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19  
20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
21 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION  
22

23 THE PEOPLE OF THE STATE OF  
24 CALIFORNIA,

25 Plaintiffs,

26 vs.

27 MICHAEL JOSEPH JACKSON,

28 Defendant.

) Case No. 1133603

) MR. JACKSON'S RESPONSE TO THE  
) GOVERNMENT'S BRIEF REGARDING  
) EVIDENTIARY FOUNDATIONS FOR  
) DOCUMENTS

) DATE: TBA  
) TIME: TBA  
) DEPT: SM-8

**ORIGINAL**

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

3 Mr. Jackson objects to the introduction of Exhibits 400 through 423 on the grounds that:  
4 (1) the prosecution's proffered testimony does not satisfy the requirements of authentication; (2)  
5 there is a genuine dispute as to the contents of the writings; and (3) the prosecution's proffered  
6 evidence is hearsay and is not subject to any exceptions to the hearsay rule.

7 There is a question as to the authenticity of all of these documents. It is unclear who  
8 created many of these documents and for what purpose they were created. The validity of the  
9 signatures on the documents is also in serious question.

10 In particular, the Court should take a close look at the documents that purport to contain  
11 Michael Jackson's signatures. Exhibit 406, page 15, for instance, is not Michael Jackson's  
12 signature.<sup>1</sup> The Court should compare that signature to the signatures on the last page of Exhibit  
13 417, the first page of Exhibit 418, and the second page of Exhibit 422. These cannot all be  
14 authentic signatures based on the differences in slant, curvature of letters, flourish and other  
15 obvious aspects. This is why authentication is required and the haphazard approach suggested  
16 by the prosecution should be rejected.

17 The prosecution attempts to justify the introduction of many of these documents as  
18 statements of co-conspirators in furtherance of a conspiracy. The problem with this argument is  
19 that there is no evidence that these documents were ever communicated to anyone. The  
20 prosecution has failed to satisfy the first two prongs of Evidence Code Section 1223 because it  
21 cannot demonstrate who the declarant was or when the documents were made. Documents  
22 sitting in file cabinets cannot further a conspiracy without being communicated. Furthermore,  
23 the argument that these documents are admissible as co-conspirator hearsay statements begs the  
24 question of whether the documents are authentic.

25 EXHIBIT 400

26 \_\_\_\_\_  
27 <sup>1</sup> The prosecution served us with this brief yesterday. We have not had time to  
28 adequately prepare a handwriting analysis.

1 The document provided to defense counsel is dated June 28, 2001, and does not match  
2 the description of the document dated August 13, 2001, listed in the prosecution's brief. Neither  
3 the provided or described document demonstrates any type of conspiracy. At best, the document  
4 appears to represent some type of business relationship regarding a project that was completed in  
5 2001.

6 The Court should reject this evidence, pursuant to Evidence Code Section 352, on the  
7 grounds that its introduction would be cause prejudice, consume undue time and that it contains  
8 to probative value regarding the matters that are before the jury.

9 EXHIBIT 401

10 This document relates to "What More Can I Give," a musical venture that was completed  
11 in 2001. It appears to be an agreement between the artist who created "What More Can I Give,"  
12 and Mr. Jackson. It appears to supercede or conflict with the June 28, 2001 document provided  
13 to defense counsel in Exhibit 400. Determining the meaning of these documents is a matter of  
14 contract interpretation that would require expert testimony. This document has no probative  
15 value for events that allegedly occurred in 2003.

16 EXHIBIT 402

17 This document, purported to be a balance sheet, was completed on November 11, 2001.  
18 There is no indication that it was communicated or delivered to anyone. Its authorship and  
19 authenticity are not apparent. This document that Mr. Jackson was in a partnership with anyone.  
20 The introduction of this document would serve no purpose other than to distract the jury.  
21 Furthermore, the introduction of this document would violated the Court's ruling regarding  
22 detailed financial evidence.

23 EXHIBIT 403

24 This appears to be a file of emails. Most of the emails appear to be from a CBS news  
25 reporter who figures prominently in other aspects of this case. Her modus operandi seems to be  
26 calling various parties associated with this case, one after another, in an attempt to obtain gossip.  
27 There is no proof as to who created the "FIRES BREWING" label and it is nothing more than  
28

1 rank hearsay. With regard to the last email, allegedly from Ronald Konitzer, there is no  
2 authentication that it was actually sent by Konitzer.

3 EXHIBIT 404

4 These messages are hearsay and are not subject to any exception for truth that anyone  
5 ever called Mr. Schaffel. Even if a logical leap of faith was made, there is no indication of the  
6 content of the telephone conversations in question or relevance, other than linking the  
7 prosecution's case with the names of well known celebrities.

8 The use of the title "MJJ Productions" does not establish anything. MJJ Productions,  
9 although not proven by the prosecution, is Mr. Jackson's business. Neverland Valley  
10 Entertainment is Mr. Schaffel's business. The fact that Mr. Schaffel may have had a list with  
11 "MJJ" on top provides no relevant information to the jury and only serves to invite unfounded  
12 speculation. This would be the same situation, if, for instance, a document containing the words  
13 "Office of the Santa Barbara District Attorney" was found in someone's home. The words on the  
14 document would not prove that the person in possession of the document had a relationship of  
15 any sort with the District Attorney's Office, and certainly would not prove that the person had a  
16 conspiratorial relationship with Mr. Sneddon, personally.

17 EXHIBIT 405

18 The prosecution claims that this evidence is offered to show consciousness of guilt on the  
19 part of Mr. Jackson. The problem with this is that this document has nothing to do with Mr.  
20 Jackson. If it could be authenticated, which it is not, it might show consciousness of guilt of Bell  
21 Yard (not a co-conspirator), offering a statement which may or may not be true. It should also be  
22 noted that this is exactly the sort of statement that Janet Arvizo testified she made to Brad Miller  
23 on February 16, 2003, "from the heart."

24 EXHIBIT 406

25 "Evinces the existence" is not a recognized legal doctrine or standard. The use of this  
26 non-doctrine is directly related to the fact that there is not an adequate legal foundation to  
27 introduce this document. This is hearsay not subject to any exception.

1 With regard to pages 5-9, there is not evidence that Mr. Jackson ever received or read  
2 these documents. What the documents show, however, is communications between attorneys  
3 discussing language for a document that may or may not have been executed.

4 Page 15 is a document that contains a signature that is not Mr. Jackson's signature. As  
5 noted in the introduction, the various signatures on these documents are not authenticated and  
6 appear to be forgeries.

7 EXHIBIT 407

8 These documents appear to be copies of unauthenticated emails. The emails include  
9 references to actor Carey Feldman, contain the ramblings of a CBS news reporter, and appear to  
10 have nothing to do with any conspiracy. The Court should exclude these emails under 352 as  
11 prejudicial, unduly time consuming, and not probative.

12 EXHIBIT 408

13 This document should be excluded based on the Court's ruling that detailed financial  
14 evidence be excluded. There is no indication of how this disk was created, what it was intended  
15 for, or who created it. It is nothing more than electronic doodles. It could easily be the product  
16 of a person day dreaming about making money.

17 EXHIBIT 409

18 This list of phone numbers includes Jack Susman, Gavin Arvizo and Karen Faye. Are  
19 these people now co-conspirators? There is no indication that this list was communicated to  
20 anyone. There is no authentication of who created it or when it was created. The fact that  
21 someone has names and numbers on a list does not prove anything. More importantly, Mr.  
22 Jackson's name and number is not on the list.

23 EXHIBIT 410

24 Randomly writing "softcore," "Maddona," or "sex" on a piece of paper has absolutely no  
25 probative value to the issues that are before the jury. How can these statements be in furtherance  
26 of a conspiracy when there is no indication that they were communicated to anyone? In  
27 particular, the prosecution claims that a "Yellow Pad with Mark Geragos" ("Gagus," actually)

1 mobile phone number on it along with adult teen erotica magazine titles and Herb Ritts Book" is  
2 "a statement in furtherance of the conspiracy." This is simply preposterous. The prosecutor does  
3 not even attempt to explain how this could further a conspiracy.

4 It is mere speculation to claim that a note stating "Take care of Janet and family \$ - fund  
5 for children remain a family w/- him" is in furtherance of a conspiracy. This statement could  
6 easily relate to Jay Jackson's request for money or to Janet Arvizo's request that she remain part  
7 of the family.

8 EXHIBIT 411

9 It is disingenuous on the part of Mr. Auchincloss to claim that these cars were rented to  
10 further a conspiracy. He is well aware that Vincent Amen informed the prosecution, after he was  
11 granted immunity, that these cars were rented to transport the Arvizos to and from there various  
12 shopping trips and restaurant meals, after the Neverland staff began complaining that they were  
13 too demanding in their constant requests to be chauffeured around. Furthermore, the documents  
14 do not give any indication the vehicles were used as part of a conspiracy.

15 EXHIBIT 412

16 There is nothing conspiratorial about preparing a proper model release with the assistance  
17 of an attorney. The unsigned documents do nothing to tie Mr. Jackson to a conspiracy.

18 EXHIBIT 413

19 These documents appear to be drafts of legitimate contracts. This evidence is cumulative  
20 and the fact that Schaffel possessed unsigned copies of the documents is irrelevant. These  
21 documents are not authenticated and should be excluded.

22 EXHIBIT 414

23 Interestingly, the prosecution is seeking to withdraw this exhibit, since it is one of the  
24 documents used by defense counsel to cross-examine Janet Arvizo. This is because the  
25 documents shed light on Janet Arvizo's false claims that she and her family were imprisoned.  
26 The records indicate that she was provided with much more than the one meal a day that she  
27 claimed she was given, while under oath. The list of expenses indicates that Janet Arvizo

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MR. JACKSON'S RESPONSE TO THE GOVERNMENT'S BRIEF REGARDING EVIDENTIARY  
FOUNDATIONS FOR DOCUMENTS

1 enjoyed steak dinners in the private company of Vincent Amen and that the family make a pit  
2 stop at Subway Sandwiches during the "final escape" from Neverland.

3 EXHIBIT 415

4 This document is not authenticated and it is simply a list of computer computations.

5 EXHIBIT 416

6 This is the handwritten summary of 414 and the receipts that document those purchases.  
7 The prosecution is seeking to withdraw this exhibit. Interestingly, Mr. Auchincloss is seeking to  
8 withdraw these documents, which would seem to form the basis of Exhibit 414, because they  
9 prove that Janet Arvizo lied to the jury.

10 EXHIBIT 417

11 There is no evidence of who prepared these documents, when they were prepared, or why  
12 they were prepared. Vincent Amen, under use immunity, informed the government that he  
13 prepared the first part of this document as a draft. Now, the government seeks to attribute this  
14 document to Mark Schaffel, despite knowing that he is not its author. The statements it contains  
15 are as harmful to Janet Arvizo as they are to anyone else.

16 Pages 3-6 tend to show that David LeGrand attempted to expose that Dieter Weisner and  
17 Ronald Konitzer were stealing from Michael Jackson. As a result, Konitzer and Weisner fired  
18 him and this document reflects their plan to never again allow a lawyer to know the whole  
19 picture of their scheme to rip off Mr. Jackson. It is ridiculous to claim that Mr. Jackson was  
20 conspiring to keep the whole picture from himself. The fact that Mr. Auchincloss wants to argue  
21 that this means Mr. Jackson was part of the conspiracy illustrates the kind of non-probative  
22 evidence that the Court should exclude.

23 Pages 9-10 do nothing to establish furtherance of a conspiracy.

24 EXHIBIT 418

25 There is not an adequate legal foundation for the introduction of these documents. There  
26 is a serious question of authenticity with regard to Mr. Jackson's purported signature and the fact  
27 that the receipt is unsigned demonstrates its lack of probative value.

1 EXHIBIT 419

2 There has been no evidence whatsoever that Paul Hugu is part of the prosecution's  
3 conspiracy theory. His name has never come up in this case. Simply calling something an  
4 "authenticated admission" does not make it so.

5 EXHIBIT 420

6 These emails have not been authenticated and there is no indication that Mr. Jackson was  
7 involved in any of these communications. The prosecution has failed to meet the burden of  
8 Evidence Code Section 1223.

9 EXHIBIT 421

10 It appears that the fax cover sheet has nothing to do with the document. The cover is  
11 dated April 9, 2003, but the document itself bears a footer, indicated it was created on May  
12 29, 2003. The title states "CBS" but the document is in regard to Fox Television. Furthermore,  
13 this is an unsigned contract and it is not at all clear that this document was executed.

14 EXHIBIT 422

15 This document should be excluded subject the Court's ruling excluding detailed financial  
16 evidence.

17 EXHIBIT 423

18 This document should be excluded subject the Court's ruling excluding detailed financial  
19 evidence.



1 CONCLUSION

2 The Court should exclude these documents for the above stated reasons.


3 Dated: April 21, 2005

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

5 SANGER & SWYSEN  
6 Robert M. Sanger

7 OXMAN & JAROSCAK  
8 Brian Oxman

9 For ~~BY~~

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**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 301 East Cook Street, Suite A, Santa Maria, California 93454.

On April 21, 2005, I served the foregoing document: MR. JACKSON'S RESPONSE TO THE GOVERNMENT'S BRIEF REGARDING EVIDENTIARY FOUNDATIONS FOR DOCUMENTS on the interested parties in this action by depositing a true copy thereof as follows:

Tom Sneddon  
Gerald Franklin  
Ron Zonen  
Gordon Auchincloss  
District Attorney's Office  
312 East Cook Street  
Santa Maria, CA 93454


**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 FACSIMILE** - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties at the above-referenced number.

**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 April 21, 2005, at Santa Maria, California.

  
Stephen K. Dunkle