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

JAN 04 2005

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

*\* Unsealed pursuant  
to 11/6/05 Court  
Order*

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 ) Case No. 1133603  
16 CALIFORNIA, )  
17 Plaintiffs, ) OPPOSITION TO DISTRICT  
18 vs. ) ATTORNEY'S MOTION FOR ADMISSION  
19 ) OF ALLEGED PRIOR OFFENSES (Evid.  
Code Sections 1108, 1101(b))

20 MICHAEL JOSEPH JACKSON, ) ~~UNDER SEAL~~  
21 Defendant. ) Honorable Rodney S. Melville  
22 ) Date: January 12, 2005  
23 ) Time: 8:30 a.m.  
24 ) Dept.: 8

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **INTRODUCTION**

26 The prosecution is seeking to introduce testimony that will prejudice Mr. Jackson's right  
27

28 **OPPOSITION TO DISTRICT ATTORNEY'S MOTION OF ADMISSION OF ALLEGED PRIOR OFFENSES**  
(Evid. Code Sections 1108, 1101(b))

1 to a fair trial through implausible testimony that will mislead the jury. Strikingly, the District  
2 Attorney is alleging at least seven prior sexual offenses, yet only one of the seven alleged victims  
3 is scheduled to testify.<sup>1</sup> In place of the alleged victims, the prosecution seeks to introduce the  
4 testimony of a collection of disgruntled former employees, paid tabloid informants, and other  
5 disreputable characters.

6 This testimony has previously been presented to two criminal grand juries and one civil  
7 jury, and the all three juries have rejected the testimony as false. Five of the witnesses were  
8 found to have lied about Mr. Jackson, by a civil jury, and two of them were found to have stolen  
9 from him. This is not the sort of prior sexual offense evidence that the legislature intended to  
10 permit when it enacted Section 1108. Mr. Jackson asks that this Court find that the prosecution's  
11 "evidence" is so lacking in credibility that it should not be allowed at trial based on its tendency  
12 to mislead the jury.

13 **ARGUMENT**

14 **I.**

15 **THE DISTRICT ATTORNEY'S ALLEGED SECTION 1108 AND 1101(B) EVIDENCE IS**  
16 **NOT CREDIBLE**

17 The constitutionality of Evidence Code Section 1108 is dependent on the trial court using  
18 sound discretion to prevent the admission of Section 1108 evidence "in cases where the  
19 admission of such evidence could result in a fundamentally unfair trial." (*People v. Falsetta*  
20 (1999) 21 Cal.4th 903, 917.) "By subjecting evidence of uncharged sexual misconduct to the  
21 weighing process of section 352, the Legislature has ensured that such evidence cannot be used  
22 in cases where its probative value is substantially outweighed by the possibility that it will  
23 consume an undue amount of time or create a substantial danger of undue prejudice, confusion of  
24 issues, or misleading the jury." (*Falsetta, supra*, 12 Cal.4th 903, 917-918.) Here, the  
25 introduction of the proffered testimony would undermine Mr. Jackson's right to a fair trial by

26 \_\_\_\_\_  
27 <sup>1</sup> The defense has yet to receive current discovery regarding this witness.

1 misleading the jury and thereby creating undue prejudice.

2 **A. The Proposed Testimony Has No Probative Value Because It Is False.**

3 This is not the first time that the prosecution has sought to introduce this evidence in a  
4 judicial proceeding. This is the same "evidence" that left two separate grand juries so  
5 unimpressed with the prosecution's "case" that they did not return indictments. In each of the  
6 occasions in which a grand jury or civil jury has had the opportunity to listen to witnesses like  
7 Ralph Chacon or Adrian McManus, the jurors have found the witnesses to be incredible. In the  
8 civil trial, the jury went as far as to find that Mr. Chacon and Ms. McManus not only lied about  
9 Mr. Jackson, but that they stole from him as well. The only thing probative about the proposed  
10 testimony of these witnesses is that it will demonstrate to the jury that the District Attorney  
11 maintains the same fact checking standards as Hard Copy and the National Enquirer.

12 Predictably, the prosecution's papers merely gloss over the issue of whether or not there  
13 is any reason to believe that the alleged prior acts actually occurred. The prosecution's 63 page  
14 motion devotes a single paragraph to the "degree of certainty of defendant's commission of the  
15 prior offenses." The District Attorney makes a general argument that a conviction is not required  
16 for evidence of a prior offense to be admissible and points out that such offenses are often not  
17 reported. (Motion, page 58.) The prosecution neglects to mention that the testimony in question  
18 in the cases cited by them, is the testimony of prior victims with no opportunity or motivation to  
19 lie about the prior offense conduct. ~~The prosecution's treatment of this issue implies that the~~  
20 evidence they are seeking to admit is of the kind that is typical in sexual abuse cases. This is not  
21 the case. There are no published cases in which a trial court has allowed prior offense testimony  
22 of this nature.

23 **B. The "Similarity" Of The Prosecution's Evidence Does Not Overcome The Witnesses**  
24 **Total Lack Of Credibility.**

25 The prosecution cites, *People v. Dancer* (1996) 45 Cal.App.4th 1677, *People v. Caitlin*  
26 (2001) 26 Cal.4th 81, *People v. Soto* (1998) 64 Cal.App.4th 966, *People v. Kraft* (2000) 23

1 Cal.4th 978, and others (Motion, pages 43-49), to argue that its proposed testimony is admissible  
2 because it describes conduct that is similar, and even identical, to the charged conduct. The cases  
3 cited by the prosecution, however, do not stand for the proposition that *any* evidence of prior  
4 sexual offenses, no matter how flimsy, should be admitted if the conduct described is similar to  
5 the conduct in the present case. The courts have held that similarity can overcome remoteness  
6 and other defects under Section 352, however, they have not held that similarity rescues  
7 testimony that is utterly lacking in credibility.

8 The evidence in all of the cases cited by the prosecution is distinguishable from the  
9 evidence in present case because in all of those cases the evidence was of a much higher quality.  
10 For example, in *Dancer*, the evidence of prior offenses was the defendant's actual conviction for  
11 the prior child molestation. In *Falsetta*, the evidence was also that the defendant was convicted  
12 and there plead guilty in two prior rape cases. In *Soto*, the evidence was testimony from the  
13 actual two prior alleged victims. Unlike the cases cited by the prosecution, there is no credible  
14 evidence that the conduct even occurred, so it is unnecessary to even get to the question of  
15 whether the conduct is similar to the charged conduct.

16 **C. The Proposed Testimony Does Not Serve The Purposes Of Evidence Code Section**  
17 **1108 Or 1101(B).**

18 1. The prosecution has spent the last 11 years seeking a new alleged victim and the  
19 allegations are public knowledge.

20 The prosecution's proposed testimony does not constitute the kind of independent sources  
21 that will corroborate the story of the current complaining witness. This is not a case where a  
22 prior victims are bravely stepping forward to bolster the testimony of a current victim by  
23 exposing similar details of a prior offenses that could only be known by prior victims, or where  
24 prior offenses for which the defendant plead guilty are being introduced to show a pattern. The  
25 supposed independence of the sources of the uncharged offenses is undermined by the extreme  
26 amount of publicity that the present case and the 1993-1994 investigation of Mr. Jackson  
27

1 received.

2 The District Attorney has held an open casting call for witnesses who are willing to make  
3 these types of allegations against Mr. Jackson from 1993 until the present time.<sup>2</sup> The  
4 prosecution's theory that Michael Jackson uses his residence to attract young boys and that he  
5 uses his wealth and fame to befriend children for nefarious purposes is without substance but it  
6 has been widely reported since the early days of the 1993-1994 investigation. Like the current  
7 alleged victim and his family, the prosecution's Section 1108 witnesses had media accounts of  
8 the prosecution's theory at their disposal when they carefully crafted their allegations, prior to  
9 selling their stories to the tabloids and filing a lawsuit against Mr. Jackson. For the past decade,  
10 anyone who wanted the District Attorney's ear could simply read the media accounts and come  
11 up with a story that fit the prosecution's theory.

12 2. The alleged witnesses to prior acts are inherently unbelievable.

13 The fact that the best prior offense witnesses that the District Attorney is able to come up  
14 with are the same disgruntled former employees and tabloid informants from 1993-1994 speaks  
15 volumes about the credibility of their proffered evidence.

16 There are strong motivations for the witnesses to lie. In the present case, unlike in a  
17 typical sexual abuse case, there is a financial motivation to lie, that extends not only to the  
18 alleged victims, but also to third parties. Many of these witnesses have already tasted the  
19 ~~financial rewards that come from making false allegations about a celebrity to the tabloid press.~~

20 Others have enjoyed financial settlements when it was determined that settling the false claims  
21 would come at a lower cost than defending against them.

22 The witnesses also have axes to grind against Mr. Jackson. The witnesses who worked  
23 for Mr. Jackson are disgruntled, not only because they lost their jobs, but because they were  
24 publicly humiliated in their failed lawsuit against Mr. Jackson. Other witnesses have been  
25 thoroughly discredited based on the significant amounts of money they received from the tabloid

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26  
27 <sup>2</sup> Sec, i.e., the February 6, 2003, press release located on the District Attorney's website  
28 (<http://www.countyofsb.org/da/documents/PR-Michael%20Jackson.pdf>) in which the District  
Attorney states that the 1993-1994 investigation of Mr. Jackson has remained "open, but  
inactive" and that "the case could be reactivated upon the discovery of new, credible evidence or  
victims willing to cooperate."

1 press. These factors are not typically present in sexual abuse cases, however, here, they cannot  
2 be ignored.

3 3. The current alleged victims went to Larry Feldman and Stan Katz before telling their new  
4 story.

5 Furthermore, this is a situation in which the Arvizo's stories conformed to other stories  
6 only because they met with Larry Feldman, the attorney for Jordan Chandler, prior to making  
7 their allegations. He then sent them to his forensic psychiatrist, Stan Katz. The Arvizos never  
8 made any of these allegations prior to meeting with Mr. Feldman and Dr. Katz, despite the fact  
9 that they were represented by counsel and had numerous opportunities to make the allegations.  
10 They not only did not make the so-called "similar" allegations before they saw Larry Feldman  
11 and Stan Katz, they didn't make any allegations at all. Therefore, any alleged similarity with  
12 claims made by Mr. Feldman and Dr. Katz's prior client is not coincidental.

13 II.

14 **MR. JACKSON IS ENTITLED TO DEFEND HIMSELF AGAINST THE FALSE**  
15 **CHARGES IN THE 1108 MOTION IF THEY ARE ALLOWED TO BE INTRODUCED**  
16 **AT TRIAL**

17 Mr. Jackson is entitled to rebut the prosecution's Section 1108 and 1101(b) evidence and  
18 to put on a defense case as to each uncharged offense. Mr. Jackson has the right to confront and  
19 ~~cross-examine his accusers. This cross-examination would undoubtedly include a tremendous~~  
20 amount of impeachment material.

21 Furthermore, Mr. Jackson is entitled to rebut the prosecution's evidence with a  
22 "presentation of character evidence of all three types – opinion evidence, reputation evidence,  
23 and evidence of specific acts pertinent to the character trait in question." (*People v. Callahan*  
24 (1999) 74 Cal.App.4th 356, 378.) A defendant is also entitled to present evidence that he was  
25 acquitted of the uncharged offenses. (*People v. Mullens* (2004) 119 Cal.App.4th 648, 670.) It  
26 follows that a defendant must be allowed to introduce evidence that a grand jury heard the prior  
27

1 offense testimony and that an indictment was not returned, and that a civil jury found these  
2 witnesses to be unconvincing.

3 III.

4 CONCLUSION

5 For the above stated reasons, Mr. Jackson objects to the introduction of the prosecution's  
6 proposed Section 1108 and 1101(b) testimony.

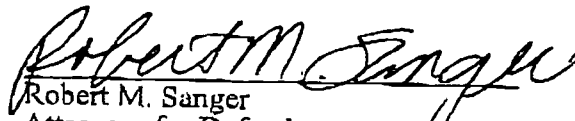
7 Dated: January 3, 2005

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13 By:

14   
15 Robert M. Sanger  
16 Attorneys for Defendant  
17 MICHAEL JOSEPH JACKSON  
18  
19

## PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On January 3, 2005, I served the foregoing documents on the interested parties in this action by depositing a true copy thereof as follows: **OPPOSITION TO DA'S MOTION FOR ADMISSION OF ALLEGED PRIOR OFFENSES; EXPARTE ORDER TO SEAL MOTION and REDACTED VERSION OF OPPOSITION TO DA'S MOTION**

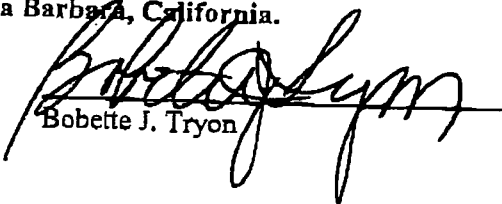
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**BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

**BY HAND** - I caused the document to be hand delivered to the interested parties at the address above.

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

Executed January 3, 2005, at Santa Barbara, California.

  
Bobette J. Tryon