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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION
14

REDACTED

15 THE PEOPLE OF THE STATE OF)
16 CALIFORNIA,)

17 Plaintiffs,)

18 vs.)

19 MICHAEL JOSEPH JACKSON,)

20 Defendant.)

) Case No. 1133603

) OPPOSITION TO DISTRICT
) ATTORNEY'S MOTION TO EXCLUDE
) REFERENCE TO JANE DOE'S REFUSAL
) TO WAIVE THE CONFIDENTIALITY OF
) HER CONVERSATIONS WITH
) ATTORNEY WILLIAM DICKERMAN

) ~~UNDER SEAL~~

) Honorable Rodney S. Melville

) Date: ~~February 10, 2005~~

) Time: ~~9:30 a.m.~~

) Dept.: 8

23
24 MEMORANDUM OF POINTS AND AUTHORITIES

25 INTRODUCTION

26 The prosecution asks this Court to exclude reference to Jane Doe's "refusal to waive the

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1 confidentiality of her conversations with attorney William Dickerman" and other attorneys. Ms.
2 Doe waived the attorney-client privilege, with regard to Mr. Dickerman, when she disclosed the
3 content of her conversations with Mr. Dickerman to the grand jury and to law enforcement.
4 Furthermore, attorney-client privilege never covered discussions she had with Mr. Dickerman in
5 the presence of [REDACTED], a third party. To the extent that she holds attorney-client privilege
6 with regard to other attorneys, defense counsel will comply with the Evidence Code. Evidence
7 Code 913, however, does not prevent defense counsel from commenting on the fact that Ms. Doe
8 has engaged counsel for various matters.

9 The exclusion of such relevant evidence threatens to deprive Mr. Jackson of his federal
10 and state constitutional rights to a fair trial, the right to confront and cross-examine witnesses
11 against him, due process of law, and equal protection pursuant to the Fifth, Sixth, and Fourteenth
12 Amendments to the United States Constitution and Article 1, Sections 7, 15 and 24 of the
13 California Constitution.

14 ARGUMENT

15 I.

16 JANE DOE WAIVED THE ATTORNEY-CLIENT PRIVILEGE

17 Evidence Code Section 912 states:

18 (a) Except as otherwise provided in this section, the right of any person to claim a
19 privilege provided by Section 954 (lawyer-client privilege) . . . is waived with
20 respect to a communication protected by the privilege if any holder of the
21 privilege, without coercion, has disclosed a significant part of the communication
22 or has consented to disclosure made by anyone. Consent to disclosure is
23 manifested by any statement or other conduct of the holder of the privilege
24 indicating consent to the disclosure, including failure to claim the privilege in any
25 proceeding in which the holder has the legal standing and opportunity to claim the
26 privilege.

23 Jane Doe waived the attorney-clients privilege, to the extent that it ever existed, with
24 regard to her communications with William Dickerman. She disclosed a significant part of the
25 communication she had with Mr. Dickerman to the grand jury. [REDACTED]

26 [REDACTED]

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1 [REDACTED] (RT 1148:12-22.) The District Attorney
2 asked her about those communications and she opted not to take advantage of her opportunity to
3 claim the privilege. She no longer holds any privilege as to those communications.

4 On September 17, 2004, [REDACTED] testified before this court and disclosed extensive
5 conversations between her and Attorney William Dickerman. (*Jasmine Networks, Inc. v. Marvel*
6 *Semiconductor, Inc.* (2004) 117 Cal. App. 4th 794, 805 (once a confidential communication has
7 been disclosed, the client can no longer claim the communication to be privileged).) When the
8 District Attorney objected that there was an attorney-client privilege between them, Mr. Thomas
9 Mesereau pointed out to the court the privilege had been waived by extensive prior testimony
10 about conversations between the attorney and his client. The Court agreed, overruled the
11 objection, and permitted Mr. Mesereau to ask and the witness to answer questions about her
12 conversations and communications with Attorney Dickerman. (9-17-04 Tr., p. 8, ln 18 to p. 10,
13 ln 10).

14 Furthermore, Ms. Doe disclosed a significant part of the communication with Mr.
15 Dickerman to law enforcement. A police report dated August 13, 2003 reflects a videotaped
16 interview of Ms. Doe in which she discusses the details of her communications with William
17 Dickerman.

18 II.

19 THERE IS NO PRIVILEGE WITH REGARD TO COMMUNICATIONS THAT
20 OCCURRED IN FRONT OF A THIRD PARTY WITNESS

21 The communications between Ms. Doe and Mr. Dickerman are not privileged because
22 they occurred in front of a third party witness, [REDACTED]. Communications made in the
23 presence of third person who is present as a witness are not "privileged." (*People v. Hall* (1942)
24 55 Cal.App. 2d 343, 356.) According to his grand jury testimony, [REDACTED] was present
25 during at least three meetings with Jane Doe and William Dickerman. (RT 306:7-309:1.) A
26 police report dated December 23, 2003, contains a detailed summary of the communications

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1 between Jane Doe and William Dickerman. This report is based on [REDACTED] account of
2 those statements. He was clearly present during those meetings. Therefore, the communications
3 that occurred during those meetings are not privileged.

4 III.

5 REGARDLESS OF WHETHER OR NOT JANE DOE HOLDS A PRIVILEGE WITH
6 REGARD TO OTHER ATTORNEYS, DEFENSE COUNSEL MAY COMMENT ON
7 THE FACT THAT SHE HAS HIRED LAWYERS AND FILED LAWSUITS

8 Contrary to the prosecution's assertion (Motion, pages 4-5), Evidence Code Section 913
9 does not prevent opposing counsel from commenting on the fact that a witness has retained
10 counsel or filed a lawsuit. Section 913 prohibits commenting on the exercise of attorney-client
11 privilege, not commenting on the fact that one has engaged counsel or filed a lawsuit.¹

12 IV.

13 CONCLUSION

14 For the above stated reasons, the Court should deny the District Attorney's motion.

15 Dated: February 4, 2005

16 COLLINS, MESEREAU, REDDOCK & YU
17 Thomas A. Mesereau, Jr.
18 Susan C. Yu

19 SANGER & SWYSEN
20 Robert M. Sanger

21 OXMAN & JAROSCAK
22 Brian Oxtman

23 By: 

24 Robert M. Sanger
25 Attorneys for Defendant
26 MICHAEL JOSEPH JACKSON

27 ¹ While it is clear that Jane Doe's litigious nature is relevant to the case at bar, in part
28 due to her own insistence that she is unsophisticated and not interested in filing lawsuits, this
issue has been and will be the subject of other motions before the Court.

OPPOSITION TO DISTRICT ATTORNEY'S MOTION TO EXCLUDE REFERENCE TO JANE DOE'S
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PROOF OF SERVICE

1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On FEBRUARY 17, 2005, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENTS (OPPOSITION TO DA'S MOTION TO EXCLUDE REFERENCE TO JANE DOE'S REFUSAL TO WAIVE THE CONFIDENTIALITY OF HER CONVERSATIONS WITH ATTORNEY) addressed as follows:

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

THOMAS W. SNEDDON, JR.
DISTRICT ATTORNEY'S OFFICE
1112 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

FAX

By faxing true copies thereof to the receiving fax numbers of: (805) 456-0699 (Thomas Mesereau, Jr.); (805) 568-2398 (Thomas Sneddon). Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

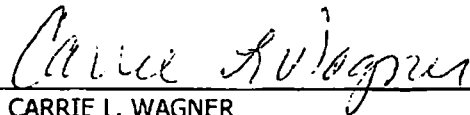
PERSONAL SERVICE

By leaving a true copy thereof at their office with the person having charge thereof or by hand delivery to the above mentioned parties.

EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 17TH day of FEBRUARY, 2005, at Santa Maria, California.


CARRIE L. WAGNER