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10 Attorneys for Defendant  
11 **MICHAEL JOSEPH JACKSON**

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

NOV 29 2004

GARY M. BLAIR, Executive Officer  
BY *Carril Wagner*  
CARRIL WAGNER, Deputy Clerk

*\* Unsealed pursuant  
to 666105 court  
order*

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

15  
16 THE PEOPLE OF THE STATE OF  
CALIFORNIA,

17 Plaintiffs,

18 vs.

19  
20 MICHAEL JOSEPH JACKSON,

21 Defendant.

) Case No. 1133603

) EX PARTE APPLICATION TO FILE UNDER  
SEAL AND IN CAMERA

) Honorable Rodney S. Melville

) Date: October 14, 2004

) Time: 8:30 am.

) Dept: SM 2

22 FILED UNDER SEAL *In Camera*

23  
24 \_\_\_\_\_  
25 TO THE CLERK OF THE ABOVE ENTITLED COURT:

26 Defendant requests that the Court issue an order that the accompanying Ex Parte Application  
27 to Permit Interview of Passport Office Employees, and accompanying documents, be filed under seal

28 \_\_\_\_\_  
EX PARTE APPLICATION TO FILE UNDER SEAL

1 and for such other such further relief as the Court may deem just and proper. This request is based  
2 on the overriding interests of Mr. Jackson's rights to due process and a fair trial under the Fifth,  
3 Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 1, 7, and  
4 15 of the California Constitution. Mr. Jackson further requests the Ex Parte Application be made  
5 In Camera and without notice to the prosecution pursuant to its Order of August 9, 2004, a copy of  
6 which accompanies this Ex Parte Application, and the requirements of Teal v. Superior Court, 117  
7 Cal. App. 4<sup>th</sup> 488 (2004), which permits the defense to issue subpoenas and receive subpoenaed  
8 material without notice to the prosecution.

9 Mr. Jackson has not submitted a redacted version of this Ex Parte Application because under  
10 the procedures set forth in the court's August 9, 2004, Order, and the customary procedures for In  
11 Camera proceedings, no notice should be given to the public and the application should not be placed  
12 in the Court's public file.

13 Dated: November 29, 2004

14 Respectfully submitted,

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

17 SANGER & SWYSEN  
18 Robert M. Sanger

19 OXMAN & JAROSCAK  
Brian Oxman

20  
21 By:

  
22 R. Brian Oxman  
23 Attorneys for Defendant  
24 MICHAEL JOSEPH JACKSON  
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EX PARTE APPLICATION TO FILE UNDER SEAL

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 **THE COURT HAS THE AUTHORITY TO ORDER THAT**  
4 **A RECORD BE FILED UNDER SEAL**

5 Pursuant to California Rule of Court 243.1(d), the Court has the authority to order a  
6 record be filed under seal if it expressly finds that:

- 7 1. There exists an overriding interest that overcomes the right of public access to the  
8 record;
- 9 2. The overriding interest supports sealing the record;
- 10 3. A substantial probability exists that the overriding interest will be prejudiced if the  
11 record is not sealed;
- 12 4. The proposed sealing is narrowly tailored; and
- 13 5. No less restrictive means exist to achieve the overriding interest.

14 (California Rule of Court 243.1(d).)

15 II.

16 **OVERRIDING INTERESTS EXIST THAT MEETS THE ABOVE CRITERIA FOR**  
17 **SEALING A RECORD**

18 It is necessary to seal the record pursuant to California Rule of Court 243.1(d) based on  
19 the overriding interests of Mr. Jackson's rights to due process and a fair trial under the Fifth,  
20 Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 1, 7,  
21 and 15 of the California Constitution.

22 An inspection of the documents will reveal that they disclose the testimony of witnesses  
23 or potential witnesses and disclose possible evidence, the admissibility of which, is yet to be  
24 determined.

25 The overriding interests of Mr. Jackson's rights to a fair trial and due process would be  
26 compromised if the accompanying document is not filed under seal. A person accused of a crime  
27 is entitled to due process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the  
28

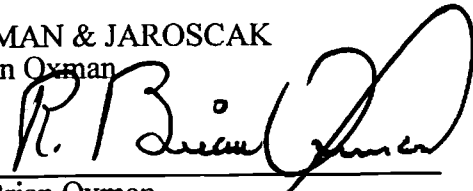
1 For the foregoing reasons, Mr. Michael Jackson requests his Ex Parte Application to Seal  
2 Application to Interview of Passport Agency Employee and accompanying documents be filed  
3 under seal, In Camera, and that no redacted copy be placed in the Court's public file.

4 Dated: November 29, 2004

5 COLLINS, MESEREAU, REDDOCK & YU  
6 Thomas A. Mesereau, Jr.  
Susan C. Yu

7 SANGER & SWYSEN  
8 Robert M. Sanger

9 OXMAN & JAROSCAK  
Brian Oxman

10 By:   
11 R. Brian Oxman  
12 Attorneys for  
13 MICHAEL JOSEPH JACKSON

1 United States Constitution and Article I, Sections 1, 7, and 15 of the California Constitution.  
2 Material contained the accompanying document pertains to evidence and the testimony of  
3 witnesses that, if made public, would compromise Mr. Jackson's these rights and would result in  
4 prejudice to Mr. Jackson. In order to protect these overriding interests, it is necessary that the  
5 accompanying document be filed under seal.

6 In addition, Mr. Jackson requests this application not be disclosed to the prosecution nor  
7 placed in the Court's public file pursuant to the Court's Order of August 9, 2004. That Order  
8 was made pursuant to *Teal v. Superior Court* 117 Cal. App. 4<sup>th</sup> 488, 492 (2004), where the court  
9 stated:

10 "[I]t is inappropriate to give a defendant "the Hobson's choice of going forth with his  
11 discovery efforts and revealing possible defense strategies and work product to the  
12 prosecution or refraining from pursuing these discovery materials to protect his  
13 constitutional rights and prevent undesirable disclosures to his adversary.[Citation.]"  
14 (Barrett [*People v. Superior court*, 80 Cal. app. 4<sup>th</sup> 1305, 1321 (2000)]). The trial court's  
15 order to reveal the subpoenaed materials to the prosecution placed *Teal* in this untenable  
16 position. As such, we conclude that the trial court abused its discretion in ordering  
17 defense counsel to provide the subpoenaed materials to the prosecution and that the error  
18 impinged upon *Teal's* constitutional rights. (*Id.* at pp. 1320-1321, 96 Cal.Rptr.2d 264.)"

19 The request for an Order permitting witness interviews of Passport Agency employees  
20 pertains to Mr. Jackson's defense strategy and reveal his counsel's work product. The  
21 prosecution is not, and in the case of the same Passport Agency, did not seek Mr. Jackson's  
22 permission prior to interviewing the witnesses. However, Mr. Jackson, as a private citizen, must  
23 have a Court Order prior to interviewing such witnesses. This request sets forth a probable cause  
24 statement that reveals information that would place Mr. Jackson in the "Hobson's choice of  
25 going forth with discovery or revealing his defense strategy." Mr. Jackson requests this  
26 Application and the accompanying Order be sealed and not made part of the Court's public file.

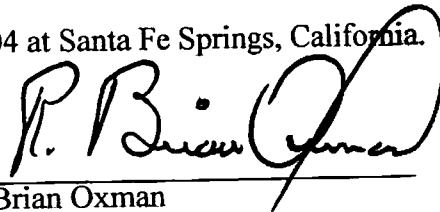
27 **CONCLUSION**

DECLARATION OF BRIAN OXMAN

I, Brian Oxman, declare:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, and an attorney for Michael Jackson.
2. It is necessary that the accompanying Application to Permit Interview of Passport Agency Employees and accompanying documents be filed under seal in order to protect the overriding interests of Mr. Jackson's rights to due process and a fair trial, as well as to prevent the disclosure of witnesses, potential witnesses and potential evidence.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 29<sup>th</sup> day of November, 2004 at Santa Fe Springs, California.



R. Brian Oxman

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