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**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

MAR - 2 2005

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

5 Attorneys for Movant  
6 Holthouse, Carlin & Van Trigt LLP

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

12	PEOPLE OF THE STATE OF CALIFORNIA	)	Case No. 1133603
13		)	
14	vs.	)	Notice of Motion and Motion to Quash
15	MICHAEL JOE JACKSON	)	Subpoena Duces Tecum;
16	Defendant.	)	Memorandum In Support of Motion
17	_____	)	Honorable Rodney S. Melville
18	HOLTHOUSE, CARLIN & VAN TRIGT,	)	Date: TBA
19	Movant.	)	Time: 8:30 a.m.
	_____	)	Place: SM 8

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

24 PLEASE TAKE NOTICE that Holthouse, Carlin & Van Trigt, LLP  
25 ("Movant"), by counsel, hereby moves the Court to quash the February 23, 2005  
26 subpoena duces tecum served upon Movant by the District Attorney and that  
27 Movant notices the motion for a hearing on a date to be announced by the Court.

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The grounds for the requested relief include the following:

1) the subpoena fails to satisfy the requirements of Code of Civil Procedure 1985 or otherwise to establish good cause for production of the subpoenaed documents, and because it is overbroad and burdensome;

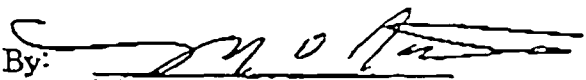
2) the subpoena violates Movant's state and federal constitutional rights against unreasonable searches and seizures;

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

The motion is based on this notice, the following memorandum, the attached exhibit, the declaration of Michael D. Nasatir, the files and records of the case and such further argument and evidence as may be presented at the hearing on the motion.

Respectfully submitted,  
Nasatir, Hirsch, Podberesky & Genego

Dated: 3/2/05

By:   
Michael D. Nasatir, Esq.

Counsel for Movant  
Holthouse Carlin & Van Trigt LLP

I.

Factual Background

The District Attorney for Santa Barbara County has served a subpoena duces tecum issued February 23, 2005 styled with the caption of this case (People v. Michael Joe Jackson), on Holthouse, Carlin & Van Tright ("Movant"). Exhibit A (teletypewriter transmission page and subpoena duces tecum issued February 23, 2005, with accompanying material). The description of the records the subpoena seeks appears to be identical to the records the District Attorney sought by means of a subpoena issued February 3, 2005 (and which Movant moved to quash in a motion filed on or about February 9, 2005) with the notable exception that the prefatory phrase "any and all" has been added in the first sentence. Specifically, the subpoenaed documents, as described by the affidavit of Deputy District Attorney Gordon Auchincloss accompanying the subpoena are the following:

ANY AND ALL STATEMENT OF ASSETS AND LIABILITIES AS OF 12/31/99, 12/31/00, 12/31/01, 12/31/02 AND THROUGH TERMINATION. STATEMENT OF REVENUES AND LIABILITIES AS OF 12/31/00, 12/31/01, 12/31/02 AND THROUGH TERMINATION. BALANCES FOR ALL ASSET, LIABILITY AND EQUITY ACCOUNTS AS OF 12/31/99, 12/31/00, 12/31/01, 12/31/02 AND THROUGH TERMINATION. BALANCES FOR ALL REVENUE AND EXPENSE ACCOUNTS AS OF 12/31/00, 12/31/01, 12/31/02 AND THROUGH TERMINATION. ACCOUNTS PAYABLE CHECK REGISTERS, IN DETAIL BY VENDOR, FOR THE 2000, 2001 AND 2002 CALENDAR YEARS, THROUGH TERMINATION. UNPAID ACCOUNTS PAYABLE AND ACCRUED LIABILITIES BALANCES, IN DETAIL BY VENDOR, AS OF 12/31/99, 12/31/00, 12/31/01, 12/31/02 AND THROUGH TERMINATION. BANK STATEMENTS FOR ALL ACTIVE DEPOSITS, COLLECTION AND LOAN COLLATERAL ACCOUNTS, AS OF 12/31/99, 12/31/00, 12/31/01, 12/31/02 AND THROUGH TERMINATION. PERIODIC STATEMENTS REPORTING MUSIC PUBLISHING ACTIVITY RELATED TO THE SONY/ATV AND MIJAC CATALOGS, INCLUDING STATEMENTS RECEIVED FROM 12/31/99 THROUGH TERMINATION. REPORTS OR STATEMENTS PROVIDING EVIDENCE OF VALUE FOR ANY MUSIC PUBLISHING CATALOGS, REAL ESTATE OR OTHER REAL PROPERTY, RECEIVED FROM 12/31/99 THROUGH TERMINATION.

1 Exhibit A, p. 3

2 The affidavit accompanying the February 3 subpoena (which is the subject of  
3 Movant's previous motion) stated the "documents are material to the proper  
4 presentation of this case by reason of the following facts: To prove motive on behalf  
5 of the defendant for the charged offenses and to corroborate the victims of the  
6 charged offenses." See Exhibit B, p. 5 (telecopier transmission page and subpoena  
7 duces tecum issued February 3, 2005, with accompanying material). The statement  
8 in the affidavit accompanying the February 23 subpoena as to why the "documents  
9 are material to the proper presentation" of the case reiterates and expands upon the  
10 District Attorney's contention that the documents are material to prove motive, but  
11 no longer contends the documents are material to corroborate the complaining  
12 witnesses.

13 Counsel for the Movant has been informed the Defendant objects to the  
14 production of the subpoenaed documents on grounds which include violation of his  
15 rights of privacy and confidentiality and other claims of privilege, and that the  
16 Defendant has or intends to file a motion to quash the subpoena on those grounds.  
17 See Declaration of Michael D. Nasatir. Movant's counsel has also been informed  
18 and believes the Defendant has objected to financial evidence on relevancy grounds  
19 and that the Court ruled on January 28, 2005, that the District Attorney cannot use  
20 detailed financial evidence to show motive. Declaration of Michael D. Nasatir.

21 II.

22 Argument

23 A. The Subpoena Must Be Quashed Because It Fails to Establish Good Cause, Is  
24 Overbroad and Burdensome, and Seeks Material That May Be Privileged

25 1. Introduction

26 Penal Code "Sections 1326 and 1327 set forth the procedure for either the  
27 prosecution or the defendant to obtain discovery records possessed by third parties."  
28

1 *People v. Superior Court (Barrett)* (2000) 80 Cal. App.4th 1305, 1315, 96 Cal.  
2 Rptr.2d 264. As the Court in *Barrett* confirmed, "The issuance of a subpoena duces  
3 tecum . . . is purely a ministerial act and does not constitute legal process in the  
4 sense that it entitles the person on whose behalf it is issued to obtain access to the  
5 records described therein until a judicial determination has been made that the  
6 person is legally entitled to receive them." *Barrett*, 80 Cal. App.4th at 1316,  
7 quoting, *People v. Blair* (1979) 25 Cal.3d 640, 651, 159 Cal. Rptr. 818.

8 A criminal subpoena issued by a prosecutor must comply with Code of Civil  
9 Procedure (CCP) section 1985(b). *People v. York* (1980) 108 Cal. App.3d 779, 789-  
10 792, 166 Cal. Rptr. 717; *Johnson v. Superior Court for Santa Barbara County* (1968)  
11 258 Cal. App.2d 829, 837, 66 Cal.Rptr. 134; *People v. Brinson* (1961) 191 Cal.  
12 App.2d 253, 12 Cal. Rptr. 625; see also *People v. Superior Court (Broderick)* (1991)  
13 231 Cal. App.3d 584, 587-88, 282 Cal. Rptr. 418 (assuming without discussion that  
14 subpoena duces tecum issued by prosecution is subject to CCP); but see, *M.B. v.*  
15 *Superior Court* (2002) 103 Cal. App.4th 1384, 127 Cal. Rptr.2d 454.<sup>1</sup>

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16  
17 <sup>1</sup> The court of appeal in *M.B. v. Superior Court* (2002) 103 Cal. App.4th 1384,  
18 127 Cal. Rptr.2d 454, in upholding a subpoena duces tecum issued by a grand jury,  
19 ruled that the subpoena was not subject to CCP section 1985, and concluded, in  
20 dictum, that "the affidavit requirement [of CCP section 1985] does not apply to  
21 either criminal trials or criminal grand jury proceedings." *Id.*, at 1394, 462. The  
22 court distinguished the cases holding CCP section 1985 applicable to a criminal  
23 trial subpoena on the ground that all but one had been decided before *Pitchess*,  
24 which it relied on as support for its conclusion, explaining that the Court in  
25 *Pitchess* ruled that the requirements of CCP section 1985 were not applicable to a  
26 subpoena issued by a criminal defendant for police officer personnel records. *M.B.*,  
27 103 Cal. App.4th at 1394, citing, *Pitchess v. Superior Court* (1974) 11 Cal.3d 531,  
28 113 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

(continued...)

1 Section 1985(b) requires that the subpoena be accompanied by affidavit  
2 showing good cause and materiality for production of the subpoenaed items.  
3 Specifically, CCP section 1985(b) provides as follows:

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

11 CCP § 1985(b).

12 Even if CCP 1985(b) were deemed not to govern a criminal subpoena duces  
13 tecum issued by the prosecution, case law requires that, given the privacy and  
14 Fourth Amendment interests implicated by a third party subpoena duces tecum, the  
15 subpoena comply "with the normal requirement that the party seeking discovery of  
16 documents furnish 'factual data by the required affidavit' justifying disclosure."  
17 *Pacific Lighting*, 60 Cal. 3d at 567, quoting, *Johnson v. Superior Court*, 258 Cal.  
18 App.2d at 837. Indeed, this is the standard a defendant must satisfy where the  
19 request does not implicate Fifth Amendment concerns. *Pacific Lighting*, 60 Cal.  
20 App.3d at 567 "The right to discovery by a subpoena duces tecum of third party

21 \_\_\_\_\_  
22 <sup>1</sup>(...continued)

23 establish good cause for enforcement of a subpoena for police officer personnel  
24 records was based on constitutional concerns specific to a defendant, and the  
25 decision was limited to "an accused in a criminal case . . ." *Pacific Lighting*, 60 Cal.  
26 3d 562, quoting, *Fitchess*, 11 Cal.3d at 535-37 ("Were a court to require strict  
27 adherence to the provisions of CCP 1985 and 2036(a), it is likely that Fifth  
28 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 records" requires a "showing 'the requested information will facilitate the  
2 ascertainment of the facts and a fair trial.'" *Barrett*, 80 Cal. App.4th at 1316,  
3 quoting, *Pitchess*, 11 Cal.3d at 536. As the court in *Barrett* noted, "[a] subpoena  
4 duces tecum that makes a blanket demand for [third party] documents and amounts  
5 to nothing more than a fishing expedition is subject to being quashed." *Barrett*, 80  
6 Cal. App.4th at 1320, n.7, citing, *People v. Serrata* (1976) 62 Cal. App.3d 9, 15, 133  
7 Cal. Rptr. 144.

8 A third party served with a subpoena duces tecum may also contest the  
9 subpoena on the grounds that it is overbroad. *M.B. v. Superior Court*, 103 Cal.  
10 App.4th at 1387, n.4; *Barrett*, 80 Cal. App.4th at 1320, n.7 (in prosecution for prison  
11 murder occurring in 1996, court of appeal directed defendant and the District  
12 Attorney "to address whether the request for prison records dating back to January  
13 1992 was overbroad" and after determining it was premature to consider  
14 overbreadth in the writ proceeding, added that "[t]he issue . . . is one that the trial  
15 court should consider if raised in further proceedings below.")

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

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1           2.     The Subpoena Fails to Establish Good Cause, Is Overbroad and Seeks  
2                     Material That May Be Privileged

3                     (a)    The Affidavit Fails to Establish Good Cause

4           The affidavit fails to establish good cause under either CCP 1985 or the  
5 standards that are otherwise applicable by case law to a third party subpoena duces  
6 tecum for production of the subpoenaed documents for at least three separate and  
7 related reasons. First, the motive theory of materiality as stated in the affidavit  
8 accompanying the subpoena fails to establish the required good cause because it  
9 simply advances a financial motive theory of materiality without connecting that  
10 theory, either as to time or data, with the subpoenaed documents. Second, the  
11 affidavit fails to establish good cause because it does not address much less explain  
12 in detail how the subpoenaed documents could be considered material in light of the  
13 Court's January 28 ruling that the District Attorney cannot use detailed financial  
14 evidence to show motive. See Declaration of Michael D. Nasatir. Third, the broad  
15 and expansive descriptive categories employed by the affidavit, including such  
16 terms as "any and all" and "through termination," preclude a finding that good  
17 cause has been established as good cause necessarily entails detailed specificity as  
18 to the items subpoenaed. See CCP § 1985(b) (affidavit must "specify[] the exact  
19 matters or things desired to be produced, setting forth in full detail the materiality  
20 thereof...")

21           In sum, the February 3 subpoena was an impermissible and unjustified  
22 "fishing expedition," and the District Attorney's indirect response to Movant's  
23 motion to quash the February 3 subpoena on that ground by issuing a broader  
24 subpoena is of no avail because it merely explains why the District Attorney wants  
25 to go fishing, and fails to provide the information needed to establish good cause.

26                     (b)    The Subpoena Is Unreasonable and Overbroad

27           Separate and apart from the failure to establish good cause, the subpoena  
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1 also must be quashed because it infringes upon Movant's state and federal  
2 constitutional rights to be free from unreasonable searches and seizures. The  
3 subpoena is rendered unreasonable as to Movant because its use of terms such as  
4 "any and all" and "through termination," are so overbroad and expansive as to be  
5 burdensome.

6 (c) Defendant's Claims of Privilege Must Be Preserved

7 As noted above, to the extent Movant is a custodian holding records as to  
8 which Defendant has a privacy interest, Movant is authorized and obligated to take  
9 steps to preserve the opportunity for Defendant to invoke any claims of privilege he  
10 may have with respect to the documents. *People v. Superior Court (Laff)*, 25  
11 Cal.4th at 713. Counsel for the Movant has been informed the Defendant objects to  
12 the production of the subpoenaed documents on grounds which include violation of  
13 his rights of privacy and confidentiality and other claims of privilege, and that the  
14 Defendant has or intends to file a motion to quash the subpoena on those grounds.  
15 Declaration of Michael D. Nasatir. Accordingly, Movant requests the Court order  
16 the production and disclosure of the documents be stayed until claims of privilege  
17 can be invoked by any interested parties and adjudicated by the Court at an in  
18 camera hearing.

19 III.

20 Conclusion

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

24 Respectfully submitted,

25 Nasatir, Hirsch, Podberesky & Genego

26 By: 

27 Michael D. Nasatir, Esq.  
28 Counsel for Movant  
Holthouse Carlin & Van Trigt LLP



**EXHIBIT A**

# 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

**TO:** HOLTHOUSE CARLIN & VAN TRIGT  
ATTN: SUBPOENA COMPLIANCE DEPT.  
1601 CLOVERFIELD BOULEVARD, STE. 300 SOUTH  
SANTA MONICA, CA 90404

HEARING DATE: March 9, 2005 at 09:00  
DEPT: 8  
JUDGE: Rodney Melville

TYPE OF HEARING: Superior Court Jury Trial  
REPORT NO: 03-5670  
COURT NO: 1133605  
DA NO: 03-12-098996

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

DDA NAME: THOMAS W. SNEDDON,  
JR.

OFFENSE DATE: 02/07/2003  
VIOLATION: PC288(A)

**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. M-F either in person at the above address, or by phone at the # below. Please have your driver's license # or ID # 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's Office prior to your actual appearance to confirm the court schedule at: (805) 346-7529

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

DATE ISSUED: February 23, 2005



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 at \_\_\_\_\_ (AM)(PM) on \_\_\_\_\_ 200\_, I served the within subpoena by delivering a copy of the subpoena personally to \_\_\_\_\_ Date: \_\_\_\_\_  
By: \_\_\_\_\_ Reason not served \_\_\_\_\_



EQUITY ACCOUNTS AS OF 12/31/99, 12/31/00, 12/31/01, 12/31/02 AND THROUGH TERMINATION. BALANCES FOR ALL REVENUE AND EXPENSE ACCOUNTS AS OF 12/31/00, 12/31/01, 12/31/02 AND THROUGH TERMINATION. ACCOUNTS PAYABLE CHECK REGISTERS, IN DETAIL BY VENDOR, FOR THE 2000, 2001 AND 2002 CALENDAR YEARS, AND THROUGH TERMINATION. UNPAID ACCOUNTS PAYABLE AND ACCRUED LIABILITIES BALANCES, IN DETAIL BY VENDOR, AS OF 12/31/99, 12/31/00, 12/31/01, 12/31/02 AND THROUGH TERMINATION. BANK STATEMENTS FOR ALL ACTIVE DEPOSIT, COLLECTION AND LOAN COLLATERAL ACCOUNTS, AS OF 12/31/99, 12/31/00, 12/31/01, 12/31/02 AND THROUGH TERMINATION. PERIODIC STATEMENTS REPORTING MUSIC PUBLISHING ACTIVITY RELATED TO THE SONY/ATV AND MIJAC CATALOGS, INCLUDING STATEMENTS RECEIVED FROM 12/31/99 THROUGH TERMINATION. REPORTS OR STATEMENTS PROVIDING EVIDENCE OF VALUE FOR ANY MUSIC PUBLISHING CATALOGS, REAL ESTATE OR OTHER REAL PROPERTY, RECEIVED FROM 12/31/99 THROUGH TERMINATION.

Affiant believes and so states that the above documents are material to the proper presentation of this case by reason of the following facts:

I am informed and believe that defendant Michael Jackson was facing a dire financial crisis at the time of the charged offenses. This crisis was publicly known and widely reported. I am also informed and believe that Michael Jackson faces a crushing amount of personal debt amounting to well over 275 million dollars which will be due and payable in December of this year.

I am informed and believe that Michael Jackson's present and future earning as an entertainer are directly connected to his public image and that his public image was decimated by the international airing of the Martin Bashir documentary entitled, "Living with Michael Jackson."

This documentary prominently featured the thirteen year old victim in the pending child molestation case. The footage showed Jackson holding hands and smuggling with this boy on a couch as he talked about his preference for having young children sleep in his bedroom.

I am informed and believe that Michael Jackson was motivated to commit the charged offense of conspiracy to commit child abduction, false imprisonment and extortion in order to control the victim and his family for his own public relations purposes.

I am informed and believe that Michael Jackson was motivated by this financial crisis to do whatever was necessary to preserve his public image. The preservation of this image was directly linked to the preservation of his financial empire and provided motivation for him to commit the charged conspiracy.

WHEREFORE, Affiant prays that a Subpoena Duces Tecum issue.

DATED: FEBRUARY 23, 2005

THOMAS W. SNEDDON, JR.  
DISTRICT ATTORNEY

By: 

GORDON AUCHINGLOSS  
Sr. Deputy District Attorney

Subscribed and sworn to before me this

23<sup>rd</sup> day of February, 2005

GARY M. BLAIR, County Clerk

By: 

SHAMRA LIMON  
Deputy Clerk

MARNIE B. PINSKER  
Assistant Director

DAVID M. SAUNDERS  
Chief Investigator



CHRISTIE STANLEY  
Assistant District Attorney

ERICA A. HANSON  
Chief Trial Deputy

COUNTY OF SANTA BARBARA  
DISTRICT ATTORNEY

To assist you in preparing your records, we have prepared this information sheet so that you can comply with the legal requirements prescribed by law, Section 1560-1564 of the Evidence Code.

Within 5 days of receipt of this Subpoena Duces Tecum, the recipient must:

- 1) Prepare a copy of all records described in the subpoena;
- 2) Complete the attached affidavit;
- 3) The affidavit and copy of records are then sealed in an envelope which must be labeled with the following information from this subpoena duces tecum:

People v.: MICHAEL JOE JACKSON  
DA #: 05-12-098996  
SC# 1133603

- 4) This sealed and labeled envelope is then sealed in an outer envelope and addressed to the Clerk of the Court named in the subpoena;
- 5) The records may then be mailed or otherwise delivered to the Clerk of the Court, Criminal Division, 312 E. Cook Street, Santa Maria, CA 93454;

Should you have any questions, please call Shamra Limon at (805)346-7529.

Thank you for your cooperation and assistance in this matter.

Sincerely,

Shamra Limon  
Witness Coordinator

Santa Barbara Office  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
(805) 568-2300  
FAX (805) 568-2455

Lompoc Office  
115 Civic Center Plaza  
Lompoc, CA 93436  
(805) 737-7760  
FAX (805) 737-7732

Santa Maria Office  
112-D East Cook Street  
Santa Maria, CA 93454  
(805) 346-7540  
FAX (805) 346-7588



DECLARATION/AFFIDAVIT

I \_\_\_\_\_, am the duly authorized custodian of the records described in the Subpoena Duces Tecum, a copy of which is attached to this affidavit. The copy of records enclosed herewith is a true and correct copy of the records described in the attached Subpoena Duces Tecum which are in my possession. The said records were prepared by \_\_\_\_\_ in the ordinary course of business at or near the time of the act, condition or event described in said records.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_

California.

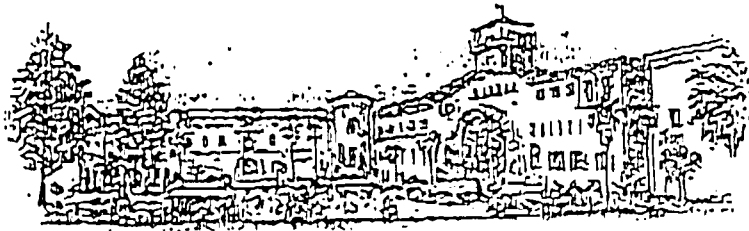
\_\_\_\_\_  
Affiant's signature

**EXHIBIT B**

THOMAS W. SNEEDON, JR.  
District Attorney

MARNIE D. PINSKER  
Assistant Director

DAVID M. SAUNDERS  
Chief Investigator



PATRICK J. MCKINLEY  
Assistant District Attorney

CHRISTIE STANLEY  
Assistant District Attorney

CICILIA HANSON  
Chief Trial Deputy

February 3, 2005

COUNTY OF SANTA BARBARA  
DISTRICT ATTORNEY

Holtzhouse Carlin & Van Trigt  
ATTN: Subpoena Compliance Dept  
1601 Cloverfield Boulevard, Suite 300 South  
Santa Monica, CA 90404

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

Dear Sir/Madam:

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) 568-2300  
FAX (805) 568-2453

Lompoc Office  
115 Civic Center Plaza  
Lompoc, CA 93476  
(805) 737-7760  
FAX (805) 737-7732

Santa Maria Office  
312-D East Cook Street  
Santa Maria, CA 93454  
(805) 346-7510  
FAX (805) 346-7588

OFFICE OF THE DISTRICT ATTORNEY  
COUNTY OF SANTA BARBARA

THOMAS W. SNEDDON, JR.  
DISTRICT ATTORNEY

## 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

**TO:** HOLTHOUSE CARLIN & VAN TRIGT  
ATTN. SUBPOENA COMPLIANCE DEPT.  
1601 Cloverfield Boulevard, Suite 300 South  
Santa Monica, CA 90404

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

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

TYPE OF HEARING: Jury Trial  
REPORT NO:  
COURT NO: 1133603  
DA NO: 03-12-098996  
DDA NAME: GORDON AUCHECLOSS  
OFFENSE DATE: 02/07/2003  
VIOLATION: PC288

**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 your actual appearance to confirm the court schedule at: (805) 546-7529

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

DATE ISSUED: February 2, 2005



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

**SECTION 1331 & 1315 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 at \_\_\_\_\_ (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,  
13 vs.  
14 MICHAEL JOE JACKSON,  
15 Defendant

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

AFFIDAVIT FOR  
SUBPOENA DUCES TECUM

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

19 That I am 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 HOLTHOUSE CARLIN & VAN TRIGT has in their possession or under their control, the  
23 following documents: Statement of Assets and Liabilities as of 12/31/99, 12/31/00, 12/31/01,  
24 12/31/02 and through termination. Statement of Revenues and Liabilities as of 12/31/00,  
25 12/31/01, 12/31/02 and through termination. Balances for all Asset, Liability and Equity  
26 accounts as of 12/31/99, 12/31/00, 12/31/01, 12/31/02 and through termination. Balances for  
27 all Revenue and Expense accounts as of 12/31/00, 12/31/01, 12/31/02 and through termination.  
28 Accounts Payable Check Registers, in detail by vendor, for the 2000, 2001 and 2002 calendar

1 years, and through termination. Unpaid Accounts Payable and Accrued Liabilities Balances, in  
2 detail by vendor, as of 12/31/99, 12/31/00, 12/31/01, 12/31/02 and through termination. Bank  
3 statements for all active deposit, collection and loan collateral accounts, as of 12/31/99,  
4 12/31/00, 12/31/01, 12/31/02 and through termination. Periodic statements reporting music  
5 publishing activity related to the Sony/ATV and MJAC catalogs, including statements  
6 received from 12/31/99 through termination. Reports or statements providing evidence of  
7 value for any music publishing catalogs, real estate or other real property, received from  
8 12/31/99 through termination.

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

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

13  
14 DATED: February 2, 2005

15  
16 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

17  
18 By: *Gordon Auchincloss*  
19 GORDON AUCHINCLOSS  
20 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 Michael D. Nasatir (Calif. Bar No. 38121)  
William J. Genego (Calif. Bar No. 103224)  
2 Nasatir, Hirsch, Podberesky & Genego  
2115 Main Street  
3 Santa Monica, California 90405  
Telephone: 310-399-3259  
4 Telecopier: 310-392-9029/8260

5 Attorneys for Movant  
Holthouse, Carlin & Van Trigt LLP  
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF SANTA OF SANTA BARBARA  
11 Santa Maria Division

12 PEOPLE OF THE STATE OF ) Case No. 1188603  
CALIFORNIA )  
13 )  
vs. ) PROOF OF SERVICE  
14 )  
MICHAEL JOE JACKSON )  
15 )  
Defendant. )  
16 \_\_\_\_\_ )  
17 )  
HOLTHOUSE, CARLIN & VAN )  
18 TRIGT, )  
Movant. )  
19 \_\_\_\_\_ )  
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1 PROOF OF SERVICE

2  
3 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

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

8 On March 2, 2005, I served the foregoing document described  
9 as: NOTICE OF MOTION AND MOTION TO QUASH SUBPOENA DUCES TECUM;  
10 MEMORANDUM IN SUPPORT OF MOTION, on all interested parties in  
11 this action by placing a true copy thereof enclosed in a sealed  
12 envelope addressed as follows:

13 Gordon Auchincloss, Esq.  
14 Senior Deputy District Attorney  
15 1112 Santa Barbara Street  
16 Santa Barbara, California 93101

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

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

22 Executed on March 2, 2005 at Santa Monica, California.

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

26  (Federal) I declare that I am employed in the office of a  
27 member of the bar of this court at those direction  
28 the service was made.

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