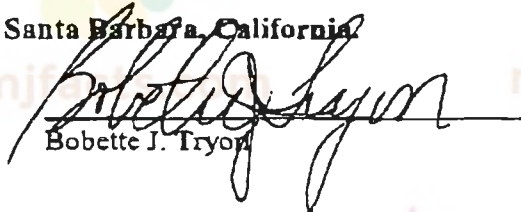
 BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid 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.

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

 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.

Executed November 23, 2004 at Santa Barbara, California


Bobette J. Tryon