

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 26 2005

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,

vs.

MICHAEL JACKSON,

Defendant.

Case No.: 1133603

Order for Release of Redacted Documents

[Plaintiff's Response to Defendant's Motion in
Limine to Exclude Any Reference to Civil
Settlements and Amounts]

The redacted form of Plaintiff's Response to Defendant's Motion in Limine to Exclude Any Reference to Civil Settlements and Amounts attached to this order shall be released and placed in the public file. The court finds that there is more material in the motion that should be redacted than that contained in the proposed redacted version. The unredacted originals shall be maintained conditionally under seal pending the hearing on January 28, 2005.

Dated: January 26, 2005

Rodney S. Melville
RODNEY S. MELVILLE
Judge of the Superior Court

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
 County of Santa Barbara
 2 By: RONALD J. ZONEN (State Bar No. 85094)
 Senior Deputy District Attorney
 3 J. GORDON AUCHINCLOSS (State Bar No. 150251)
 Senior Deputy District Attorney
 4 GERALD McC. FRANKLIN (State Bar No. 40171)
 Senior Deputy District Attorney
 5 1112 Santa Barbara Street
 Santa Barbara, CA 93101
 6 Telephone: (805) 568-2300
 FAX: (805) 568-2398
 7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SANTA BARBARA

10 SANTA MARIA DIVISION

11 [PROPOSED] REDACTED VERSION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,	}	No. 1133603
13 Plaintiff,		}
14 v.	DEFENDANT'S MOTION IN	
15 MICHAEL JOE JACKSON,	DEFENDANT.	
16 Defendant.		REFERENCE TO CIVIL
		SETTLEMENTS AND AMOUNTS
		DATE: January 28, 2005
		TIME: 9:30 a.m.
		DEPT: TBA (Melville)

18
19
20 Introduction

21 Defendant moves the Court for its order "prohibiting plaintiff's attorneys and
 22 witnesses from making any references in the presence of jurors or prospective jurors of the
 23 amount of any civil settlement Mr. Jackson has made in the past" or, at least, to require plaintiff
 24 to "make an offer of proof to the court" and obtain "a preliminary determination of the
 25 relevancy, admissibility, and foundation thereof." (Motion 1:1-13.)

26 The grounds for his motion, defendant asserts, are:

- 27 -- "(1) Evidence of prior civil settlement amounts are irrelevant and inflammatory . . .";
- 28 -- "(2) The introduction of evidence of prior civil settlement amounts constitutes a

1 violation of Evidence Code section 1152(a), cannot be used to establish state of mind, and do
2 not show criminality"; and

3 — "(3) Plaintiff failed to disclose settlement amounts in discovery, and introduction of
4 settlement amounts will deprive Mr. Jackson of due process of effective cross-examination of
5 witnesses."

6 Defendant also argues that "Claims of Settlement Amounts Violate the Prohibitions
7 in the Statute of Limitations."

8 Plaintiff has not yet decided whether to seek leave for admission of evidence of
9 defendant's prior civil settlements at trial. But since defendant raises the issue, plaintiff
10 opposes defendant's motion for an order excluding evidence of his prior civil settlements. That
11 evidence is relevant as an admission against interest. Its receipt in this criminal prosecution as
12 an implied admission of criminal liability would not violate Evidence Code section 1152,
13 subdivision (a), as authoritatively construed by the Court of Appeal. Defendant is, of course,
14 already in possession of information and documents evidencing his civil settlements and
15 doesn't need a copy of them from plaintiff. And until plaintiff seeks admission of that
16 evidence, those documents are not among the items the prosecuting attorney must disclose to
17 the defense pursuant to Penal Code section 1054.1.

18 Argument

19 I

20 EVIDENCE OF A [REDACTED] SETTLEMENT
21 BY DEFENDANT OF A CIVIL SUIT ALLEGING HIS [REDACTED]
22 [REDACTED], HIS WILLFUL MISCONDUCT
23 AND HIS NEGLIGENCE IN HIS RELATIONSHIP WITH THE
24 BOY PLAINLY WOULD BE RELEVANT TO THE JURY'S
25 CONSIDERATION OF SIMILAR ALLEGATIONS AGAINST
26 DEFENDANT IN THIS CASE

26 Put aside for the moment defendant's argument that Evidence Code section 1152
27 would bar admission of evidence of his substantial settlement of the lawsuit filed against him
28 on behalf of [REDACTED] on September 14, 1993 in the Los Angeles Superior Court. If

1 that lawsuit alleged sexual misconduct conduct by defendant that is substantially similar to the
 2 sexual misconduct alleged in Counts Two through Six of the pending indictment, and if that
 3 lawsuit was settled by defendant for [REDACTED] less than five months later, a
 4 reasonable person would conclude that the settlement was at least a tacit admission that there
 5 was merit to the lawsuit. Evidence of that settlement could not be "inflammatory" unless it was
 6 reasonably perceived as defendant's admission of wrongdoing.

7 II

8 EVIDENCE CODE § 1152 DOES NOT BAR ADMISSION
 9 OF EVIDENCE OF DEFENDANT'S SETTLEMENT OF
 10 [REDACTED] LAWSUIT IN THIS CRIMINAL PROCEEDING

11 A. Defendant Is In Possession Of, And Has
 12 Long Had Access To, Evidence Of The
 13 Lawsuit Filed Against Him In 1993 And
 14 The Documents Recording His Settlement
 15 Of That Lawsuit

16 Defendant affects distress that the prosecution "failed to disclose settlement
 17 amounts in discovery, and introduction of settlement amounts would deprive Mr. Jackson of
 18 due process of effective cross-examination of witnesses." (Motion 1:20-21.)

19 That information is part of the record in the civil suit in question ([REDACTED]),
 20 filed in the Los Angeles Superior Court, Santa Monica District on September 14, 1993. The
 21 court's file is sealed at defendant's request; nevertheless, a copy of the lawsuit has been made
 22 available on the Internet. More to the point here, defendant, as the party defendant in that
 23 lawsuit, has had access to all of the documents filed in that case since its inception. Indeed, his
 24 efforts to deny the public access to the court's file will make admissible an authenticated but
 25 uncertified copy of the lawsuit and settlement agreement, under Evidence Code section 1521,
 26 subdivision (a) (the "Secondary Evidence Rule").

27 The prosecution obtained its copies of the relevant documents from the Internet.
 28 The People are not required to make "discovery" of them to defendant, because they do not

1 come within the provisions of Penal Code section 1054.1, nor are they "Brady" material.

2 Nevertheless, a copy of the documents we obtained will accompany delivery of a "hard copy"
3 of this Opposition to the defense.

4 B. Defendant's Settlement Of [REDACTED]
5 Lawsuit Is Not Barred By Evidence Code §
6 1152

7 Evidence Code section 1152, subdivision (a) provides:

8 (a) Evidence that a person has, in compromise or from humanitarian
9 motives, furnished or offered or promised to furnish money or any other
10 thing, act, or service to another who has sustained or will sustain or
11 claims that he or she has sustained or will sustain loss or damage, as
12 well as any conduct or statements made in negotiation thereof, is
13 inadmissible to prove his or her liability for the loss or damage or any
14 part of it.

15 Section 1152 was amended in 1987 by unanimous votes of both houses to expand its
16 references to gender, and to add subdivision (b) to the statute. Those amendments constituted a
17 reenactment of the statute itself. (See Cal. Const., art. IV, § 9.) Subdivision (a) is a statutory
18 rule of exclusion and, assuming it applies in criminal prosecutions, it is not "trumped" by
19 Proposition 8's addition of article I, section 28, subdivision (d) to the California Constitution in
20 1982.

21 But section 1152's reference to "liability for . . . loss or damage" has been construed
22 not to refer to criminal liability. See *People v. Muniz* (1989) 213 Cal.App.3d 1508.

23 In *Muniz*, defendant was convicted of the charge of forcible oral copulation, and
24 with inflicting great bodily injury on his victim. The trial court allowed the investigating
25 officer to testify, in rebuttal, "that Muniz confirmed his offer to pay for some of Sherri's
26 medical expenses" over the objection that the testimony was inadmissible under Evidence Code
27 section 1152. "His reliance on this statute is misplaced," the reviewing court stated. "Muniz
28 would have us read into the statute the word 'criminal' as an alternative modifier for liability
[in section 1152's phrase "inadmissible to prove his or her liability for the loss or damage"] yet

1 he offers no reason for us to do so. Nor does the case law interpreting Evidence Code section
2 1152 supply any support for the notion that the statute has any application to criminal cases."
3 (213 Cal.App.3d, at p. 1515.)

4 The settlement in this case was certainly the compromise of a disputed claim.
5 *Muniz*'s holding is not dictum, and that holding has not been set aside by the Legislature or
6 disagreed with or disapproved of by other courts. (*Muniz* was later implicitly disapproved on
7 another point by the Supreme Court in *People v. Escobar* (1992) 3 Cal.4th 740, with explicit
8 apologies for the understandable reliance by the *Muniz* court and other Courts of Appeal on the
9 Supreme Court's earlier and erroneous definition of "great bodily injury" in *People v.*
10 *Caudillo* (1978) 21 Cal.3d 562. See 3 Cal.4th at pp. 749-750.)

11 *Muniz* is binding authority on lower courts to the extent it is pertinent to the facts of
12 a case pending in a trial court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450,
13 455.)

14 C. Defendant Would Not Be Deprived Of The
15 Right Of "Effective Cross-Examination" By
16 Introduction Of Evidence Of His Settlement
17 Of The Chandler Suit

18 Defendant argues that "Under Evidence Code section 1154, Mr. Jackson is
19 precluded from effectively cross-examining any witness who wished to testify concerning the
20 offer or acceptance of a sum of money in satisfaction of a claim."

21 Evidence Code section 1154 provides:

22 Evidence that a person has accepted or offered or promised to accept a
23 sum of money or any other thing, act, or service in satisfaction of a
24 claim, as well as any conduct or statement made in negotiation thereof,
25 is inadmissible to prove the invalidity of the claim or any part of it.

26 It is not clear why defendant relies on section 1154. That provision is intended to
27 prevent the defendant in a civil claim from using the fact that a plaintiff offered to settle his
28 claim for a small amount as evidence that the claim had no real merit if the offer is spurned and

1 the matter goes to trial.

2 Assume, for discussion's sake, the reports in the popular press to the effect that
3 Michael Jackson settled the [REDACTED] lawsuit for more than [REDACTED] is correct. Does
4 defendant really mean to argue that he would like to show that [REDACTED] agreed to settle for
5 "merely" [REDACTED] as evidence of "an admission of weakness by the party who settled or
6 offered to settle" (*Lemer v. Boise Cascade, Inc.* (1980) 107 Cal.App.3d 1, 9) but would be
7 prevented from doing so by section 1154?

8 Defendant frets needlessly. If Evidence Code section 1152 is inapplicable to
9 criminal prosecutions (*People v. Muniz, supra*), so must be the flip-side provision, section
10 1154. Defendant should feel free to argue that [REDACTED] acceptance of [REDACTED]
11 demonstrates the invalidity of his claim.

12 D. Evidence Of The Claim Settlement, If
13 Otherwise Relevant And Material, Is
14 Not "Speculative Because There Is No
15 Evidence Michael Jackson Made The
16 Settlement"

17 Defendant argues that "Permitting evidence of settlement amounts would be
18 speculative because there is no evidence Michael Jackson made the settlement." (Motion 7:8-
19 9.)

20 Nonsense. The "Confidential Agreement and Mutual General Release" that resulted
21 in the settlement of the [REDACTED] lawsuit was subscribed to by Defendant Jackson himself.

22
23 E. Evidence Of The Claim Settlement, If
24 Otherwise Relevant And Material, Is
25 Not Made Inadmissible Because
26 Payment May Have Been Made By
27 An Insurance Company On Defendant's
28 Behalf

Defendant suggests that civil "settlements are often involuntary and dictated by

1 insurance companies," citing *Western Polymer Technology, Inc. v. Reliance Ins. Co.* (1995) 32
 2 Cal.App.4th 14, 23-28. (Motion 5:20-22, fn. 3.) "Settlements in civil suits many times are
 3 dictated by insurance companies who settle claims regardless of an individual's wishes." (*Id.*,
 4 7:9-10.) "Unless the plaintiff is prepared to prove Mr. Jackson paid every dime of these
 5 settlements and that no insurance was involved," the argument runs, "plaintiff's claim of
 6 conscious state or proof of criminality [?] lacks foundation and is irrelevant." (*Id.* 5:20-22; fn.
 7 3.)

8 As noted, the "Confidential Agreement and Mutual General Release" that resulted
 9 in the settlement of [REDACTED] lawsuit was subscribed to by Defendant Jackson himself, and,
 10 as well, by the guardians and the guardian ad litem for [REDACTED]; and by their respective
 11 counsel. Assume defendant foresightfully had obtained insurance that covered his liability for
 12 the torts alleged by [REDACTED] in his complaint. If so, it is reasonable to assume the insurance
 13 carrier was involved in settlement negotiations. But it was defendant's signature on the
 14 Agreement and Release, not the representative of his insurance carrier. If that settlement
 15 obliged the carrier of Mr. Jackson's liability insurance to pay out in excess of [REDACTED] on
 16 behalf of its assured, all that would prove is that defendant, his lawyers and his insurance
 17 carrier were agreed on the wisdom of the proposed settlement.

18 If defendant objected to the settlement but was overruled, he can say so in limine by
 19 providing evidence that is available only to him.

20
 21 E. Evidence Of The Claim Settlement, If
 22 Otherwise Relevant And Material, Is Not
 23 Made Inadmissible Because It "Violates
 24 The Prohibitions In The Statute Of
 25 Limitations" And Is "Time Barred"

26 Defendant seems to argue that if he could not now be *criminally* prosecuted for
 27 sexual offenses against children allegedly committed 13 or more years ago, "to now permit the
 28 suggestion of a settlement amount for some improper act [that long ago] is not only irrelevant,
 but also a speculative [?] violation of the statute of limitations." (Motion 7:10-18.) He cites

1 and discusses *Stogner v. California* (2003) 539 U.S. 607 in support of that argument.

2 *Stogner, supra*, dealt with the propriety of California's attempt to expand a statute
3 of limitations for a given sex offense "retroactively," so as to make a defendant again eligible
4 for prosecution and conviction for an offense after the time limits fixed by the earlier statute of
5 limitations had expired.

6 In a prosecution for a sexual offense committed within the applicable time limits,
7 Evidence Code section 1108 permits the introduction of evidence of other of the defendant's
8 sexual offenses, quite apart from the statute of limitations for the earlier of those offenses.
9 (See, e.g., *People v. Branch* (2001) 91 Cal.App.4th 274 [evidence of molestation committed
10 against victim's mother 30 years earlier properly admitted under section 1108].)

11 Prosecuting a defendant for an offense originally subject to a statute of limitations
12 that had expired by the time he was formally accused of that offense is one thing. Acquainting
13 a jury considering defendant's guilt or innocence for a current offense with evidence of his
14 ~~commission of uncharged and time-barred offenses, for purposes of demonstrating his~~
15 propensity to commit such offenses, is quite another matter. With all due respect, an argument
16 that conflates the two concepts is footless.

17 CONCLUSION

18 Evidence of a payment of in excess of [REDACTED] by or on behalf of Michael
19 Jackson to [REDACTED] to settle [REDACTED] complaint that Jackson had [REDACTED]
20 him in 1993 may reasonably be regarded as an admission that the complaint was factually well-
21 founded. It is relevant for that reason. Evidence of the settlement and the claim that prompted
22 it is not barred by Evidence Code section 1152 or 1154. Neither is it barred by the statute of
23 limitations that limited the time within which that [REDACTED] could be prosecuted criminally.
24 In the event plaintiff decides to seek admission of evidence of defendant's civil settlement,
25 opposition to that effort on the grounds set out in defendant's motion in limine should be
26 overruled.

27 ////
28 ////

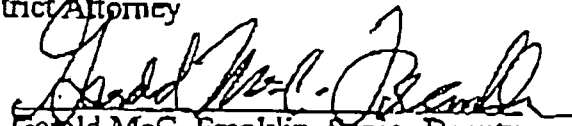
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: January 24, 2005

Respectfully submitted,

THOMAS W. SNEDDON, JR.
District Attorney

By:


Gerald McC. Franklin, Senior Deputy

Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara, California 93101.

Redacted

On January 24, 2005, I served the within PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE ANY REFERENCE TO CIVIL SETTLEMENTS AND AMOUNTS on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER and BRIAN OXMAN, by personally delivering a true copy to Mr. Sanger's office and a true copy to be transmitted to Mr. Mesereau at the confidential facsimile number given us for their Santa Maria branch office, and then causing that copy to be mailed to Mr. Mesereau at the address shown on the Service List.

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

Excuted at Santa Barbara, California on this 24th day of January, 2005.

Gerald McC. Franklin

Gerald McC. Franklin

SERVICE LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

THOMAS A. MESEREAU, JR.
Collins, Mescreau, Reddock & Yu, LLP
1875 Century Park East, No. 700
Los Angeles, CA 90067
FAX: [CONFIDENTIAL]

Attorney for Defendant Michael Jackson

ROBERT SANGER, ESQ.
Sanger & Swysen, Lawyers
233 E. Carrillo Street, Suite C
Santa Barbara, CA 93001
FAX: (805) 963-7311

Co-counsel for Defendant

BRIAN OXMAN, ESQ.
Oxman & Jaroscak, Lawyers
14126 E. Rosecrans Blvd.,
Santa Fe Springs, CA 90670

Co-counsel for Defendant

PROOF OF SERVICE

1013A(1)(3), 1013(c) CCP

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am a citizen of the United States of America and a resident of the county aforesaid. I am employed by the County of Santa Barbara, State of California. I am over the age of 18 and not a party to the within action. My business address is 312-H East Cook Street, Santa Maria, California.

On JANUARY 27, 2005, I served a copy of the attached ORDER FOR RELEASE OF REDACTED DOCUMENTS (PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE ANY REFERENCE TO CIVIL SETTLEMENTS AND AMOUNTS) addressed as follows:

THOMAS A. MESEREAU, JR.
COLLINS, MESEREAU, REDDOCK & YU, LLP
1875 CENTURY PARK EAST, 7TH FLOOR
LOS ANGELES, CA 90067

THOMAS W. SNEDDON, JR.
DISTRICT ATTORNEY'S OFFICE
1112 SANTA BARBARA STREET
SANTA BARBARA, CA 93101

X

FAX

By faxing true copies thereof to the receiving fax numbers of: (805) 456-0699 (Thomas Mesereau, Jr.); (805) 568-2398 (Thomas Sneddon), Said transmission was reported complete and without error. Pursuant to California Rules of Court 2005(i), a transmission report was properly issued by the transmitting facsimile machine and is attached hereto.

MAIL

By placing true copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States Postal Service mail box in the City of Santa Maria, County of Santa Barbara, addressed as above. That there is delivery service by the United States Postal Service at the place so addressed or that there is a regular communication by mail between the place of mailing and the place so addressed.

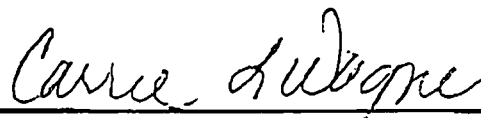
PERSONAL SERVICE

By leaving a true copy thereof at their office with the person having charge thereof or by hand delivery to the above mentioned parties.

EXPRESS MAIL

By depositing such envelope in a post office, mailbox, sub-post office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service for receipt of Express Mail, in a sealed envelope, with express mail postage paid.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 27TH day of JANUARY, 2005, at Santa Maria, California.



CARRIE L. WAGNER