

1 Thomas A. Mesereau, Jr. (SBN 91182)
Susan C. Yu (SBN 195640)
2 COLLINS, MESEREAU, REDDOCK & YU
1875 Century Park East, 7th Floor
3 Los Angeles, CA 90067
Telephone: 310-284-3120
4 Facsimile: 310-284-3133

5 Robert M. Sanger (SBN 58214)
SANGER & SWYSEN
6 233 E. Carrillo Street, Suite C
Santa Barbara, California 93101
7 Telephone: 805-962-4887
Facsimile: 805-963-7311

8 Brian Oxman (SBN 072172)
9 Oxman & Jaroscak
14126 East Rosecrans
10 Santa Fe Springs, CA 90670
Telephone: 562-921-5058
11 Facsimile: 562-921-2298

12 Attorneys for Defendant
MICHAEL JOSEPH JACKSON

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SANTA BARBARA
16 SANTA MARIA DIVISION
17

18 THE PEOPLE OF THE STATE OF CALIFORNIA,)
19 Plaintiff,)
20 vs.)
21 MICHAEL JOSEPH JACKSON)
22 Defendant.)

CASE NO. 1133603

MR. JACKSON'S MOTION IN LIMINE
TO EXCLUDE REFERENCE TO
BOOKS, MAGAZINES, PHOTOGRAPHS,
AND COMPUTER IMAGES OF
DISROBED INDIVIDUALS AND
ACCOMPANYING DOCUMENTS

23 TIME: 9:30 a.m.
DATE: January 28, 2005
24 PLACE: Department SM-8

25 FILED UNDER SEAL
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 18 2005

GARY M. BLAIR, Executive Officer

By Carrie L. Wagner
CARRIE L. WAGNER, Deputy Clerk

* Unsealed pursuant
to 6/16/05 court order

05 JAN 18 PM 9:36
SANTA MARIA DIVISION
CLERK'S OFFICE

1 A. Introduction.

2 Mr. Michael Jackson submits this Memorandum in support of his Motion in Limine to Exclude
3 Reference to Books, Magazines, Photographs, and Computer Images of Disrobed Individuals. Mr. Jackson
4 requests the court make the following orders in limine:

5 (1) An order prohibiting the attorneys for plaintiff from offering any evidence of and prohibiting
6 plaintiff's attorneys and witnesses from making any references in the presence of jurors or prospective
7 jurors of any books, magazines, photographs, computer content, or other depictions of suggestive or
8 sexually explicit content or of disrobed individuals seized from any location outside of Neverland Ranch
9 located at [REDACTED] Los Olivos, CA;

10 (2) An order prohibiting the attorneys for plaintiff from offering any evidence of and prohibiting
11 plaintiff's attorneys and witnesses from making any reference in the presence of jurors or prospective jurors
12 of any books, magazines, photographs, computer content, or other depictions of suggestive or sexually
13 explicit content or of disrobed individuals seized at Neverland Ranch unless and until the court has ruled
14 that a proper foundation has been laid for admissibility and the defense has had an opportunity to address
15 the court in limine;

16 (3) An order requiring the attorneys for plaintiff to instruct their witnesses of the court's
17 exclusionary order on this motion; or in the alternative,

18 (4) An order requiring the attorney for the plaintiffs, prior to making any reference, comment, or
19 assertions concerning any Schaffel computer photograph or physical depiction, to approach the bench and
20 make an offer of proof to the court so that the court, prior to any presentation of the above-referenced
21 evidence to the jury, can make a preliminary determination of the relevancy, admissibility, and foundation
22 thereof.

23 Mr. Jackson's Motion is based on the following grounds:

24 (1) These orders are necessary to insure Mr. Jackson will be accorded a fair trial and the trial record
25 of this case will not be tainted with reversible error to Mr. Jackson;

26 (2) The introduction of evidence of photographs or physical depictions seized from outside of
27 Neverland Ranch have no connection to any issue in this proceeding and are irrelevant;

1 (3) The introduction of evidence of photographs or physical depictions seized from Neverland
2 Ranch lack foundation and relevance, and should not be presented to the jury until plaintiff establishes
3 these preliminary facts;

4 (4) The introduction of evidence of books, magazines, photographs, and computer images
5 belonging to third parties lacks probative value and any probative value is outweighed by their prejudicial
6 effect because they have no connection to Michael Jackson or any nexus to this case.

7 **B. Items showing Disrobed Individuals in the Private Quarters of Michael**
8 **Jackson's Business Associates have No Connection to any Issue of this Case.**

9 Plaintiff has executed more than 110 search warrants and dozens of subpoenas directed to numerous
10 Michael Jackson business associates (hereafter "outside" seized materials). The police seized numerous
11 items, papers, computers, and files from the homes and businesses of these individuals, including books,
12 magazines, and images of disrobed individuals. All of these seizures had nothing to do with Michael
13 Jackson, and the fact that business associates had sexually oriented, yet perfectly legal materials, in their
14 possession is not a basis to make any claims or inferences regarding the character of these individuals, nor
15 any of the issues involved in this case.

16 When the police searched Neverland Ranch on November 18, 2003, they seized numerous books,
17 magazines, photographs, and computer images which also showed disrobed individuals. (Hereafter
18 "inside" seized materials). However, these items also had no connection to Michael Jackson, and plaintiff
19 will not be able to establish any foundation for their presentation in evidence in this case. These
20 photographs and images do not depict any crime, let alone the alleged crime in this case, nor do they
21 establish the participation of any person in any of the acts alleged to be part of this proceeding.

22 The materials from both "inside" and "outside" Neverland Ranch are salacious with no probative
23 value, and there is no legitimate purpose for their introduction into evidence. Plaintiff cannot establish that
24 Mr. Jackson had any connection to any of the "outside" materials, and he had little relevant connection to
25 the "inside" items. None of the physical depictions show Michael Jackson, nor have any nexus to the
26 crimes alleged in this proceeding. Any suggested connection between the photographs, magazines, books,
27 and computer images and the crimes alleged in this case is speculation lacking foundation.

1 Plaintiff should not be permitted to introduce salacious material that creates an inference that Mr.
2 Jackson associates with individuals who keep such items in their possession because such an inference is
3 not only lacking in foundation, but also it lacks any probative value that isn't outweighed by its prejudicial
4 effect. Mr. Jackson moves in limine that the "outside" books, magazines, photographs, and computer
5 generated images of disrobed individuals seized at the homes and living quarters of business associates be
6 excluded from evidence because they are irrelevant and lack foundation. As to "inside" items seized on
7 Neverland Ranch premises, no foundation can be laid establishing a nexus between them and Michael
8 Jackson, let alone the crimes alleged to have occurred in this case, and the court should hold a preliminary
9 fact hearing regarding them before plaintiff is permitted to make reference to them.¹⁷

10 **C. The Photographs and Physical Depictions are Irrelevant to the Alleged Crimes.**

11 This motion will primarily address items seized "outside" of Neverland Ranch because the
12 individuals whose homes were raided are Mr. Jackson's business contacts whose private books and
13 magazines have no relevance to this case. What they do in the privacy of their homes or living quarters is
14 their individual responsibility. Plaintiff has not and cannot establish a nexus between these seized items
15 showing disrobed women and men and Michael Jackson, and all of these books, magazines, photographs,
16 and computer images are irrelevant to any issue in this case.

17 In Pacific Gas & Elec. Co. v. Hacienda Mobile Home Park, 45 Cal. App. 3d 519, 530 (1975), the
18 court stated:

19 "Photographic evidence may, in a proper case, be used as substantive evidence. (People v.
20 Bowley (1963) 59 Cal.2d 855, 859-860; People v. Moran (1974) 39 Cal.App.3d 398, 407-408.)

21 However, the proffered evidence must be relevant. It is elementary that before a court can consider
22 "similar situations," such as the ones contended for by Hacienda, the situations must be shown to be

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24 ¹⁷ Allowing these materials into evidence would result in a violation of Mr. Jackson's right to a fair trial,
25 due process of law, a fair and impartial jury, and violate the constitutional guarantees of the 4th, 5th, 6th,
26 and 14th Amendments to the United States Constitution and the California Constitution. Plaintiff is
27 offering these items only because of the public nature of these proceedings and Mr. Jackson's notoriety.
28 The effort to inflame the jury deprives Mr. Jackson of equal protection of the laws and the privileges and
immunities guaranteed others. Many of these items have not been provided in discovery, and plaintiff's
effort to introduce them will deprive Mr. Jackson of the right to adequately prepare for trial, along with
destroying his rights to a fair trial.

1 similar. Evidence Code section 403 provides in pertinent part: "Determination of foundational and
2 other preliminary facts where relevancy, personal knowledge, or authenticity is disputed. (a) The
3 proponent of the proffered evidence has the burden of producing evidence as to the existence of the
4 preliminary fact, and the proffered evidence is inadmissible unless the court finds that there is
5 evidence sufficient to sustain a finding of the existence of the preliminary fact, when: (1) The
6 relevance of the proffered evidence depends on the existence of the preliminary fact." (Cf. Evid.
7 Code, § 354.)."

8 The preliminary facts necessary to the admissibility of the photographs and physical depictions of
9 disrobed women and men found at locations "outside" of Neverland Ranch do not exist, and these items
10 have no connection to the alleged crimes or issues of this case. Plaintiff cannot present any evidence that
11 the computer depictions or photographs were part of any conspiracy, used in any crime, or have any
12 connection to any of the complaining witnesses. They are not relevant to any issue before the court and
13 have no probative value.

14 **D. The Books, Magazines, Photographs, and Physical Depictions of Disrobed Individuals**
15 **Have No Connection to the Alleged Crimes.**

16 There is no nexus or connection between this case and the photographs and items seized "outside of
17 Neverland Ranch showing disrobed individuals. It is improper to introduce into evidence items that have
18 no nexus to this proceeding. There is no basis for the prosecution to claim any legitimate purpose to
19 present these items to the jury.

20 Unnecessary admission of offensive photographs can deprive a defendant of a fair trial and require
21 reversal of a judgment. People v. Marsh, 175 Cal. App. 3d 987, 997-98 (1985) (photographs unrelated to
22 issues of the case should not be admitted). Physical objects that are not connected to the alleged crime
23 should not be permitted into evidence. People v. McCall, 10 Cal. App. 2d 503, 505 (1935)(prosecution for
24 murder where deceased fell to pavement fracturing skull, it was reversible error to admit wrench, hammer
25 handle, and tire iron as possible weapons); People v. Smith, 55 Cal. App. 324, 332 (1921)(in prosecution
26 for murder by cyanide, reversible error to introduce can of cyanide kept in tool room at defendant's place of
27 employment where no evidence showed defendant knew of or saw it was there); People v. Locigno, 193
28 Cal. App. 2d 360, 379 (1961)(error to introduce guns not connected with crime or defendant); People v.

1 Henderson, 58 Cal. App. 3d 349, 360 (1976)(evidence of weapon not used in the crime is inflammatory and
2 irrelevant because it leads jury to believe defendant is type of person who surrounds himself with deadly
3 weapons)

4 There is no showing that Michael Jackson knew of any of these items, nor can there be any such
5 showing because the undeniable fact is he had never seen these things. More important, Mr. Jackson's
6 knowledge of the existence of these items is not an issue in this proceeding. These items are not connected
7 to this case and should be excluded from evidence.

8 **E. Introduction of the Seized Images of Disrobed Individuals Would Be Prejudicial and**
9 **Any Probative Value is Outweighed by their Prejudicial Impact.**

10 These photographs and images do not depict any crime, let alone the alleged crime in this case, nor
11 do they establish the participation of any person in any of the acts alleged to be part of this proceeding. The
12 photographs are salacious with no probative value in this case. There is no legitimate purpose for their
13 introduction into evidence and any probative value they might have, which escapes all rational evaluation,
14 is far outweighed by the prejudicial impact they would have on the jury.

15 Evidence that inflames the jury with no probative value to any issue of the case should be excluded
16 under Evidence Code section 352. People v. Burns, 109 Cal. App. 524, 541-42 (1952). As in People v.
17 Smith, 33 Cal. App. 3d 51, 69 (1978), disapproved on other grounds in People v. Wetmore, 22 Cal. 3d 318,
18 324 n. 5 (1978), “[t]hey supplied no more than a blatant appeal to the jury’s emotions. Their prejudice-
19 arousing effect heavily outweighed their probative value.” See also People v. Gibson, 56 Cal. app. 3d 119,
20 135 (1976). In Asuagyo v. Compton & Knowles Corp., 183 Cal. App. 3d 1032, 1038 (1986), the court
21 stated:

22 “The trial court is vested with very broad discretion in ruling on the admissibility of evidence. A
23 trial court acts within its discretion when excluding cumulative and time consuming evidence,
24 (Evid. Code, sec. 352; Vossler v. Richards Manufacturing Co., (1983) 143 Cal.App.3d 952, 961.)
25 The weighing process under section 352 depends upon the trial court’s consideration of the unique
26 facts and issues of each case, rather than upon mechanically automatic rules. (People v. Yu (1983)
27 143 Cal.App.3d 358, 377.)”
28

1 There is no relevant purpose for which these books, magazines, photographs, and physical
2 depictions of disrobed individuals can or should be offered in this case. The fact that people with whom
3 Michael Jackson does business have these items in their possession, at their homes, has no probative value
4 in this proceeding, and any probative value is far outweighed by the prejudicial and salacious impact they
5 would have on the jury. The court should exclusive them as remote, irrelevant, and unduly prejudicial.

6 **F. Plaintiff Cannot Establish A Foundation for the Admission of Photographs and**
7 **Depictions of Disrobed Women and Men.**

8 Plaintiff cannot establish the foundational facts of who utilized, controlled, or had access to these
9 books, magazines, photographs, or computers, let alone that Michael Jackson had access to them. As to
10 items seized "outside" Neverland Ranch, no foundational facts exist concerning the custody and control of
11 the seized items that demonstrates Michael Jackson was ever near them, and as to items "inside" Neverland
12 Ranch, plaintiff should be required to show proper foundational facts. Lacking foundation, the items
13 should be excluded form evidence.

14 To permit introduction of a photograph found on a computer, a foundation should be laid showing
15 who created the photograph, the purpose for which the photograph was created, and when the photographs
16 were generated. Evidence Code sec. 400; People v. Doggett, 83 Cal. App. 2d 405, 409-10 (1948). To be
17 admissible in evidence as probative evidence, foundational facts must be established of when, in point of
18 time, the picture was taken, the place where it was taken, and that the defendants are connected to or
19 depicted in the photographs. People v. Bowley, 59 Cal. 2d 855, 859 (1963). To be admissible in evidence
20 a photograph must be authenticated and shown by evidence or testimony that it accurately depicts what it
21 purports to show. People v. Mayfield, 14 Cal.4th 668, 757 (1997).

22 The prosecution cannot provide the foundational facts for these seized items. There can be no
23 showing who had access to the information or why the information was in the location it was found.
24 Materials found outside Neverland Ranch is irrelevant to this proceeding, and materials found on
25 Neverland Ranch suffer from a lack of foundation.

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1 F. Conclusion.

2 For the foregoing reasons, Mr. Michael Jackson requests his Motion in Limine to Exclude
3 Reference to Books, Magazines, Photographs, and Computer Images of Disrobed Individuals be granted.
4

5 DATED: January 18, 2005

Respectfully submitted,

6 Thomas A. Mesereau, Jr.
7 Susan Yu
8 COLLINS, MESEREAU, REDDOCK & YU

9 Robert M. Sanger
10 SANGER & SWYSEN

11 Brian Oxman
12 OXMAN & JAROSCAK

13 By: 

14 R. Brian Oxman
15 Attorneys for defendant
16 Mr. Michael Jackson