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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SANTA BARBARA
17 SANTA MARIA DIVISION

18 THE PEOPLE OF THE STATE OF
CALIFORNIA,

19 Plaintiff,

20 vs.

21 MICHAEL JOSEPH JACKSON

22 Defendant.
23
24

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

NOV 01 2004

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

* Unsealed pursuant
to 6/16/05 court
order

CASE NO. 1133603

MR. JACKSON'S OBJECTION
AND OPPOSITION TO MOTION
TO QUASH SUBPOENA

FILED UNDER SEAL *by S. M. Amara*

TIME: 8:30 a.m.
DATE: November 4, 2004
PLACE: Department SM-2

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1 **A. Introduction.**

2 Mr. Michael Jackson submits this Objection to Service and Opposition to Motion to Quash
3 in response to the Motion to Quash filed by subpoenaed party Ray Chandler. Mr. Jackson's
4 Objection and Opposition is based on the following grounds:

5 (1) The Notice of Motion was served on October 25, 2004, according to the Proof of
6 Service by United States Mail (California Overnight), and whether it was express delivery or regular
7 mail, service was insufficient for a hearing on November 4, 2004;

8 (2) Because of the extent and length of the subpoenaed party's Motion to Quash, and the
9 large amounts of other business which is before the court, Mr. Jackson must insist on proper service
10 and the notice period for the motion;

11 (3) Mr. Jackson granted the subpoenaed party significant additional time to respond to the
12 subpoena, and no justification exists for the subpoenaed party not to abide by statutory notice
13 periods or to have hearings on motions that are improperly noticed.

14 **B. Service of the Subpoena Duces Tecum and Trial Subpoena.**

15 On September 19, 2004, Mr. Jackson served the subpoenaed party with two (2) subpoenas.
16 The first was a Subpoena Duces Tecum where the response was due on October 5, 2004. The
17 second was a subpoena for personal appearance at trial, and the production of documents where the
18 response is due on January 31, 2004.

19 On September 30, 2004, Mr. Herbert Fox, counsel for the subpoenaed telephoned Mr.
20 Oxman and requested additional time to respond to the Subpoena. Mr. Oxman agreed and the
21 parties mutually set October 25, 2004, as the date for the return on the Subpoena Duces Tecum. No
22 discussion or agreement was made, nor was any necessary, concerning the subpoena to be returned
23 on January 31, 2005.

24 On October 25, 2004, the subpoenaed party served a Motion to Quash and Application for In
25 Camera Review. The motion challenged the subpoena because the subpoenaed party seeks
26 protection under the California Shield Law contained in Evidence Code section 1070. However,
27 whether the subpoenaed party is a journalist, and whether a self-published book qualifies for
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1 protection under the Shield Law, is an highly complicated question.

2 **C. The Motion to Quash was Not Properly Served and the Notice Period Is**
3 **Inadequate.**

4 More important, the Proof of Service which is attached as Exhibit "A" to this Objection
5 states the motion was served by :

6 "BY UNITED STATES MAIL (California Overnight).

7 [X] I deposited such envelope in the mail at Santa Barbara California. The envelope was
8 mailed with postage fully prepaid."

9 Service by United States Mail is wholly inadequate for a hearing on November 4, 2004,
10 which is only ten (10) days following the service of the document. Under Code of Civil Procedure
11 section 1013(a), the period of notice must be extended an additional five (5) days prior to the
12 hearing on the matter. The Motion to Quash suffers from inadequate service.

13 The Proof of Service makes mention of California Overnight, which is an express delivery
14 service. However, there is no statement in the Proof of Service of this fact, nor does the proof of
15 service describe the deposit with such service, whether it is in the business of overnight delivery,
16 nor whether overnight delivery charges were pre-paid. All the Proof of Service states is that the
17 U.S. Postage was pre-paid, and such postage payment would otherwise be inadequate for a private
18 business such as California Overnight.

19 Further, an amended Proof of Service will not solve the inadequate notice problem here
20 because Rule 4.11(a) of the California Rules of Court provides that written pretrial motions in
21 criminal cases must be filed with the court at least ten (10) calendar days before the hearing on the
22 motions. Service of the motion must be accomplished either by personal delivery or by mailing a
23 copy of the motion under Code of Civil Procedure sections 1012-13, or by substituted services
24 under code of Civil Procedure section 1011. 1 C.E.B., California Criminal Law and Procedure, sec.
25 24.5, at 628 (7th ed. 2004) L. Levinson, On California Criminal Procedure, sec. 21.11, at 839 (2002).
26 Code of Civil Procedure section 1013(c) provides that where service is made by overnight or
27 express delivery, there must be an additional two (2) days added to the period of notice.

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1 Service in this case, if it was made by overnight delivery deposited on October 25, 2004, is
2 still inadequate. While October 25, 2004, was ten (10) days prior to November 4, 2004, the service
3 was improper because it was not accomplished with the two (2) additional days required by Code of
4 Civil Procedure section 1013(c) for overnight and express delivery. The notice in this matter is
5 inadequate and the matter should be taken off calendar.

6 **D. The Motion Should be Take Off-Calendar.**

7 Mr. Jackson requests the subpoenaed party re-file his motion with proper notice. The
8 subpoenaed party has raised issues which cannot be addressed under the crush of business which is
9 evident in this case without proper notice being given. It is appropriate for the court to order the
10 motion off-calendar for lack of adequate service of the motion.

11
12 Dated: November 1, 2004

Respectfully submitted,

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

15 Robert M. Sanger
16 SANGER & SWYSEN

17 Brian Oxman
OXMAN & JAROSCAK

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19
20 By: _____


21 R. Brian Oxman
22 Attorneys for Defendant
MICHAEL JOSEPH JACKSON

EXHIBIT A

1
2 **PROOF OF SERVICE**

3 STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

4 I am employed in the County of Santa Barbara, State of California. I am over the age of 18 years
5 of age and not a party to the within action; my business address is 15 West Carrillo Street, Suite 211,
6 Santa Barbara, California 93101.

7 On Oct. 25, 2004, I served the foregoing document described as *Application To File*
8 *Under Seal And Without Notice To The People; Notice of Motion and Motion to Quash Subpoena*
9 *and/or In Camera Review; Memorandum of Points and Authorities; Declaration of Raymond*
10 *Chandler; Proposed Order* on the interested parties in this action as follows:

11 Brian Oxman
12 14126 E. Rosacrans
13 Santa Fe Springs, CA 90670
14 Telephone (562) 921-5058

15 BY UNITED STATES MAIL (*California Overnight*)
16 I deposited such envelope in the mail at Santa Barbara, California. The envelope was mailed
17 with postage thereon fully prepaid.

18 [] As follows: I am "readily familiar" with the firm's practice of collection and processing
19 correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that
20 same day with postage thereon fully prepaid at Santa Barbara, California in the ordinary course of
21 business. I am aware that on motion of the party served, service is presumed invalid if postal
22 cancellation date or postage meter date is more than one day after date of deposit for mailing in
23 affidavit.

24 [] BY PERSONALLY DELIVERY: I personally delivered said envelope to the name and address
25 indicated above.

26 [] BY FACSIMILE TRANSMISSION: The transmission of this document was reported as
27 complete and without error. A true and correct copy of the transmission reports are attached hereto.
28 This transmission report was properly issued by the transmitting facsimile machine on this date.

Executed on Oct. 25, 2004 at Santa Barbara, California.

I declare under penalty of perjury under the laws of the State of California that the above is true
and correct.

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27 Kristyne Aljian

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PROOF OF SERVICE BY MAIL AND FAX

I, Maureen Jaroscak declare and say:

I am an attorney at law admitted to practice before all the courts of the state of California and I am an attorney for Mr. Michael Jackson in the above-entitled action. My business address is 14126 East Rosecrans Blvd., Santa Fe Springs, California 90670. I am over 18 years and not a party to the above-entitled action. On November 1, 2004, I served the following:

EX PARTE APPLICATION TO FILE UNDER SEAL

MR. JACKSON'S OBJECTION AND OPPOSITION TO MOTION TO QUASH

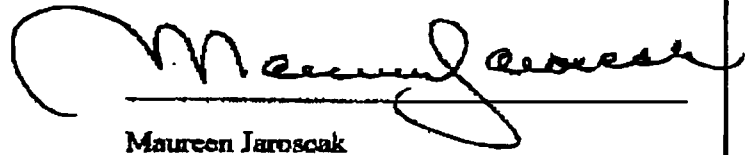
on the interested parties by placing a true copy of the document in a sealed envelope, and depositing it in the United States Mail with first class postage fully prepaid at La Mirada, California, and addressed as follows:

Herb Fox
15 West Carrillo Street
Suite 211
Santa Barbara, CA 93101
Fax No. (805) 899-2121

In addition, on this same date, I served a copy of the document by fax to the above-indicated number by transmitting a true copy of it by facsimile pursuant to Rule 2003 of the California Rules of Court, and no error was reported by the machine. Pursuant to Rule 2008(e), I had the machine print a record of the transmission, and a copy of that record is attached to this declaration.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct.

Executed this 1st day of November, 2004, at Santa Fe Springs, California.


Maureen Jaroscak