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9 Attorneys for
10 JOHN BRANCA and JOHN McCLAIN

FILED
LOS ANGELES SUPERIOR COURT
JUL 01 2009
JOHN A. CLARKE, CLERK
M. Dewey
BY M. DEWEY, DEPUTY

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 Estate of
14 MICHAEL JOSEPH JACKSON,
15 Deceased.

16 Case No. BP 117321
17 EX PARTE APPLICATION TO
18 VACATE COURT'S ORDER
19 APPOINTING KATHERINE JACKSON
20 AS SPECIAL ADMINISTRATOR
21 [FILED CONCURRENTLY WITH
22 PETITION FOR LETTERS OF
23 SPECIAL ADMINISTRATION]

24 Date: July 1, 2009
25 Time: 8:30 a.m.
26 Room: 258

27 John McClain ("Mr. McClain") and John Branca ("Mr. Branca")
28 (jointly, "Petitioners") file this Ex Parte Application to Vacate
Court's Order Appointing Katherine Jackson as Special
Administrator of June 29, 2009 (the "Order") and allege as
follows:



1 I. Nature of this Ex Parte

2 This Ex Parte Application is brought pursuant to California
3 Rules of Court, Rule 3.1200 et seq., Probate Code section 8420,
4 and Code of Civil Procedure section 663, et seq., seeking to
5 vacate, modify or amend this Court's order appointing Katherine
6 Jackson as Special Administrator.

7 This Ex Parte Application seeks to vacate the Court's Order
8 on the grounds that:

- 9 1. The Court's Order finds that Decedent died intestate,
10 which is not accurate, as this Court currently holds
11 the original will of Michael Jackson, deposited with
12 Will Safekeeping concurrently with this Ex Parte
13 Application;
- 14 2. Mr. McClain and Mr. Branca are two of the named
15 executors of the Will and have the right to appointment
16 as personal representatives;
- 17 3. Mr. McClain, Mr. Branca and their counsel were not
18 given notice of Joseph Jackson's ("Mr. Jackson") and
19 Katherine Jackson's ("Mrs. Jackson") Petition for
20 Letters of Administration or their Petition for Letters
21 of Special Administration before their filing.
22 Therefore, Mr. McClain and Mr. Branca were not provided
23 with the opportunity to object to the Petition for
24 Letters of Special Administration;
- 25 4. The Court was not informed of the existence of the will
26 before the Order was signed by this Court, and thus
27



1 found that the Decedent died intestate, which is not
2 correct; and

3 5. Michael Jackson's business affairs and the marshaling
4 of his personal property require immediate attention,
5 and without Petitioners' appointment to address the
6 numerous facets of this complex Estate, there is a
7 significant danger of loss to the Estate. The Order
8 provides only limited authority to Mrs. Jackson in
9 order to marshal tangible personal property. These
10 powers are not sufficient to protect the Estate, even
11 for the few days before July 6, 2009, the date the
12 Letters expire.

13 **II. THIS COURT HAS THE INHERENT POWER TO RECONSIDER ITS PRIOR**
14 **ORDER AS TO MAKE IT CONFORM TO THE LAW**

15 California law is clear that the Court, on its own motion,
16 may reconsider its prior orders so that it may correct the record
17 to conform to newly discovered facts. *Wozniak v. Lucutz* (2002)
18 102 Cal.App.4th 1031, 1042. A court's inherent power to correct
19 its own ruling is based on the California Constitution; it is
20 irrelevant whether the court acts sua sponte or pursuant to a
21 party's motion. (*Id.*)

22 **III. GOOD CAUSE EXISTS FOR GRANTING EX PARTE RELIEF BECAUSE THE**
23 **COURT'S ORDER DOES NOT CONFORM WITH THE FACTS.**

24 **A. Michael Jackson died testate, with named executors**
25 **willing and able to serve as personal representatives.**
26 As Michael Jackson died testate, the appointment of Mrs.
27 Jackson was based on a mistake of fact. The Court's Order finds



1 that Decedent died intestate. On June 30, 2009, however,
2 Petitioners lodged the Last Will of Michael Joseph dated July 7,
3 2002 (the "Will") with this Court for safekeeping. A true copy
4 of the Will is affixed as Attachment 3e(2) to the Petitioners'
5 Petition for Probate of Will and Letters Testamentary and their
6 Petition for Letters of Special Administration.

7 As the Court had no information of the existence of the
8 Will, it was also unaware, of course, that Petitioners were named
9 as co-Executors of the Will. Article V of the Will provides that
10 John Branca, John McClain and Barry Siegel are appointed as co-
11 Executors. Mr. Branca and Mr. McClain are also named Trustees of
12 the Michael Jackson Family Trust, which is the sole beneficiary
13 of the Will. Barry Siegel ("Mr. Siegel"), also named as a co-
14 executor of the Will, has declined to act as Executor, as
15 evidenced by the letter from Mr. Siegel dated August 26, 2003, a
16 true copy of which is attached and incorporated as an exhibit to
17 the Petition for Probate filed by Petitioners concurrently with
18 this Ex Parte Application.

19 Pursuant to Probate Code section 8420, the named executors
20 of the Will have the right to serve as personal representatives.
21 Section 8420 is an express statement of the legislature's
22 determination of their first priority for appointment. See
23 Probate Code section 8420, Law Revision Commission Comments, 1990
24 Enactment.

25 As Mrs. Jackson was not named as Executor of the Will, and
26 two of the three named executors are willing and able to serve,
27

1 Petitioners, and not Mrs. Jackson, are the appropriate persons to
2 be appointed.

3 At the time that this Court heard and partially granted Mr.
4 and Mrs. Jackson's Petition for Letters of Special
5 Administration, this Court was unaware of the existence of the
6 Will, as the Will had not yet been lodged with the Court. Mr.
7 Branca, an attorney, whose firm was in possession of the Will,
8 was out of the country until late in the day of Saturday, June
9 27, 2009. (Declaration of Paul Gordon Hoffman ("Hoffman
10 Declaration"), paragraph 3.

11 On Sunday, June 28, Mr. Branca met with several of Mr.
12 Jackson's business and legal advisors, and spoke to numerous
13 others. At the end of the day on Sunday, Mr. Branca concluded
14 that to the best of his knowledge, the document signed on July 7,
15 2002, was actually the last known Will of Michael Jackson.
16 Hoffman Declaration, paragraph 3.

17 Mr. Branca scheduled a meeting with Mrs. Jackson and various
18 members of the Jackson family to discuss what he had learned.
19 The meeting took place on Monday, June 29, 2009, at the home of
20 one of the Jackson family members at approximately 11:00 A.M.,
21 and Mr. Branca provided Mrs. Jackson and the other members of the
22 Jackson family who were present at the meeting with copies of
23 Michael Jackson's Will and the Michael Jackson Family Trust.
24 Hoffman Declaration, paragraph 4.

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1 obligations are met or, if they cannot be met due to Michael
2 Jackson's death or otherwise, they must take action to mitigate
3 any harm that might result to any parties.

4 Petitioners are informed and believe that the Decedent had
5 debts which need to be serviced pending the appointment of a
6 personal representative with general powers in order to avoid the
7 loss of assets or harm to the Estate. Hoffman Declaration,
8 paragraph 9.

9 Finally, at the time of the Decedent's death, he was also
10 the sole custodial parent for three minor children who were
11 dependent upon him for all of their needs, including financial
12 support. The Petitioners would like to ascertain as soon as
13 possible the availability of cash flow to the Estate, the cash
14 flow needs of the Estate, and the needs of the minor children so
15 they can make arrangements for authority to pay a family
16 allowance for the benefit of the minor children in such amounts
17 as would be appropriate under the circumstances.

18 In summary, the numerous facets of this complex Estate
19 require immediate attention to avoid a danger of loss.

20 **C. Conclusion**

21 Based on the foregoing, the file in this matter, and the
22 matters set forth in the attached Declarations of Paul Gordon
23 Hoffman, Mr. McClain and Mr. Branca respectfully urge this Court

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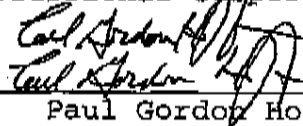
1 to vacate its Order appointing Mrs. Jackson as Special
2 Administrator of Michael Jackson's Estate.

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Respectfully submitted,

Dated: July 1, 2009

HOFFMAN, SABBAN & WATENMAKER
A Professional Corporation

By: 
Paul Gordon Hoffman
Attorneys for
John Branca and John McClain

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DECLARATION OF PAUL GORDON HOFFMAN
IN SUPPORT OF EX PARTE APPLICATION TO VACATE ORDER
APPOINTING KATHERINE JACKSON AS SPECIAL ADMINISTRATOR

1. I am an attorney licensed to practice law in the State of California and am a partner at the law firm of Hoffman, Sabban & Watenmaker, APC, counsel of record for John Branca and John McClain. Except as otherwise stated, the statements contained herein are based on my personal knowledge and experience. If called as a witness, I could and would testify competently to those facts.

2. John Branca is a partner of Ziffren Brittenham, LLP. I have spoken to John Branca, and he has informed me that he is willing and able to serve as co-Executor of the Will of Michael Jackson. Mr. Branca has, in fact, signed the Petition for Probate of Will and Letters Testamentary. I have examined the Michael Jackson Family Trust and have determined that he is also named as a co-Trustee of the Michael Jackson Family Trust.

3. I learned on Friday, June 26, 2009, that Mr. Branca was out of the country until late in the day of Saturday, June 27, 2009. On Sunday, Mr. Branca met with several of Mr. Jackson's business and legal advisors, and spoke to numerous others. At the end of the day on Sunday, Mr. Branca informed me that he had concluded that to the best of his knowledge, the document signed on July 7, 2002, was actually the last known Will of Michael Jackson. Mr. Branca informed me that he was scheduling a meeting

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DECLARATION OF PAUL GORDON HOFFMAN
EX PARTE APPLICATION TO VACATE COURT'S ORDER
APPOINTING KATHERINE JACKSON AS SPECIAL ADMINISTRATOR

1 with Katherine Jackson and various members of the Jackson family
2 to discuss what he had learned.

3 4. Mr. Branca informed me that the meeting took place on
4 Monday, June 29, 2009, at the home of one of the Jackson family
5 members at approximately 11:00 a.m., and that Mr. Branca provided
6 Katherine Jackson and the other members of the family who were
7 present at the meeting with copies of Michael Jackson's Will and
8 the Michael Jackson Family Trust.

9 5. Mr. Branca informed me on Monday evening, June 29,
10 2009, that he did not learn of the Petition for Appointment of
11 Special Administrator until I informed him on Monday evening that
12 the Order partially granting that petition had been granted.

13 6. I did not learn of the Petition for Appointment of
14 Special Administrator until I saw the Order partially granting
15 that petition on Monday evening, June 29, 2009.

16 7. Throughout the afternoon of June 29, 2009, my colleague
17 Jeryll Cohen and I made several attempts to contact Mr. and Mrs.
18 Jackson's counsel. Our telephone calls were not returned until
19 late in the day.

20 8. Michael Jackson was in the midst of final preparations
21 for an international concert tour. It is important that some
22 authorized representative be appointed at the earliest possible
23 time to mitigate the inevitable damages caused by Michael
24 Jackson's untimely death.

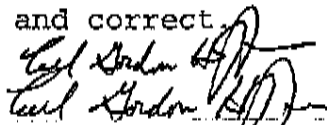
25 9. I am informed and believe that Michael Jackson had
26 debts which need to be serviced pending the appointment of a

27 2

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DECLARATION OF PAUL GORDON HOFFMAN
EX PARTE APPLICATION TO VACATE COURT'S ORDER
APPOINTING KATHERINE JACKSON AS SPECIAL ADMINISTRATOR

1 personal representative with general powers in order to avoid the
2 loss of assets or harm to the Estate.

3 Executed on July 1, 2009, at Los Angeles, California. I
4 declare under penalty of perjury of the laws of the State of
5 California that the foregoing is true and correct.

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7 PAUL GORDON HOFFMAN

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ORIGINAL

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FILED
Los Angeles Superior Court

JUL 01 2009

John A. Clarke, Executive Officer/Clerk

BY A. Watts
A. Watts

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES

12 Estate of

13 MICHAEL JOSEPH JACKSON,

14 Deceased.

) Case No. BP 117321

) Date: July 1, 2009

) Room: 258

) **DECLARATION RE EX PARTE
NOTICE**

19 The undersigned Kenneth S. Wolf, hereby declares as follows:

20 1. I am an attorney duly licensed to practice in the State of California. I am "Of
21 Counsel" to the firm of Hoffman, Sabban & Watenmaker ("HSW") who represent John Branca
22 and John McClain, petitioners in connection with the Ex Parte Application for Appointment of a
23 Special Administrator of the Estate Michael Joseph Jackson.
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25 2. I am familiar with all of the facts hereinafter set forth, and, if called as a witness, I
26 could and would competently testify thereto of my own knowledge.
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3. At 9:55 a.m. on June 30, I called Belinda Johns at the office of the Attorney General of the State of California. Her name was given to me by the voicemail at the office of John Cordi, formerly the deputy attorney general that was in charge of charitable organization issues in Southern California.

4. I reached Ms. Johns' voicemail and read verbatim the language of the memo attached hereto as Exhibit "A" (the "Memo").

5. At about 11 a.m. Ms. Johns returned my call. She acknowledged that she had received my phone message and verbal notice. She also acknowledged receipt of the fax transmission of the Memo. She indicated that she would assign a deputy in Los Angeles to the matter, but that she saw no need to attend the ex parte hearing being noticed. She asked why we were giving the AG notice and I indicated that there were general charitable gifts to unnamed charities in the operable documents.

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

Date: June 30, 2009



Kenneth S. Wolf

WMA

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BURT LEVITCH (SBN: 092803)
2 9601 Wilshire Boulevard, Suite 710
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3 Telephone: (310) 858-7700
4 DEWEY & LEBOEUF LLP
L. LONDELL MCMILLAN (*pro hac vice* application pending)
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6 Telephone: (212) 259-8000
7 DEAN HANSELL (SBN: 93831)
JOHN E. SCHREIBER (SBN: 261558)
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FILED
LOS ANGELES SUPERIOR COURT
JUL 01 2009
JOHN A. CLARKE, CLERK
BY M. DEWEY, DEPUTY

10 Attorneys for
11 KATHERINE ESTHER JACKSON

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF LOS ANGELES

14 Estate of
15
16
17 Michael Joseph Jackson
aka Michael Jackson,
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19
20 Decedent.
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[Case No. BP117321]
OPPOSITION OF KATHERINE ESTHER JACKSON TO (1) PETITION FOR LETTERS OF SPECIAL ADMINISTRATION SEEKING THE APPOINTMENT OF JOHN MCCLAIN AND JOHN BRANCA AS SPECIAL ADMINISTRATORS OF THE ESTATE OF MICHAEL JOSEPH JACKSON, AND (2) MOTION TO VACATE THE ORDER APPOINTING KATHERINE JACKSON SPECIAL ADMINISTRATOR

Date: July 1, 2009
Time: 8:30 a.m.
Dept.: Five

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23
24 The purported will with which Messrs. Branca and McClain have belatedly come
25 forward (the "will") may well be the first of other such competing wills, and claims with
26 respect thereto, that the Court will be forced to examine and compare before issuing final
27 letters of administration concerning the estate of Michael Jackson. Indeed, the will
28 purportedly was executed in July 2002, seven years before the decedent's death.

1 The decedent's mother Katherine Esther Jackson takes no position at this time as to
2 the authenticity and effect of the will and believes that it would be premature to do so. A
3 hearing regarding the issuance of final letters of administration concerning the decedent's
4 estate already has been set for August 3, 2009. It is in the best interest of the estate and all
5 interested parties (not to mention judicial efficiency) to address the authenticity and effect
6 of this will, and any other competing wills, at that time, rather than on a rolling basis each
7 time a new petitioner comes forward with what purports to be the true and final will of the
8 decedent. The Court already has named Mrs. Jackson as temporary Special Administrator,
9 a step that was necessary to preserve assets and protect the estate's interests pending the
10 appointment of a permanent administrator. The intense, public scrutiny of the decedent's
11 estate and these proceedings renders it virtually impossible for the Special Administrator
12 to do anything inappropriate with estate assets, or to act in any manner detrimental to the
13 estate's beneficiaries or creditors, during the relatively brief period of time between now
14 and the hearing scheduled for August 3, 2009.

15 For these reasons, Mrs. Jackson takes no position at this time and respectfully
16 requests that the petition and motion of Messrs. McClain and Branca be denied and that
17 she remain Special Administrator pending the August 3, 2009 hearing.

18 Dated: July 1, 2009

ROSENFELD, MEYER & SUSMAN, LLP

19
20 By: 
Burt Levitch (SBN: 092803)

21 DEWEY & LEBOEUF LLP
22 Dean Hansell (SBN: 93831)
23 John E. Schreiber (SBN: 261558)

24 Attorneys for KATHERINE ESTHER JACKSON
25
26
27

ORIGINAL

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~~FILED~~
Los Angeles Superior Court

JUL 01 2009

John A. Clarke, Executive Officer/Clerk

BY *J. W. W. A. W. W.*
A. W. W.

6 Attorneys for Petitioners,
7 JOHN BRANCA and JOHN McCLAIN

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

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Estate of

MICHAEL JOSEPH JACKSON,

Deceased.

Case No. BP 117321

DECLARATION OF JERYLL S.
COHEN RE NOTICE TO INTERESTED
PARTIES

Date: July 1, 2009
Time: 8:30 A.M.
Room: 258

I, JERYLL S. COHEN, declare as follows:

1. I am an attorney licensed to practice law in the State of California and am a Partner at the law firm of HOFFMAN, SABBAN & WATENMAKER, APC ("HSW"), attorneys for John Branca and John McClain (collectively "Petitioners"). Except as otherwise stated, the statements contained herein are based on my personal knowledge and experience. If called as a witness, I could and would testify competently to those facts.

2. Before 10:00 a.m. on the morning of Tuesday, June 30, 2009, I gave notice that on July 1, 2009, at 8:30 A.M. in Room 258 of the Los Angeles Superior Court, Central District, located



1 at 111 N. Hill Street, Los Angeles, CA 90012 on behalf of John
2 Branca and John McClain, we would be filing ex parte: 1) A
3 Petition for Letters of Special Administration, seeking the
4 appointment of John Branca and John McClain as Special
5 Administrators of the Estate of Michael Joseph Jackson pending
6 the hearing on the Petition for Probate of the Will and Letters
7 Testamentary which they will be filing; and 2) a Motion to Vacate
8 the Order Appointing Katherine Jackson Special Administrator and
9 seeking Mrs. Jackson's removal as the Special Administrator would
10 be filed and heard, to the following persons:

11 a. Burt Levitch, counsel of record for Mr. and Mrs.
12 Jackson. I called Mr. Levitch's office telephone
13 number reflected on his firm's website. The phone
14 rang approximately 10-15 times without being
15 answered.

16 b. L. Londell McMillan. I called Mr. McMillan's
17 office and was connected to Mr. McMillan's
18 assistant, Clint Copes. I identified myself and
19 informed Mr. Copes that I needed to speak to Mr.
20 McMillan to give him ex parte notice. Mr. Copes
21 put me on hold. When he returned to the phone, he
22 informed me that Mr. McMillan was not available
23 and that he (Mr. Copes) was not authorized to
24 receive notice. I then proceeded to give notice
25 to Mr. Copes as described above and informed him
26 that I had sent an e-mail to Mr. McMillan giving
27 notice of the hearing on the Ex Parte Petition and
28 Motion to Vacate.

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- c. Diane Goodman. I spoke with Diane Goodman and gave her notice as described above. I also informed her that I had sent an e-mail with the notice.
- d. Katherine Esther Jackson. I called Mrs. Jackson's assistant and left a message on her voice mail giving notice as described above. I also read on the voice mail recorder the powers requested in the Ex Parte Petition for Letters of Special Administration in to the voice mail message.
- e. Office of the Attorney General. I instructed Geraldine A. Wyle of my office to give notice to the Attorney General of the State of California. Ms. Wyle sent an email addressed to the email address provided on the website for the Attorney General giving notice as described above. Ms. Wyle received an email confirming that the email was received. A true and correct copy of the email is attached as Exhibit A and incorporated by this reference. In the afternoon of June 30, 2009, I received a phone call from a representative at the Attorney General's Office for the State of California confirming that they had received the notice and that they had no objection.
- f. Barry Siegel. I am informed and believe that Barry Siegel, is aware of the ex parte hearings on

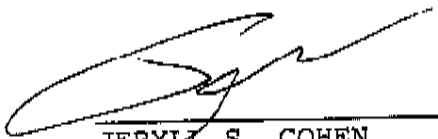


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the Petition and the Motion described above and
has no objections.

3. At 9:48 A.M. on June 30, 2009, I sent an e-mail to Burt
Levitch, L. Londell McMillan, Dean Hansell, J. Schreiber, James
Cordy and Diane Goodman, giving them notice of the ex parte
hearing on the Petition and Motion to Vacate. The email included
an attachment describing the special powers requested. A true
and correct copy of the e-mail is attached hereto as Exhibit B
and incorporated by this reference.

I declare under penalty of perjury under the laws of the
State of California that the foregoing is true and correct and
that this declaration is executed this 30th day of June, 2009, at
Los Angeles, California.



JERYLL S. COHEN

