

JUL 17 2009

John A. Clarke, Executive Officer/Clerk

By R. Gamboa, Deputy
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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF LOS ANGELES

17 Estate of

18 Michael Joseph Jackson
19 aka Michael Jackson,

20 Decedent

Case Number: BP 117321

APPLICATION PURSUANT TO
PROBATE CODE § 21320(a) FOR
DETERMINATION THAT POSSIBLE
OBJECTION TO APPOINTMENT OF
EXECUTORS AND/OR REQUEST
FOR APPOINTMENT OF EXECUTOR
OR ADMINISTRATOR DOES NOT
VIOLATE THE TERMS OF THE NO-
CONTEST CLAUSE AFFECTING
DECEDENT'S WILL (PROBATE CODE
§§ 21320-21322)

DATE: August 3, 2009

TIME: 8:30 a.m.

DEPT.: 5

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24 Katherine Esther Jackson, former Special Administrator, mother of the
25 Decedent, temporary guardian of the Decedent's minor children, and an indirect
26 beneficiary of the Estate as a beneficiary of the Trust that would receive the entire
27 Estate pursuant to the will that has been offered for probate ("Mrs. Jackson"),
28 hereby submits her Application Pursuant to Probate Code § 21320(a) for

1 Determination That Possible Objection to Appointment of Executors and/or
2 Request for Appointment of Executor or Administrator Does Not Violate the
3 Terms of the No-Contest Clause Affecting Decedent's Will as follows:

4 1. **Petition for Letters of Administration.** On June 29, 2009, when it
5 was thought that the Decedent died intestate, Mrs. Jackson filed a Petition for
6 Probate of the Decedent's Estate, seeking her appointment as Administrator of the
7 Estate. That Petition currently is set for hearing on August 3, 2009.

8 2. **Petition for Probate of Will and for Letters Testamentary.** On July 1,
9 2009, John Branca and John McClain filed a Petition for Probate of Will and for
10 Letters Testamentary, seeking their appointment as Executors of the Decedent's
11 Estate. They offered for probate a purported will of the Decedent dated July 7,
12 2002 (the "2002 Will") in which they, along with Barry Siegel, were named as Co-
13 Executors of that will. Barry Siegel has declined to serve. That Petition currently
14 is set for hearing on August 3, 2009 as well.

15 3. **Beneficiary.** Mrs. Jackson is a beneficiary of the Decedent's Estate by
16 virtue of being a named beneficiary of the Michael Jackson Family Trust dated
17 November 1, 1995, as amended and restated on March 22, 2002 (the "Trust"). The
18 Trust is the sole beneficiary under the 2002 Will, as provided in Article III of the
19 2002 Will which reads in pertinent part as follows:

20 "I give my entire estate to the Trustee or Trustees then acting under that
21 certain Amended and Restated Declaration of Trust executed on March 22,
22 2002 by me as Trustee and Trustor which is called the MICHAEL JACKSON
23 FAMILY TRUST, giving effect to any amendments thereto made prior to my
24 death."

25 4. **No Contest Clause.** The Trust, which is not a public document and
26 has not been submitted to this Court, although reference to it has been made in
27 earlier proceedings and it is specifically referenced in the 2002 Will, contains a no
28 contest clause (the "No Contest Clause") which provides as follows:

1 "In the event that any beneficiary under this Declaration of Trust shall,
 2 singly or in conjunction with any other person or persons, contest in any
 3 court the validity of this instrument or of a deceased Trustor's last Will or
 4 shall seek to obtain an adjudication in any proceeding in any court that this
 5 instrument or any of its provisions is void, or seek otherwise to void, nullify
 6 or set aside this instrument or any of its provisions, then the right of that
 7 person to take any interest given to him by this instrument shall be
 8 determined as it would have been determined had the person predeceased
 9 the execution of this Declaration of Trust without surviving issue. The
 10 Trustee is hereby authorized to defend, at the expense of the trust estate,
 11 any contest or other attack of any nature of this instrument or any of its
 12 provisions."

13 5. Applicable Law. Pursuant to Section 21320(a) of the Probate Code,
 14 "[i]f an instrument containing a no contest clause has become irrevocable, a
 15 beneficiary may apply to the court for a determination of whether a particular
 16 motion, petition, or other act by the beneficiary . . . would be a contest within the
 17 terms of the no contest clause." In the instant matter, the subject no contest clause
 18 became irrevocable upon the Decedent's death on June 25, 2009.

19 6. Application for Determination. As provided in Section 21320 of the
 20 Probate Code, Mrs. Jackson hereby applies for a determination of whether (a) a
 21 possible objection to the requested appointment of executors or (b) a possible
 22 request for the appointment of an executor or administrator (the "Possible
 23 Action") would constitute a contest within the terms of the No Contest Clause.
 24 Mrs. Jackson and her counsel have not yet decided whether to object to the
 25 appointment of the named Executors or to suggest or seek an alternate
 26 appointment. Mrs. Jackson and her counsel are continuing to collect and review
 27 relevant information and are in regular communication with the attorneys for the
 28 named Executors. Nonetheless, to maintain her options while the sharing of

1 information continues, Mrs. Jackson does seek the determination requested in this
2 Application.

3 7. Objecting to the Appointment of Executors or Requesting the
4 Appointment of an Executor is Not a Contest. Objecting to the appointment of
5 named executors as permanent personal representatives or a request for the
6 appointment of an executor or administrator does not constitute a contest under
7 the terms of the No Contest Clause. See *Hermanson v. Hermanson*, 108 Cal. App.
8 4th 441, 444-445 fn.3 (2003). Section 21305(b)(7) of the Probate Code specifically
9 provides that "[a] pleading regarding the appointment of a fiduciary or the
10 removal of a fiduciary" "do[es] not violate a no contest clause as a matter of public
11 policy." See also Prob. Code § 21305(b)(6), which provides that as a matter of
12 public policy, a "pleading challenging the exercise of a fiduciary power" does not
13 violate a no contest clause, "notwithstanding anything to the contrary in any
14 instrument."

15 8. Possible Action Cannot Violate No Contest Clause as a Matter of
16 Public Policy. As set forth above, the No Contest Clause became irrevocable upon
17 the Decedent's death on June 25, 2009. Therefore, the Trust's No Contest Clause
18 cannot, as a matter of public policy, be violated by a pleading enumerated in
19 Section 21305(b) of the Probate Code. See Prob. Code §21305(d), which provides
20 that "[Probate Code Section 21305(b)] shall apply only to instruments of decedents
21 dying on or after January 1, 2001, and to documents that became irrevocable on or
22 after January 1, 2001." Those conditions are satisfied here.

23 9. Formal Proposed Pleading Need Not Be Attached. Probate Code
24 § 21320(a) provides that "a beneficiary may apply to the court for determination of
25 whether a particular motion, petition or other act by the beneficiary...would be a
26 contest within the terms of the no contest clause." Here, no particular motion or
27 petition is being presented with this Application, but the possible action of Mrs.
28 Jackson has been stated explicitly above. No proposed pleading need accompany

1 this Application. See *Estate of Andrew J. Rossi, Sr., Deceased*, 138 Cal.App.4th 1325
2 (2006).

3 10. Notice; Request for Special Notice. Notice of this Application will
4 be given to the recipients appearing on Attachment 1, including the California
5 Attorney General who has requested Special Notice.

6
7 WHEREFORE, Mrs. Jackson requests that this court (a) make a
8 determination that an objection to the requested appointment of executors or a
9 possible request for the appointment of an executor would not constitute a contest
10 within the terms of the no contest clause affecting the will that has been offered for
11 probate, and (b) offer such other and further relief as it deems appropriate.

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13 Date: July 16, 2009


KATHERINE ESTHER JACKSON

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VERIFICATION

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I, KATHERINE ESTHER JACKSON, I have read the foregoing APPLICATION PURSUANT TO PROBATE CODE § 21320(a) FOR DETERMINATION THAT POSSIBLE OBJECTION TO APPOINTMENT OF EXECUTORS AND/OR REQUEST FOR APPOINTMENT OF EXECUTOR OR ADMINISTRATOR DOES NOT VIOLATE THE TERMS OF THE NO-CONTEST CLAUSE AFFECTING DECEDENT'S WILL and know the contents thereof and the same is true of my own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters I believe it to be true.

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

Executed this 16th day of July, 2009, at Encino, California.


KATHERINE ESTHER JACKSON

CONFIRMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUL 17 2009

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By R. Gamboa, Deputy
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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

[Case No. BP117321]

18 Michael Joseph Jackson
19 aka Michael Jackson,

15 VERIFICATION OF SUPPLEMENT TO
16 OPPOSITION OF KATHERINE ESTHER
17 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
20 (2) MOTION TO VACATE THE ORDER
21 APPOINTING KATHERINE JACKSON
SPECIAL ADMINISTRATOR

21 Decedent.

22 Date: July 6, 2009
23 Time: 8:30 a.m.
24 Dept.: 5


25 I, KATHERINE ESTHER JACKSON, am the Petitioner in the matter herein. I have
26 read the SUPPLEMENT TO OPPOSITION OF KATHERINE ESTHER JACKSON TO (1)
27 PETITION FOR LETTERS OF SPECIAL ADMINISTRATION SEEKING THE
28 APPOINTMENT OF JOHN MCCLAIN AND JOHN BRANCA AS SPECIAL

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ADMINISTRATORS OF THE ESTATE OF MICHAEL JOSEPH JACKSON, AND (2)
MOTION TO VACATE THE ORDER APPOINTING KATHERINE JACKSON SPECIAL
ADMINISTRATOR filed with the Court on July 6, 2009 and know the contents thereof and
the same is true of my own knowledge, except as to those matters which are therein stated
on information and belief, and as to those matters I believe it to be true.

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

Executed this ___ day of July, 2009, at Encino, California.


KATHERINE ESTHER JACKSON