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10 Attorneys for Defendant
11 MICHAEL JOE JACKSON

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 18 2005

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

*Unsealed pursuant
to 6/16/05 court
order*

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

14 THE PEOPLE OF THE STATE OF
15 CALIFORNIA,

16 Plaintiff,

17 vs.

18 MICHAEL JOE JACKSON

19 Defendant.

) CASE NO. 1133603

) NOTICE OF MOTION AND MOTION IN
) LIMINE TO EXCLUDE FOURTEEN (14)
) ITEMS OF IRRELEVANT EVIDENCE
) ("MOTION IN LIMINE GROUP #1")

) HEARING:

) DATE: JANUARY 28, 2005

) TIME: 9:30 A.M.

) Place: Dept. SM-2

FILED UNDER SEAL & BY FAX

1 TO THE HONORABLE RODNEY S. MELVILLE AND TO THE DISTRICT
2 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY
3 DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN AND GORDON
4 AUCHINCLOSS:

5 Please take notice that on January 28, 2005, at ⁹8:30 a.m., or as soon thereafter as the
6 matter may be heard, before the Honorable Rodney S. Melville, defendant Michael Joseph
7 Jackson ("Mr. Jackson") will move and hereby does move the Court for an order excluding
8 any reference (direct or indirect and oral or written) to the following fourteen irrelevant
9 and extraneous evidence at trial,¹ and for such other and further relief the Court deems just
10 and proper:

- 11 1. "Baby dangling";
- 12 2. Cosmetic or plastic surgery;
- 13 3. Lyrics from Mr. Jackson's songs;
- 14 4. Bankruptcy filed by Mr. Jackson's family;
- 15 5. Al Malnik's alleged ties to mobsters;
- 16 6. Brothel allegedly owned by Dieter Weisner;
- 17 7. Scott Peterson's case;
- 18 8. Mark Geragos's website;
- 19 9. Ray Chandler's book entitled "All that Glitters";
- 20 10. Victor Gutierrez's book entitled "Michael Jackson was My Lover";
- 21 11. Attorney General's Investigation of Mr. Jackson's Injury;
- 22 12. Items Seized by Henry Vaccaro;
- 23 13. DNA of Anyone other than Mr. Jackson; and
- 24 14. Underwear and Cocaine.

25 The preclusion of these items of evidence is based on the following two grounds.

26 _____
27 ¹ In the interest of brevity and judicial economy, this Motion will address these
fourteen items of irrelevant evidence which all fall under the same legal argument.

1 First, they are irrelevant under Evidence Code Section 210 because they have no
2 tendency in reason to prove or disprove any disputed fact that is of consequence to the
3 determination of this action.

4 Second, even if relevant, they nevertheless must be excluded under Evidence Code
5 Section 352 because the probative value of such evidence is substantially outweighed by
6 the danger of prejudice, undue consumption of court time, and confusion of the jury.

7 If the Court is inclined to rule that these extraneous items of evidence should be
8 allowed at trial, Mr. Jackson respectfully requests that the Court first hold an evidentiary
9 hearing under Evidence Code Sections 402 and 403 to make a preliminary determination of
10 the relevancy, admissibility, and foundation thereof. This request is made pursuant to Mr.
11 Jackson's constitutional rights to a fair trial, due process of law, a fair and impartial jury, the
12 effective assistance of counsel, and to equal protection of the laws and the privileges and
13 immunities guaranteed by the 4th, 5th, 6th and 14th Amendments to the United States
14 Constitutions and Article I of the California Constitution.

15 This motion will be based on this notice of motion, the memorandum of points and
16 authorities served and filed herewith, on such supplemental memoranda of points and
17 authorities as may hereafter be filed with the court or stated orally at the conclusion of the
18 hearing, on all the papers and records on file in this action, and on such oral and
19 documentary evidence as may be presented at the hearing of the motion

20 DATED: January 18, 2004

Respectfully submitted,

21 Thomas A. Mesereau, Jr.
22 Susan C. Yu
23 COLLINS, MESEREAU, REDDOCK & YU

24 Robert M. Sanger
25 SANGER & SWYSEN

26 Brian Oxman
27 OXMAN & JAROSCAK

28 By:



Susan C. Yu
Attorneys for Mr. MICHAEL J. JACKSON

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 At trial, the Prosecution may attempt to mention (directly or indirectly) at least
5 fourteen extraneous and irrelevant evidence (discussed more fully below). This Motion
6 will first set forth the applicable law and then discuss why each of these irrelevant items of
7 evidence should be precluded.²

8 II.

9 APPLICABLE LAW

10 A. Evidence Code Section 210

11 Evidence Code Section 210 defines "relevant evidence" as "evidence, including
12 evidence relevant to the credibility of a witness or hearsay declarant, having any tendency
13 in reason to prove or disprove any disputed fact that is of consequence to the
14 determination of the action." (Evid. Code § 210.)

15 As broadly defined by Section 210, "relevant evidence" has two distinct dimensions:
16 (1) probative value, or the tendency of the evidence in reason to prove or disprove the
17 proposition for which it is offered; and (2) relationship to a matter which is provable in the
18 action, or the tendency of the evidence in reason to prove or disprove any disputed fact
19 that is of consequence to the determination of the action. (People v. Hill, 3 Cal.App.4th 16,
20 29 (1992).)

21 Under this definition, evidence which has no tendency in reason to prove or
22 disprove any disputed fact of consequence to the determination of the action is irrelevant --

23 _____
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25 allowed at trial, Mr. Jackson respectfully requests that the Court first hold an evidentiary
26 hearing under Evidence Code Sections 402 and 403 to make a preliminary determination of
27 the relevancy, admissibility, and foundation thereof. This request is made pursuant to Mr.
28 Jackson's constitutional rights to a fair trial, due process of law, a fair and impartial jury, the
effective assistance of counsel, and to equal protection of the laws and the privileges and
immunities guaranteed by the 4th, 5th, 6th and 14th Amendments to the United States
Constitutions and Article I of the California Constitution.

1 as is evidence which has a tendency in reason to prove or disprove a fact which is not of
2 consequence to the determination of the action. (Id.)

3 **B. Evidence Code Section 350**

4 Under Section 350, no evidence is admissible except relevant evidence. (Evid. Code
5 §350.)

6 **C. Evidence Code Section 352**

7 Even relevant evidence may be precluded pursuant to Evidence Code Section 352.

8 Section 352 provides, in pertinent part, that “[t]he court in its discretion may
9 exclude evidence if its probative value is substantially outweighed by the probability that
10 its admission will (a) necessitate undue consumption of time or (b) create substantial
11 danger of undue prejudice, of confusing the issues, or of misleading the jury. (Evid. Code §
12 352.)

13 The prejudice that Section 352 is designed to avoid “is not the prejudice or damage
14 to a defense that naturally flows from relevant, highly probative evidence.” (People v.
15 Zapien, 4 Cal.4th 929, 958 (1993).) Rather, the statute uses the word in the sense of
16 “prejudging” a person or cause on the basis of extraneous factors.” (Id.) Accordingly, the
17 danger of undue prejudice means that the evidence is likely to arouse the emotions of the
18 jurors or be used in some manner unrelated to the issue on which it was admissible.
19 (People v. Cudjo, 6 Cal.4th 585, 610 (1993).)

20 “Substantial danger of undue prejudice” within the meaning of Section 352 thus
21 refers to a situation in which the evidence may be misused by the jury for a purpose other
22 than that for which it was admitted. (People v. Filson 22 Cal.App.4th 1841, 1851 (1994).)
23 Evidence should be excluded as unduly prejudicial when it is of such nature as to inflame
24 the emotions of the jurors, motivating them to use the information -- not to logically
25 evaluate the point upon which it is relevant -- but to reward or punish one side because of
26 the jurors’ emotional reaction. (Vorse v. Sarasy, 53 Cal.App.4th 998, 1009 (1997).)

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III.

LEGAL ARGUMENT

1. "Baby Dangling"

In late November 2002, Mr. Jackson was in Berlin, Germany to accept a lifetime Bambi entertainment award for his philanthropic work on behalf of children. Outside the hotel in which he was staying, fans gathered and cheered. Many asked Mr. Jackson to show them his newly-born son, Prince Michael II , who was nine months old at the time.

In an effort to connect with his fans, Mr. Jackson firmly and securely held Prince Michael II over his hotel balcony. He did so for a split second. Though Mr. Jackson held his baby tightly in his arms for a brief moment, media frenzy ensued. Tabloid news, in particular, called this scene "baby dangling," agitating the public and denigrating Mr. Jackson.

The so-called "baby dangling" incident has absolutely no relevance to any of the charged crimes in this case. Notwithstanding this fact, the Prosecution may attempt to mention or reference this irrelevant evidence, purely for the purpose to inflaming the jurors' emotions and thereby causing prejudice to Mr. Jackson's defense.

Indeed, the minimal probative value (if any) of this highly inflammatory evidence is substantially outweighed by all of the risks enumerated in Section 352, *in that* its admission will probably (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury

Accordingly, any reference (direct or indirect and oral or written) to this highly inflammatory and prejudicial evidence should be precluded.

2. Cosmetic or Plastic Surgery

Much has been said in the media about Mr. Jackson's cosmetic or plastic surgery. Whether or not Mr. Jackson had such surgery is completely irrelevant to any of the charged crimes in this case. Indeed, this evidence has absolutely no probative value. Even if it did,

1 any probative value is substantially outweighed by all of the risks enumerated in Section
2 352.

3 The Prosecution may nonetheless attempt to mention or reference this irrelevant
4 evidence, strictly for the purpose of poisoning the Jurors' views and thereby prejudicing
5 Mr. Jackson's defense.

6 The Court should preclude any reference (direct or indirect and oral or written) to
7 this highly irrelevant and prejudicial evidence.

8 **3. Lyrics from Mr. Jackson's Songs**

9 The Prosecution may mention or refer to lyrics from Mr. Jackson's songs. Again,
10 the lyrics have no bearing whatsoever on this case. Accordingly, the Court should
11 preclude any reference (direct or indirect and oral or written) to this unduly prejudicial
12 evidence.

13 **4. Bankruptcy filed by Mr. Jackson's Family**

14 Within the last ten years, some of Mr. Jackson's family members have filed for
15 bankruptcy. Said bankruptcy, however, has no relevance to any of the charged crimes in
16 this case. Notwithstanding this fact, at trial, the Prosecution may attempt to mention or
17 reference the family bankruptcy for the purpose of arousing the emotions of the jurors,
18 causing the jurors to "prejudge" Mr. Jackson on the basis of extraneous factors which are
19 wholly unrelated to any of the charged crimes in this case.

20 Accordingly, any reference (direct or indirect and oral or written) to Mr. Jackson's
21 family bankruptcy should be precluded.

22 **5. Al Malnik's alleged ties to Organized Crimes**

23 Al Malnik is an attorney with whom Mr. Jackson had brief contact. Mr. Malnik is
24 not on the Prosecution's or the Defense's witness list.

25 The media have spread rumors that Mr. Malnik has ties to "mobsters." These
26 rumors seem to have emerged from yet another rumor, i.e., Mr. Malnik's legal
27 representation of members of the organized crimes.

1 this case. There is absolutely no evidence to substantiate such far-fetched and nonsensical
2 allegation.

3 Stripped of such self-serving proclamation, the Prosecution has acknowledged that
4 its conspiracy allegation against Mr. Geragos is, at best, factually unsupportable and
5 disingenuous.

6 In an effort to inflame the jurors, the Prosecution may attempt to mention the highly
7 publicized Scott Peterson case, which Mr. Geragos handled.

8 Under Sections 210 and 352, the Court should preclude any reference (direct or
9 indirect and oral or written) to the Peterson case.

10 **8. Mark Geragos's Website**

11 Mr. Geragos's website, too, has absolutely no relevance in this case. Thus, any
12 attempt by the Prosecution to mention it cannot be countenanced by this Court.

13 Any reference (direct or indirect and oral or written) to Mr. Geragos's website should
14 be precluded under Sections 210 and 352.

15 **9. Ray Chandler's book entitled "All that Glitters"**

16 Raymond Chandler is the uncle of Jordie Chandler, one of the alleged "prior acts"
17 victims from 1993. Mr. Raymond Chandler, who is on the Prosecution's witness list,
18 recently (i.e., just months ago) published a book entitled "All that Glitters."

19 The timing of the publication of this book substantiates what the book is worth. Mr.
20 Chandler's book is, at best, a tabloid tool designed to fuel controversy and generate
21 financial gains for Mr. Chandler.

22 Mr. Chandler's book has no probative value in this case. It has no relevance
23 whatsoever to any of the charged crimes. The Prosecution, however, may attempt to
24 mention this book at trial, solely for the purpose of inflaming the jurors, causing them to
25 "prejudge" Mr. Jackson. Accordingly, any reference (direct or indirect and oral or written)
26 to Mr. Chandler's book should be precluded under Sections 210 and 352.

1 **10. Victor Gutierrez's book entitled "Michael Jackson was My Lover"**

2 In approximately April 1998, a jury awarded Mr. Jackson \$2.7 million in a slander
3 suit against Victor Gutierrez. Mr. Gutierrez is believed to have fled to Chile after the
4 verdict was reached against him. He is the author of a book called "Michael Jackson Was
5 My Lover."

6 Mr. Gutierrez is not a witness for the Prosecution or the Defense in this case.
7 However, the Prosecution may attempt to mention his book at trial, purely for the purpose
8 of poisoning the jurors' views.

9 The book is wholly irrelevant because it has no tendency in reason to prove or
10 disprove any of the charged crimes in this case. Even if it is relevant, its probative value is
11 substantially outweighed by the probability that its admission will (a) necessitate undue
12 consumption of time and (b) create substantial danger of undue prejudice, of confusing the
13 issues, or of misleading the jury.

14 Any reference (direct or indirect and oral or written) to Mr. Gutierrez's book should
15 be precluded.

16 **11. Attorney General's Investigation of Mr. Jackson's Injury**

17 Following his arrest in November 2003, Mr. Jackson injured his shoulder at the
18 Santa Barbara County Sheriff's Department. The investigation by the State Attorney
19 General office ensued.

20 The investigation has no bearing whatsoever on any of the charged crimes.
21 Accordingly, any reference (direct or indirect and oral or written) to this evidence at trial
22 should be precluded under Section 210 as irrelevant. It should also be precluded under
23 Section 352 as (a) an undue consumption of time and (b) a substantial danger of undue
24 prejudice, of confusing the issues, or of misleading the jury.

25 **12. Items Seized by Henry Vaccaro**

26 Henry Vaccaro is supposedly a businessman who allegedly owns a storage facility in
27 New Jersey. Mr. Vaccaro allegedly seized a storage cabinet containing items of personal

1 property belonging to Mr. Jackson's family. Allegedly included in that cabinet were
2 soiled underwear and costumes allegedly belonging to Mr. Jackson.

3 Absent speculation, conjecture and rumors, the Prosecution produced no reports,
4 results, conclusions or any other discovery as to (1) who (if any) actually owns these
5 underwear and costumes and (2) the relevance (if any) these personal property have on
6 this case.

7 The "seized" items allegedly in the possession of Mr. Vaccaro have absolutely no
8 bearing on this case.

9 Accordingly, the Court should preclude any reference (direct or indirect and oral or
10 written) to Mr. Vaccaro and any of the items of personal property he "seized" on the
11 grounds that such evidence is (1) irrelevant to this case and (2) even if relevant, any
12 probative value it may have is substantially outweighed by all of the risks enumerated in
13 Section 352.

14 **13. DNA of Anyone other than Mr. Jackson**

15 There are two DNA reports in this case.

16 The first DNA report says 3 male DNAs were found on Mr. Jackson's mattress. Of
17 these 3 males, one was identified as Mr. Jackson, aka "male 1." The remaining 2 males
18 were not identified. However, the report says that these 2 males are not the alleged victims
19 in this case, i.e., Gavin Arvizo and Star Arvizo.

20 The second DNA report says a fourth male DNA was found in bed sheets. The bed
21 sheets presumably were found in a laundry bag, along with underwear. The fourth male is
22 unknown, but is not the alleged victim, i.e., Gavin Arvizo or Star Arvizo.

23 These DNA reports have no relevance to any of the charged crimes, particularly the
24 alleged molestation, in this case. There is no nexus between Mr. Jackson's DNA and the
25 alleged crime.

1 Thus, any reference (direct or indirect and oral or written) to the DNA reports and
2 the DNAs of other unknown males who are not the alleged victims in this case should be
3 precluded as (1) irrelevant and (2) even if relevant, any probative value it may have is
4 substantially outweighed by all of the risks enumerated in Section 352.

5 **14. Underwear & Cocaine**

6 Mr. Jackson's underwear was found in a laundry bag, along with the bed sheets
7 (discussed in section 13 above). This underwear had bloodstain and cocaine. A forensic
8 lab for the Prosecution tested this underwear. No cocaine, however, was found in the
9 blood.

10 Mr. Jackson has vertigo. A medical injection he receives causes him to dispense
11 blood. The underwear with the bloodstain reflects this fact.

12 It is unknown how and why the cocaine was found on the underwear. It may be
13 evidence of contamination. In the alternative, someone may have brought cocaine during a
14 fundraising party at Neverland in September 2003, where hundreds of people, including
15 well-known celebrities, were present.

16 In short, neither the underwear nor the cocaine found on the underwear (and not in
17 Mr. Jackson's blood) has probative value to any of the charged crimes in this case.

18 Mentioning these items of irrelevant and extraneous factors will only inflame the
19 jurors and prejudice Mr. Jackson's rights to a fair trial.

20 Thus, any reference (direct or indirect and oral or written) to the underwear or
21 cocaine should be precluded under Sections 210 and 352.

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IV.

CONCLUSION

For all of the foregoing reasons, Mr. Jackson respectfully requests that the Court grant this Motion.


DATED: January 18, 2005

Respectfully submitted,

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

Robert M. Sanger
SANGER & SWYSEN

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By: 

Susan C. Yu
Attorneys for Mr. MICHAEL J. JACKSON

PROOF OF SERVICE

I, the undersigned, declare:

I am a citizen of the United States of America, am over the age of eighteen (18) years, and not a party to the within action. I am employed at 1875 Century Park East, 7th Floor, Los Angeles, CA 90067. On January 18, 2005, I served the following document:

NOTICE OF MOTION AND MOTION IN LIMINE TO EXCLUDE FOURTEEN (14) ITEMS OF IRRELEVANT EVIDENCE ("MOTION IN LIMINE GROUP #1")

on the interested parties addressed as follows:

Thomas Sneddon, Esq., District Attorney
Gerald Franklin, Esq.
Ronald Zonen, Esq.
Gordon Auchincloss, Esq.
District Attorney's Office
1105 Santa Barbara Street
Santa Barbara, CA 93108
FAX: (805) 568-2398

 BY MAIL: I placed each envelope, containing the foregoing document, with postage fully prepaid, in the United States mail at Los Angeles, California. I am readily familiar with the business practice for collection and processing of mail in this office; that in the ordinary course of business said document would be deposited with the US Postal Service in Los Angeles on that same day.

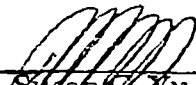
 X BY FACSIMILE: I served a copy of the within document on the above-interested parties, by way of a facsimile, at the facsimile numbers listed above.

 BY MESSENGER/ATTORNEY SERVICE: I caused to personally serve the within document on the above interested parties.

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

 (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 18, 2005, at Los Angeles, California.



Susan C. Xu