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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

FEB - 9 2005

5 Attorneys for Movant
Bernstein, Fox, Whitman & Company
6

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

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA OF SANTA BARBARA
10 Santa Maria Division

11 PEOPLE OF THE STATE OF)
12 CALIFORNIA)
13 vs.)
14 MICHAEL JOE JACKSON)
15 Defendant.)
16 _____)
17 BERNSTEIN, FOX, WHITMAN &)
18 CO.)
19 Movant.)
20 _____)

Case No. 1133603
Notice of Motion and Motion to Quash
Subpoena Duces Tecum;
Memorandum In Support of Motion
Date: ~~February 16, 2005~~
Time: ~~8:30 a.m.~~
Place: Santa Maria Division

21 To the Clerk of the above designated department of the Superior Court of the
22 State of California for the County of Santa Barbara, and to Thomas W. Sneddon,
23 Jr., District Attorney for the County of Santa Barbara, and his deputy in this
24 matter, Senior Deputy District Attorney Gordon Auchincloss:

25 PLEASE TAKE NOTICE that on ~~February 16, 2005~~, at ~~8:30 a.m.~~, in the
26 Santa Maria Division courthouse, or as soon thereafter as counsel may be heard,
27 Bernstein, Fox, Whitman & Company ("Movant"), by counsel, will move the Court
28

1 to quash the subpoena duces tecum served upon Movant by the District Attorney.

2 The motion is made pursuant to non-statutory authority. The grounds
3 for the requested relief include the following:

4 1) the subpoena seeks documents and records that must be sought
5 pursuant to the criminal discovery process, and not by means of a third party
6 subpoena duces tecum;

7 2) alternatively, the subpoena must be quashed because it fails to
8 satisfy the requirements of Code of Civil Procedure 1985 or otherwise to establish
9 with sufficient particularity that there is good cause for production of the
10 subpoenaed documents, and because it is overbroad and burdensome;

11 3) alternatively, enforcement of the subpoena should be stayed until
12 those persons who may have a claim of privilege to raise with respect to the
13 documents have had an opportunity to review the documents and assert any
14 applicable privileges.

15 The motion is based on this notice, the following memorandum, the
16 attached exhibit, the declaration of Alan Whitman, the files and records of the case
17 and such further argument and evidence as may be presented at the hearing on the
18 motion.

19 Respectfully submitted,


20 Nasatir, Hirsch, Podberesky & Genego

21
22 By:


23 William J. Genego, Esq.

24 Dated: 2-8-05

25 By:


26 Michael D. Nasatir, Esq.
27 Counsel for Movant
28 Bernstein, Fox, Whitman & Company

1 I.

2 Factual Background

3 On February 3, 2005, the District Attorney for Santa Barbara County served
4 by telecopier a subpoena duces tecum styled with the caption of this case (People v.
5 Michael Joe Jackson), on Bernstein, Fox, Whitman & Company ("Movant"). Exhibit
6 A (telecopier transmission page and subpoena duces tecum with accompanying
7 material). The subpoena indicates the records to be produced are described in the
8 accompanying affidavit. Exh A, p. 2.

9 The accompanying affidavit represents on "information and belief" that
10 Movant "has in their possession or under their control" documents which the
11 affidavit identifies by a descriptive label or category. The affidavit references seven
12 different types or categories of documents, some of which are for a specific date and
13 others which are for a period of time, as follows:

- 14 1) Accountants Compilation Reports as of 12/31/03 and 12/31/04.
- 15 2) Balances for all Revenues and Expense accounts as of 12/31/04 and
16 12/31/04.
- 17 3) Accounts Payable Check Registers, in detail by vendor, for the 2003
18 and 2004 calendar years.
- 19 4) Accounts Payable and Accrued Liabilities Balances, in detail, by
20 vendor, from inception, and as of 12/31/03 and 12/31/04.
- 21 5) Bank statements for all active deposits, collection and loan collateral
22 accounts from inception, and as of 12/31/03 and 12/31/04.
- 23 6) Periodic statements reporting music publishing activity related to the
24 Sony/ATV and MIJAC catalogs, including statements received from
25 inception through 12/31/04.
- 26 7) Reports or statements providing evidence of value for any music
27 publishing catalogs, real estate or other personal property, received
28 through 12/31/04.

1 A cover letter transmitting the subpoena specifies that "[w]ithin 5 days of
2 receipt," the custodian is to make a copy of "all records described in the [affidavit
3 accompanying] the subpoena;" place the documents in an envelope (provided by the
4 party issuing the subpoena), and place that envelope in a second envelope (provided
5 by the party issuing the subpoena) that is addressed to the Court, and complete a
6 declaration (sent with the subpoena). Exh A, p. 2; see Evidence Code section 1560.
7 The declaration requires the individual signing the declaration to state that he or
8 she is the custodian of the records and to complete the first section of the
9 declaration, representing that: "true copies of all the records described" in the
10 subpoena are enclosed in the envelope and that they are business records, or to
11 complete the second section, entitled "No Records," and complete the following
12 statement: "After a diligent search, I declare that this business has none of the
13 following records: . . ." Exh A, p. 6; see Evidence Code section 1561.

14 The subpoena indicates the date for which the documents are subpoenaed is
15 February 16, 2005, and that the type of hearing is "Jury Trial - Pre-Trial". Exh A,
16 p. 3. The affidavit states the "documents are material to the proper presentation of
17 this case by reason of the following facts: To prove motive on behalf of the defendant
18 for the charged offenses and to corroborate the victims of the charges offenses." Exh
19 A, p. 5.

20 ///
21 ///
22 ///
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1 II.

2 Argument

3 A. Penal Code Section 1054 Establishes the Exclusive Means For Obtaining the
4 Subject Records and Requires That the Subpoena Be Quashed

5 1. Introduction

6 The enactment of Penal Code (PC) section 1054, *et seq.* created for the first
7 time a statutory scheme governing both the substance and procedure of criminal
8 discovery between the prosecution and defense. *People v. Superior Court (Barrett)*
9 (2000) 80 Cal. App.4th 1305, 1311, 96 Cal. Rptr.2d 264. "The procedural
10 mechanisms of the statutory scheme (§ 1054, *et seq.*), are exclusive - - that is, the
11 parties to a criminal proceeding may not employ discovery procedures other than
12 those authorized by Chapter 10." *Barrett*, 80 Cal. App.4th at 1312-13. *citing*, PC §
13 1054.5(a).¹

14 The "meaning of 'discovery'" for purposes of the statute, is made "clear . . . in
15 its statement of purposes: "To save court time by requiring that discovery be
16 conducted informally *between and among the parties* before judicial enforcement is
17 requested." *People v. Sanchez* (1994) 24 Cal. App.4th 1012, 1026 30 Cal. Rptr.2d
18 111, *quoting*, PC § 1054(b)(emphasis added by court). According to this definition,
19 the discovery statute applies if the information sought is from the other party. The
20 statute applies not only to the parties individually, but also to their agents and
21 employees."²

23 ¹ PC Section 1054.5(a) provides as follows: "No order requiring discovery shall be
24 made in criminal cases except as provided in this chapter. This chapter shall be the
25 only means by which the defendant may compel the disclosure or production of
26 information from prosecuting attorneys, law enforcement agencies which
27 investigated or prepared the case against the defendant, or any other persons or
agencies which the prosecuting attorney or investigating agency may have
employed to assist them in performing their duties."

28 ² *People v. Superior Court* (2000) 80 Cal. App.4th 1305, 96 Cal. Rptr.2d 264

(continued...)

1 To obtain information covered by the discovery provisions, a party is required
2 first to make "an informal request of opposing counsel for the desired materials and
3 information." PC § 1054.5(b). A party may not seek court enforcement to obtain the
4 desired materials and information unless it has first made the required informal
5 request. PC § 1054.5(b). Where a party has made the required informal request,
6 and opposing counsel has not provided the desired materials and information
7 within 15 days, the statute provides that "the party may seek a court order" for
8 enforcement of its request. PC § 1054.5(b).

9 2. The Subpoena Seeks Records of the Defendant and May Not Be
10 Obtained By Subpoena

11 The District Attorney's subpoena seeks documents and records of the
12 defendant that the District Attorney asserts, based on information and belief, are in
13 the custody of Movant. Because the items sought by the District Attorney are
14 documents and records of the defendant, the District Attorney's subpoena is a
15 request for discovery within the meaning of PC section 1054(b). *Sanchez*, 24 Cal.
16 App.4th at 1026. The statutory discovery scheme thus provides the "exclusive"
17 means for seeking the documents, and the District Attorney "may not employ

18 _____
19 ²(...continued)
20 (although California Department of Corrections (CDC) is a distinct and separate
21 government entity from the District Attorney, defense request for documents and
22 records of CDC relating to investigation of prison murder for which defendant was
23 being prosecuted are subject to discovery procedures and not subpoena, because
24 CDC was investigating agency for District Attorney with respect to charged
25 murder); *Walters v. Superior Court* (2000) 80 Cal. App.4th 1074, 95 Cal. Rptr.2d 880
26 (reciprocal discovery procedures apply to defense request to examine evidence in
27 custody of police "because police are not third parties for these purposes and an
28 examination of seized evidence is discovery, not 'investigation.'"); *People v. Superior
Court (Broderick)* (1991) 231 Cal. App.3d 584, 594, 282 Cal. Rptr. 418 (rejecting
argument of defendant that proceeding to enforce criminal subpoena was premature
on grounds that prosecution had failed to follow the procedurs set forth in
Proposition 115 because "Proposition 115 discovery procedures apply only to
discovery between the People and the defendant" and "People claim that all of the
subpoenas in issue here were to 'third parties with no direct formal or legal
relationship to the defendant or the criminal defense team.'")

1 discovery procedures other than those authorized by Chapter 10" to obtain the
2 documents. *Barrett*, 80 Cal. App.4th at 1312-13.

3 This means that the District Attorney must seek the documents by
4 compliance with the discovery process, which he has not done, and that he may not
5 obtain the documents by the process he has employed, a third-party criminal
6 subpoena duces tecum. Accordingly, the subpoena should be withdrawn, and if it is
7 not withdrawn it should be quashed or declared invalid.

8
9 B. The Subpoena Must Be Quashed Because It Fails to Establish Good Cause, Is
10 Overbroad and Burdensome, and Seeks Material That May Be Privileged

11 1. Introduction

12 Penal Code "Sections 1326 and 1327 set forth the procedure for either the
13 prosecution or the defendant to obtain discovery records possessed by third parties."
14 *Barrett*, 80 Cal. App.4th at 1315. As the Court in *Barrett* confirmed, "The issuance
15 of a subpoena duces tecum . . . is purely a ministerial act and does not constitute
16 legal process in the sense that it entitles the person on whose behalf it is issued to
17 obtain access to the records described therein until a judicial determination has
18 been made that the person is legally entitled to receive them." *Barrett*, 80 Cal.
19 App.4th at 1316, quoting, *People v. Blair* (1979) 25 Cal.3d 640, 651, 159 Cal. Rptr.
20 818.

21 A criminal subpoena issued by prosecution must comply with Code of Civil
22 Procedure (CCP) section 1985(b). *People v. York* (1980) 108 Cal. App.3d 779, 789-
23 792, 166 Cal. Rptr. 717; *Johnson v. Superior Court for Santa Barbara County* (1968)
24 258 Cal. App.2d 829, 837, 66 Cal.Rptr. 134; *People v. Brinson* (1961) 191 Cal.
25 App.2d 253, 12 Cal. Rptr. 625; see also *People v. Superior Court (Broderick)* (1991)
26 231 Cal. App.3d 584, 587-88, 282 Cal. Rptr. 418 (assuming without discussion that
27 subpoena duces tecum issued by prosecution is subject to CCP); but see, *M.B. v.*

1 *Superior Court* (2002) 103 Cal. App.4th 1384, 127 Cal. Rptr.2d 454.³

2 Section 1985(b) requires that the subpoena be accompanied by affidavit
3 showing good cause and materiality for production of the subpoenaed items.

4 Specifically, CCP section 1985(b) provides as follows:

5 A copy of an affidavit shall be served with a subpoena duces
6 tecum issued before trial, showing good cause for the production
7 of the matters and things described in the subpoena, specifying
8 the exact matters or things desired to be produced, setting forth
9 in full detail the materiality thereof to the issues involved in the
10 case, and stating that the witness has the desired matters or

11
12 ³ The court of appeal in *M.B. v. Superior Court* (2002) 103 Cal. App.4th 1384,
13 127 Cal. Rptr.2d 454, in upholding a subpoena duces tecum issued by a grand jury,
14 ruled that the subpoena was not subject to CCP section 1985, and concluded, in
15 dictum, that "the affidavit requirement [of CCP section 1985] does not apply to
16 either criminal trials or criminal grand jury proceedings." *Id.*, at 1394, 462. The
17 court distinguished the cases holding CCP section 1985 applicable to a criminal
18 trial subpoena on the ground that all but one had been decided before *Pitchess*,
19 which it relied on as support for its conclusion, explaining that the Court in
20 *Pitchess* ruled that the requirements of CCP section 1985 were not applicable to a
21 subpoena issued by a criminal defendant for police officer personnel records. *M.B.*,
22 103 Cal. App.4th at 1394, *citing*, *Pitchess v. Superior Court* (1974) 11 Cal.3d 531,
23 113 Cal. Rptr. 897.

24 As explained by the court in *Pacific Lighting Leasing Co. V. Superior Court*
25 (1976) 60 Cal. App.3d 552, 131 Cal. Rptr. 559, the Court in *Pitchess* was discussing
26 "the right of an accused to seek discovery in the course of preparing his defense to a
27 criminal prosecution," which it noted was "a judicially created doctrine evolving in
28 the absence of guiding legislation." *Pacific Lighting*, 60 Cal. 3d 561, *quoting*,
Pitchess, 11 Cal.3d at 535-37. Moreover, the Court's holding that a defendant was
not required to meet the specificity requirements of CCP section 1985 in order to
establish good cause for enforcement of a subpoena for police officer personnel
records was based on constitutional concerns specific to a defendant, and the
decision was limited to "an accused in a criminal case . . ." *Pacific Lighting*, 60 Cal.
3d 562, *quoting*, *Pitchess*, 11 Cal.3d at 535-37 ("Were a court to require strict
adherence to the provisions of CCP 1985 and 2036(a), it is likely that Fifth
Amendment problems would develop in many instances. Therefore, in contrast to
the formal requirements for civil discovery, an accused in a criminal prosecution
may compel discovery by demonstrating that the requested information will
facilitate the ascertainment of the facts and a fair trial." (internal quotations and
citations omitted)(emphasis added))

1 things in his or her possession or under his or her control.

2 Even if CCP 1995(b) were deemed not to govern a criminal subpoena duces
3 tecum issued by the prosecution, case law requires that, given the privacy and
4 Fourth Amendment interests implicated by a third party subpoena duces tecum, the
5 subpoena comply "with the normal requirement that the party seeking discovery of
6 documents furnish 'factual data by the required affidavit' justifying disclosure."
7 *Pacific Lighting*, 60 Cal. 3d at 567, quoting, *Johnson v. Superior Court*, 258 Cal.
8 App.2d at 837. Indeed, this is the standard a defendant must satisfy where the
9 request does not implicate Fifth Amendment concerns. *Pacific Lighting*, 60 Cal.
10 App.3d at 567 "The right to discovery by a subpoena duces tecum of third party
11 records" requires a "showing 'the requested information will facilitate the
12 ascertainment of the facts and a fair trial.'" *Barrett*, 80 Cal. App.4th at 1316,
13 quoting, *Pitchess*, 11 Cal.3d at 536.

14 While the exact *degree* of factual specificity that is required to satisfy these
15 requirements is, of course, subject to a case-by-case determination, "[t]he
16 requirement of . . . good cause . . . is not met by an affidavit which is totally devoid
17 of any statement of facts." *Pacific Lighting*, 60 Cal. App.3d at 567, quoting,
18 *Johnson*, 258 Cal. App.2d at 835 (emphasis added). As the court in *Barrett* noted,
19 "[a] subpoena duces tecum that makes a blanket demand for [third party]
20 documents and amounts to nothing more than a fishing expedition is subject to
21 being quashed." *Barrett*, 80 Cal. App.4th at 1320, n.7, citing, *People v. Serrata*
22 (1976) 62 Cal. App.3d 9, 15, 133 Cal. Rptr. 144.

23 A third party served with a subpoena duces tecum may also contest the
24 subpoena on the grounds that it is overbroad. *M.B. v. Superior Court*, 103 Cal.
25 App.4th at 1387, n.4; *Barrett*, 80 Cal. App.4th at 1320, n.7 (in prosecution for prison
26 murder occurring in 1996, court of appeal directed defendant and the District
27 Attorney "to address whether the request for prison records dating back to January
28 1992 was overbroad" and after determining it was premature to consider

1 overbreadth in the writ proceeding, added that “[t]he issue . . . is one that the trial
2 court should consider if raised in further proceedings below.”)

3 In addition to the objections to the subpoena that the third party has the
4 right to assert, where the materials sought by the subpoena may be subject to a
5 privilege held by another, the custodian has an obligation to take steps to preserve
6 the opportunity to invoke that privilege. *People v. Superior Court (Laff)* (2001), 25
7 Cal.4th 703, 713, 107 Cal. Rptr.2d 323 (“[T]he custodian of materials protected by
8 an evidentiary privilege owes a duty to the holder of the privilege to claim the
9 privilege and to take actions necessary to ensure that the materials are not
10 disclosed improperly.” (citation omitted)).

11
12 2. The Subpoena Fails to Establish Good Cause, Is Overbroad and
13 Burdensome, and Seeks Material That May Be Privileged

14 The affidavit here contains no specific facts; fails to establish good cause for
15 production under either CCP 1985 or the standards that are otherwise applicable by
16 case law to a third party subpoena duces tecum.

17 In the words of the Court in *Barrett*, this subpoena is a “fishing expedition”
18 and is subject to being quashed. There are simply no facts stated, as required by
19 law, to establish good cause and/or materiality or relevance.

20 Separate and apart from the failure to establish good cause, the subpoena
21 also must be quashed because it is overbroad. The subpoena does not even specify
22 to whom or what the described records pertain and, as served, would apply to all of
23 Movant’s clients. As such, it infringes upon Movant’s privacy and Fourth
24 Amendment interests. It is also overbroad as to time, as it seeks documents “from
25 inception.” Because it is overbroad, it is also burdensome and oppressive as it
26 would unreasonably require Movant to devote countless hours to attempt
27 compliance with its overbroad scope.

1 Movant also objects to production and disclosure of the records in fulfillment
2 of its obligation to take steps to preserve the opportunity for others to invoke any
3 claims of privilege they may have with respect to the documents. *People v. Superior*
4 *Court (Laff)*, 25 Cal.4th at 718. Accordingly, even if the subpoena is not quashed,
5 Movant requests the Court order the production and disclosure of the documents be
6 stayed until claims of privilege can be invoked by any interested parties and
7 adjudicated by the Court at an in camera hearing.

8
9 III.

10 Conclusion

11 For all the foregoing reasons, the Court should order the subpoena quashed
12 or, alternatively, order that its enforcement be stayed to allow claims of privilege to
13 be asserted and adjudicated.

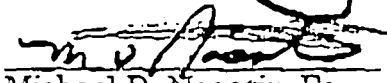
14 Respectfully submitted,

15 Nasatir, Hirsch, Podberesky & Genego

16 By:


17 William J. Genego, Esq.

18 By:


19 Michael D. Nasatir, Esq.

20 Counsel for Movant
21 Bernstein, Fox, Whitman & Company
22
23
24
25
26
27
28



**SANTA BARBARA COUNTY DISTRICT ATTORNEY'S OFFICE
FAX TRANSMITTAL COVER SHEET**

MY DIRECT FAX NUMBER IS (805) 568-2398. IF PROBLEMS, PLEASE CALL ME DIRECTLY AT (805) 568-2308.

DATE: January 3, 2005 NUMBER OF PAGES INCLUDING COVER SHEET: 6

PLEASE DELIVER AT ONCE TO:

BERNSTEIN, FOX WHITMAN & CO. Fax: (310) 226-7533
ATTENTION: KATHY FEUD

COMMENTS: RE: *The People of the State of California vs. Michael Joe Jackson*
Subpoena Duces Tecum

FROM: Gordon Archinloss, Senior Deputy District Attorney
By Rosemary Moll, Executive Secretary

- FAX # (805) 568-2453 - Santa Barbara Main Office, 1st floor - Call (805) 568-2300 w/problems
- FAX # (805) 560-1049 - Santa Barbara Main Office, 2nd floor - Call (805) 568-2300 w/problems
- FAX # (805) 560-1077 - Santa Barbara Main Office, 3rd floor - Call (805) 568-2300 w/problems
- FAX # (805) 568-2398 - Santa Barbara Main Office, 4th floor - Call (805) 568-2308 w/problems
- FAX # (805) 346-7492 - Santa Maria Criminal - Call (805) 346-7540 w/problems
- FAX # (805) 737-7732 - Lompoc Criminal - Call (805) 737-7760 w/problems
- FAX # (805) 346-7585 - Santa Maria Victim Witness - Call (805) 346-7529 w/problems

THE DOCUMENTS ACCOMPANYING THIS TELECOPY TRANSMISSION MAY CONTAIN CONFIDENTIAL INFORMATION BELONGING TO THE SENDER AND IS LEGALLY PRIVILEGED. THE INFORMATION IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR THE TAKING OF ANY ACTION IN RELIANCE ON THE CONTENTS OF THIS TELECOPIED INFORMATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS TELECOPY IN ERROR, PLEASE IMMEDIATELY NOTIFY THE OFFICE BY PHONE.

THOMAS W. SNEDDON, JR.
District Attorney

MARNIE B. PINSKER
Assistant Director

DAVID M. SAUNDERS
Chief Investigator



PATRICK J. MCKINLEY
Assistant District Attorney

CHRISTIE STANLEY
Assistant District Attorney

ERICA A. HANSON
Child Trial Deputy

February 3, 2005

COUNTY OF SANTA BARBARA
DISTRICT ATTORNEY

BERNSTEIN, FOX WHITMAN & CO.
ATTN: Kathy Feud
2029 Century Park East, Suite 500
Los Angeles, CA 90067

Via Fax (310) 226-7533
Original Mailed Under Separate Cover

Re: *The People of the State of California vs. Michael Joe Jackson*

Dear Ms. Feud:

Enclosed please find a Subpoena Duces Tecum. To assist you in preparing your records, we have developed this information sheet. Within 5 days of receipt of this Subpoena Duces Tecum, the custodian of records must:

- (1) Prepare a copy of all records described in the subpoena.
- (2) Complete the enclosed declaration.
- (3) Seal the declaration and the copy of records in an envelope that has been provided with the case number, case name, and date of hearing. (Use envelope #1.)
- (4) This sealed and labeled envelope is then to be sealed in an outer envelope and addressed as designated below. (Use envelope #2.)

Carrie Wagner for Judge Melville
Superior Court of California
County of Santa Barbara
Santa Maria Civil Division
312 East Cook Street
Santa Maria, CA 93454

- (5) The records may then be mailed or otherwise delivered to the addressee indicated above before the scheduled hearing date of February 16, 2005, at 8:30 a.m.

If you have any questions, please contact me at (805) 568-2372. Thank you for your cooperation and assistance.

Very truly yours,

GORDON AUCHINCLOSS
Senior Deputy District Attorney

Enclosures

Santa Barbara Office
1112 Santa Barbara Street
Santa Barbara, CA 93101
(805) 568-2372

Lompoc Office
115 Civic Center Plaza
Lompoc, CA 93436
(805) 717-7762
FAX (805) 737-7732

Santa Maria Office
312-D East Cook Street
Santa Maria, CA 93454
(805) 346-7240
FAX (805) 346-7588

SUBPOENA FOR APPEARANCE OF WITNESS

THE SUPERIOR COURT, STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA
Santa Maria Division

The People Of The State Of California VS: MICHAEL JOE JACKSON

DUCES TECUM

BERNSTEIN, FOX WHITMAN & CO.
ATTN: KATHY FEUD
2029 CENTURY PARK EAST, SUITE 500
LOS ANGELES, CA 90067

310-277-3373

HEARING DATE: February 16, 2005 at 08:30 a.m.
DEPT: 2
JUDGE: Rodney Melville

TYPE OF HEARING: Jury Trial - Pre-Trial
REPORT NO:
COURT NO: 1133603
D.A. NO: 03-12-098996
DDA NAME: GORDON AUCHINCLOSS
OFFENSE DATE: 02/07/2003
VIOLATION: PC238

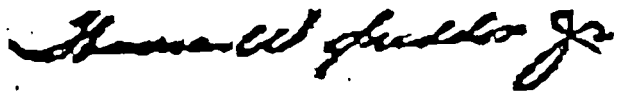
REPORT TO: Santa Barbara Superior Court
312-G East Cook Street
Santa Maria, CA 93454

YOU ARE: Not required to appear in person if you produce the records described in the accompanying affidavit. If you received this subpoena by mail **PLEASE CONTACT THE WITNESS COORDINATOR IMMEDIATELY.** This can be done between 8:00 a.m. to 5:00 p.m., Monday through Friday, by phone at the number below. Please have your driver's license number or ID number available. If you have small children, please make arrangements for childcare prior to your court date.

FOR CASE STATUS INFORMATION:
Please call the Witness Coordinator prior to our actual appearance to confirm the court schedule at: 805) 346-7529

DATE ISSUED: February 2, 2005

Witness may be entitled to witness fees and mileage. If you reside outside Santa Barbara County contact the Witness Coordinator for assistance.



Thomas W. Sneddon, Jr., District Attorney
County of Santa Barbara

SECTION 1331 & 1331.5 PENAL CODE: A WITNESS MAY, IN LIEU OF APPEARANCE AT THE TIME SPECIFIED IN THE SUBPOENA, AGREE TO APPEAR AT ANOTHER TIME. DISOBEDIENCE TO A SUBPOENA, OR REFUSAL TO BE SWORN TO TESTIFY AS A WITNESS MAY BE PUNISHED BY THE COURT OR MAGISTRATE AS A CONTEMPT.

I hereby certify that on _____ (AM/PM) on _____ 200_, I served the within subpoena by delivering a copy of the subpoena personally to _____ Date: _____
by: _____ Reason not served _____

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
2 County of Santa Barbara
3 By: GORDON AUCHINCLOSS, State Bar # 150251
4 Senior Deputy District Attorney
5 1112 Santa Barbara Street, Santa Barbara, CA 93101
6 Telephone: (805) 568-2300

7 Attorney for Plaintiff

8 SUPERIOR COURT, STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA

10 Santa Maria Division

11 THE PEOPLE OF THE STATE OF CALIFORNIA,
12 Plaintiff,

DA No. 03-12-098996
Court No. 1133603

13 vs.

AFFIDAVIT FOR
SUBPOENA DUCES TECUM

14 MICHAEL JOE JACKSON,

15 Defendant.

16
17 I, GORDON AUCHINCLOSS, Senior Deputy District Attorney of Santa Barbara
18 County, California, being sworn, says:

19 That he is the attorney for Plaintiff in the action; that the cause has been duly set down
20 for trial or hearing on February 16, 2005; at 08:30 a.m., in the Superior Court.

21 That Affiant is informed and believes, and upon such information and belief alleges,
22 that BERNSTEIN, FOX WHITMAN & CO. has in their possession or under their control the
23 following documents: Accountants Compilation Reports as of 12/31/03 and 12/31/04.
24 Balances for all Revenue and Expense accounts as of 12/31/03 and 12/31/04. Accounts
25 Payable Check Registers, in detail by vendor, for the 2003 and 2004 calendar years. Unpaid
26 Accounts Payable and Accrued Liabilities Balances, in detail by vendor, from inception, and as
27 of 12/31/03 and 12/31/04. Bank statements for all active deposit, collection and loan collateral
28 accounts, from inception, and as of 12/31/03 and 12/31/04. Periodic statements reporting

1 music publishing activity related to the Sony/ATV and MLLAC catalogs, including statements
2 received from inception through 12/31/04. Reports or statements providing evidence of value
3 for any music publishing catalogs, real estate or other real property, received through 12/31/04.

4 Affiant believes and so states the above documents are material to the proper presentation
5 of this case by reason of the following facts: To prove motive on behalf of the defendant for
6 the charged offenses and to corroborate the victims of the charged offenses.

7 Wherefore, Affiant prays that a Subpoena Duces Tecum be issued.

8
9 DATED: February 2, 2005

10
11 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

12
13 By: *Gordon Auchincloss, Asst. DA, Jr.*
14 GORDON AUCHINCLOSS
15 Senior Deputy District Attorney

DECLARATION OF CUSTODIAN OF RECORDS

I, _____ say:
(name)

1. I am the duly authorized CUSTODIAN OF THE RECORDS for this business and I am a qualified witness with authority to certify these records.
2. The copies enclosed in this inner envelope are true copies of all the records described in the subpoena duces tecum.
3. The records were prepared by the personnel of this business in the ordinary course of business at or near the time of the act, condition, or event.

Date records sent: _____

DECLARATION OF CUSTODIAN OF RECORDS (NO RECORDS)

I, _____ say:
(name)

I am the duly authorized CUSTODIAN OF THE RECORDS who has authority to certify records for the within business.

After a diligent search, I declare that this business has none of the following records:

I declare under penalty of perjury, that the following is true and correct and that this declaration is executed at:

_____ on _____
City and State Date

Signature of Custodian Name of Company

1
2
3 PROOF OF SERVICE

4 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

5 I am employed in the County of Los Angeles, State of
6 California. I am over the age of 18 and not a party to the
7 within action; my business address is: 2115 Main Street, Santa
8 Monica, California 90405.

9 On February 9, 2005, I served the foregoing document
10 described as: NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA DUCES
11 TECUM; MEMORANDUM OF POINTS AND AUTHORITIES, on all interested
12 parties in this action by placing a true copy thereof enclosed in
13 a sealed envelope addressed as follows:

14
15 Gordon Auchincloss
16 Senior Deputy District Attorney
17 1112 Santa Barbara Street
18 Santa Barbara, California 93101

19 (BY MAIL) I caused such envelope with postage thereon fully
20 prepaid to be placed in the United States mail at Santa
21 Monica, California

22 (BY PERSONAL SERVICE) I caused such envelope to be delivered
23 by hand to the offices of the addressee.

24 Executed on February 9, 2005 at Santa Monica, California.

25 (State) I declare under penalty of perjury under the laws
26 of the State of California that the above is true
27 and correct.

28 (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.

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