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

14  
15 **THE PEOPLE OF THE STATE OF**  
16 **CALIFORNIA,**

17 **Plaintiffs,**

18 **vs.**

19 **MICHAEL JOSEPH JACKSON,**

20 **Defendant.**

) **Case No. 1133603**

) **REPLY TO RESPONSE TO**  
) **DEFENDANT'S SUBPOENA DUCES**  
) **TECUM**

) ~~**UNDER SEAL**~~

) **Honorable Rodney S. Melville**  
) **Date: December 20, 2004**  
) **Time: 8:30 a.m. 9:30 AM**  
) **Dept: SM8**

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**REPLY TO RESPONSE TO DEFENDANT'S SUBPOENA DUCES TECUM**

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA  
DEC 15 2004  
GARY M. ALLEN, Executive Officer  
COURT CLERK  
CAROL L. LAWRENCE, Deputy Clerk

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 THE INFORMATION REQUESTED IN SUBPOENA DUCES TECUM IS NECESSARY  
4 TO EVALUATE THE NEED FOR A FAIR CROSS-SECTION CHALLENGE

5 The purpose of the subpoena duces tecum is so that counsel for Mr. Jackson has the  
6 necessary information to determine whether there is a basis to make a fair cross-section  
7 challenge to the grand jury venire. Such a determination cannot be made if counsel for Mr.  
8 Jackson is not provided with these materials. As stated in the declaration in support of the  
9 subpoena, Mr. Jackson has a right to make such a challenge if the grand jury was not selected  
10 from a fair cross-section of the community. It is impossible to evaluate whether or not there is a  
11 basis to make such a challenge without the materials listed in the subpoena.

12 The absence of a fair cross-section provides grounds for a defendant to challenge the jury  
13 selection process. (*Duren v. Missouri* (1979) 439 U.S. 357.) The absence of a fair cross-section  
14 also provides grounds for a defendant to challenge the grand jury selection process. (*Carter v.*  
15 *Jury Comm'n* (1970) 396 U.S. 320; *People v. Newton* (1970) 8 Cal.App.3d 359, 388.)

16 In order to establish a prima facie violation of the cross-section requirement, "the  
17 defendant must show (1) that the group alleged to be excluded is a 'distinctive' group in the  
18 community; (2) that the representation of this group in venires from which juries are selected is  
19 not fair and reasonable in relation to the numbers of such persons in the community; and (3) that  
20 this underrepresentation is due to systematic exclusion of the group in the jury selection  
21 process." (*Duren v. Missouri, supra*, 439 U.S. 357, 364; *People v. Harris* (1984) 36 Cal.3d 36,  
22 50.)

23 Raw data from the Santa Barbara Jury Commissioner will be necessary to establish the  
24 demographic composition of potential, prospective and qualified jurors that result at the several  
25 culling stages. This data is not available other than through a subpoena duces tecum.  
26 (Declaration of Robert M. Sanger, attached to the SDT.)

27 Mr. Blair argues that that grand jury was impaneled under Penal Code Section 904.6 and  
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REPLY TO RESPONSE TO DEFENDANT'S SUBPOENA DUCES TECUM

1 that, under Section 904.6, "[t]here is no statutory provision for the disclosure of any personal,  
2 identifying information of grand jurors . . . [t]herefore, there is no statutory basis for discovery."  
3 (Response, page 5.) If this analysis were correct, the could never be a fair cross-section  
4 challenge to a criminal grand jury venire. Under the cases cited above, criminal defendants are  
5 clearly allowed to challenge grand jury venires. Mr. Jackson submits that the declaration  
6 attached to the subpoena makes the necessary showing that the information sought is necessary.

7 **II.**

8 **THE JURY COMMISSIONER DOESN'T HAVE THE AUTHORITY TO QUASH A**  
9 **SUBPOENA BY VOUCHING FOR THE JURY SELECTION SYSTEM**

10 The Jury Commissioner is essentially asking Mr. Jackson to take his word for it that the  
11 grand jury was culled from a fair cross-section of the community without disclosing the raw data  
12 to support his position. (Declaration of Gary M. Blair, ¶ 8.) Mr. Blair's opinion that the grand  
13 jury was selected from a fair cross-section, however, is not a basis for quashing the subpoena  
14 duces tecum. As argued above, disclosure of the raw data requested in the subpoena is necessary  
15 so that Mr. Jackson's counsel can evaluate whether there is a basis for a fair cross-section  
16 challenge.

17 As discussed in the declaration in support of the subpoena, an evaluation by counsel in  
18 *People v. Ballesteros*, previously resulted in a successful challenge to the jury venire. This  
19 decision was reversed by the Court of Appeal. The Supreme Court of California granted review  
20 of that decision. However, Mr. Blair then promised to fix the problems that were at issue in that  
21 case and the Supreme Court dismissed the petition for review, leaving the Court of Appeal  
22 decision unpublished. While Mr. Blair now claims that the grand jury in the present case was  
23 selected using a one-step system, it is impossible for counsel for Mr. Jackson to determine if the  
24 system used to select the grand jury suffers from any of the flaws that the two-step system  
25 suffered from, or if the one-step system suffers from any new flaws that would render the system  
26 unconstitutional.

1 III.

2 **THE COURT'S INTEREST IN PRESERVING CONFIDENTIALITY OF THE GRAND**  
3 **JURY SHOULD NOT OVERRIDE MR. JACKSON'S RIGHT TO A GRAND JURY**  
4 **DRAWN FROM A FAIR CROSS-SECTION OF THE COMMUNITY**

5 As set forth above, Mr. Jackson has a right to a grand juror selected from a fair cross-  
6 section of the community. The Jury Commission objects to complying with the subpoena based  
7 on the "tradition of secrecy for grand jury proceedings" (Response, page 4) and the  
8 confidentiality of the grand jury proceedings. (Declaration of Gary M. Blair, ¶ 12.) While these  
9 concerns are important, they are not as important as a criminal defendant's right to a  
10 constitutionally selected grand jury.

11 Furthermore, the secrecy of the already concluded grand jury proceedings will not be  
12 compromised by the raw data regarding grand jury selection being provided to defense counsel.  
13 As argued below, the confidentiality of the jurors identities would not be jeopardized by an order  
14 that the Jury Commissioner comply with the subpoena.

15 IV.

16 **THE ISSUES RAISED REGARDING THE IDENTITY AND PRIVACY OF THE GRAND**  
17 **JURORS ARE IRRELEVANT BECAUSE THE INFORMATION WILL REMAIN**  
18 **SEALED**

19 The information requested in the subpoena will remain sealed when it is provided to the  
20 Court. Mr. Blair argues that the Court should consider that "the media went to great lengths to  
21 discovery what was occurring at every stage of the grand jury proceedings" and that this concern  
22 is "sufficiently compelling to warrant this court's intervention to protect the grand jurors from  
23 disclosure of their personal information." (Response, page 7.)

24 Mr. Jackson does not dispute that the media would be interested in learning the identities  
25 of the grand jurors. However, this information will not become available to the media if the  
26 Court orders the Jury Commissioner to comply with the subpoena. The Court's interest in  
27 protecting the "lives and safety of jurors who serve in criminal cases" (Response, page 6) will  
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REPLY TO RESPONSE TO DEFENDANT'S SUBPOENA DUCES TECUM

1 not be compromised by an order that the Jury Commissioner disclose the requested materials as  
2 long as the materials are kept under seal.

3 Furthermore, the materials requested in the subpoena, with the exception of item 3,  
4 requesting names, addresses and phone numbers of potential, prospective, qualified and  
5 unqualified jurors, do not disclose the identity of the grand jurors. If it is necessary to conduct  
6 further proceedings, pursuant to Code of Civil Procedure Sections 206 and 237, regarding that  
7 material, such proceedings can be accomplished in due course. The remainder of the subpoena  
8 should be complied with forthwith.

9 IV.

10 CONCLUSION

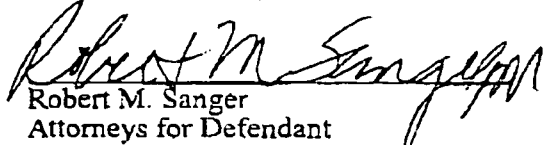
11 For the reasons stated above, Mr. Jackson respectfully requests that the Court order the  
12 Jury Commissioner to comply with the subpoena duces tecum.

13 Dated: December 15, 2004

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