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13 Attorneys for Defendant
14 **MICHAEL JOSEPH JACKSON**

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAY 25 2005

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

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

17 THE PEOPLE OF THE STATE OF
18 CALIFORNIA,

19 Plaintiffs,

20 vs.

21 MICHAEL JOSEPH JACKSON,

22 Defendant.

) Case No. 1133603

) MOTION TO EXCLUDE TESTIMONY OF
) CHARLIE MICHAELS AND BLANCA
) FRANCIA

) Honorable Rodney S. Melville

) Date: TBD

) Time: TBD

) Dept: SM 8

23 TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE DISTRICT
24 ATTORNEY OF THE COUNTY OF SANTA BARBARA, TOM SNEDDON, AND DEPUTY
25 DISTRICT ATTORNEYS GERALD FRANKLIN, RON ZONEN, GORDON AUCHINCLOSS
26 AND MAG NICOLA:

27 Please take notice that the Defendant does hereby move and will further move on a date
28 determined by the Court, at 8:30 a.m., or as soon thereafter as counsel may be heard in

MOTION TO EXCLUDE TESTIMONY OF CHARLIE MICHAELS AND BLANCA FRANCIA

1 Department 8 of the above entitled court, for an order prohibiting Charlie Michaels and Blanca
2 Francia from testifying as rebuttal witnesses on the grounds that they are not proper rebuttal
3 witnesses.


4 This motion is based on this Notice of Motion, and the Memorandum of Points and
5 Authorities attached hereto, the papers, records and files in this case, and such other matters as
6 may be received by the Court at or after the hearing scheduled on this motion.

7 Dated: May 25, 2005

8 Respectfully submitted.

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

11 SANGER & SWYSEN
12 Robert M. Sanger
Stephen K. Dunkle

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14 For By: 
15 Robert M. Sanger
16 Attorneys for Defendant
MICHAEL JOSEPH JACKSON

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2 MEMORANDUM OF POINTS AND AUTHORITIES

3 INTRODUCTION

4 The Court should remember that there is a high risk of prejudice to Mr. Jackson because
5 this "rebuttal" evidence is 1108 evidence. This evidence was improperly held back and should
6 have been presented in the prosecution's case in chief. It is not proper rebuttal and should be
7 excluded for those reasons no matter what. However, it is also rebuttal evidence offered on 1108
8 matters and, therefore, there is an additional reason to exclude it to prevent undue prejudice.

9 There are no reported decisions where Section 1108 evidence is offered by way of third
10 party witnesses where the alleged victims themselves deny the conduct under oath. We are now
11 faced with the situation where the Section 1108 alleged victims deny that anything occurred and
12 witnesses, all of who either went to the tabloids for money, or wrote books for money, or sued
13 Mr. Jackson for money, or all of the above, are being offered to refute the testimony of the
14 alleged victim. Here, the proffered rebuttal witness is, once again, a former employee who went
15 to the tabloids and received money to appear on Diane Dimond's television show, Hard Copy.
16 The Court should recognize that this sort of testimony is of little probative value and is
17 particularly likely to result in undue prejudice.

18 There is no question that the District Attorney wants to end his case with a flurry of 1108
19 evidence to distract the jury from the comprehensive impeachment of the Arvizos in the current
20 case. In essence, the prosecutions seems to be banking on the prejudicial nature of this rebuttal
21 evidence. The Court should not allow it.

22 ARGUMENT

23 I.

24 CHARLIE MICHAELS AND BLANCA FRANCA ARE NOT PROPER REBUTTAL
25 WITNESSES

26 The Court should prohibit the prosecution from calling Ms. Michaels as a rebuttal witness
27 because her testimony is not proper rebuttal testimony. According to the prosecution's initial
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1 witness list, the prosecution intended to call Ms. Michaels as a Section 1108 witness. According
2 to the prosecution's Section 1108 motion, Ms. Michaels would have testified that: (1) she saw
3 Mr. Jackson touching Wade Robson's genitals while showing him a dance move; (2) she saw
4 Mr. Robson's mother, Joy Robson, crying as a result of not being able to enter a theater at
5 Neverland where Mr. Jackson and Mr. Robson were rehearsing; and (3) Ms. Robson told her she
6 was upset because Mr. Jackson was separating her from her son. (Motion, page 34.) The
7 prosecution chose not to call Ms. Michaels as a witness in their case in chief. They should not
8 be allowed to "sandbag" the defense and call her now.

9 The rebuttal portion of the case is reserved for evidence that actually rebuts evidence in
10 the defense case in chief. "The parties may then respectively offer rebutting testimony only,
11 unless the court, for good reason, in furtherance of justice, permit them to offer evidence upon
12 their original case." (Penal Code Section 1093(d).) In *People v. Carter* (1957) 48 Cal.2d 737, the
13 California Supreme Court stated that:

14 The purpose of the restriction in that section is to assure an orderly presentation of
15 evidence so that the trier of fact will not be confused; to prevent a party from
16 unduly magnifying certain evidence by dramatically introducing it late in the trial;
17 and to avoid any unfair surprise that may result when a party who thinks he has
18 met his opponent's case is suddenly confronted at the end of trial with an
19 additional piece of crucial evidence. Thus proper rebuttal evidence does not
20 include a material part of the case in the prosecution's possession that tends to
21 establish the defendant's commission of the crime. It is restricted to evidence
22 made necessary by the defendant's case in the sense that he has introduced new
23 evidence or made assertions that were not implicit in his denial of guilt.

20 Here, the prosecution is seeking to offer prejudicial 1108 evidence at the end of the trial under
21 the guise of putting on a rebuttal case. This is just the type of dramatic tactic the Supreme Court
22 disapproved.

23 **A. THE PROFFERED TESTIMONY REGARDING WADE ROBSON IS NOT**
24 **PROPER REBUTTAL TESTIMONY**

25 Ms. Michaels testimony would not rebut any particular evidence in the defense case in
26 chief. The fact that Mr. Robson denied that he was ever molested by Mr. Jackson does not open
27 the door to Ms. Michaels' testimony. Mr. Jackson has consistently denied ever molesting Mr.
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1 Robson or anyone else. Mr. Robson has consistently denied ever being molested by Mr. Jackson.
2 The prosecution has been aware of these denials for more than a decade. The prosecution did not
3 call Mr. Robson as a witness because they knew he would deny it. Now that he has denied it,
4 they wish to call a witness whom they could have called all along. This is improper rebuttal. As
5 argued above, this type of rebuttal is particularly likely to result in prejudice because it is 1108
6 evidence. As such, the Court should prohibit its admission.

7 **B. THE PROFFERED TESTIMONY REGARDING THE INCIDENT REGARDING**
8 **MS. ROBSON IS NOT PROPER REBUTTAL TESTIMONY**

9 To the extent that Ms. Michael's testimony would "rebut" the testimony of Joy Robson
10 regarding the alleged Mother's Day crying incident, Mr. Jackson objects on the grounds that this
11 testimony is inadmissible hearsay.

12 This incident was not raised on direct examination. On cross-examination, the
13 prosecution asked Ms. Robson about this event. She stated that she remembered crying because
14 she had not seen her son all day and that someone at the ranch had asked why she was upset. She
15 did not remember, however, telling Charlie Michaels that she felt Mr. Jackson was separating her
16 from her son. Mr. Sneddon then showed her a decade old deposition in which she had stated that
17 she had told that to Ms. Michaels. She stated that she did not remember saying that but conceded
18 that she obviously said it. (RT 9234:27- 9236:20.) The Court should prohibit Ms. Michaels
19 from testifying about this incident because Ms. Michaels' testimony is not proper impeachment.
20 It is hearsay that is not subject to any exception.

21 **C. MS. FRANCIA'S TESTIMONY APPEARS TO BE SUBJECT TO THE SAME**
22 **OBJECTIONS**

23 With regard to Ms. Francia, it is unclear why the prosecution is calling her at this time,
24 other than to put her on the stand in dramatic fashion to improperly prejudice the jury against Mr.
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1 Jackson. The prosecution should make a proffer as to Ms. Francia's new testimony.¹ Since it is
2 1108, she should not be called to testify in rebuttal at all since whatever she has to say could have
3 been covered on rebuttal in the case in chief.

4 In the District Attorney's case in chief she testified to the proffered statements in the 1108
5 motion. In particular, she testified on direct regarding the alleged shower incident with Mr.
6 Robson and Mr. Jackson. Mr. Robson testified that the same incident never occurred. Both
7 witnesses were cross-examined. The Court should reject this testimony as improper rebuttal.

8 II.


9 CONCLUSION

10 Therefore, based on the reasons set forth above, the Court should prohibit Charlie
11 Michaels and Blanca Francia from testifying.

12 Dated: May 25, 2005

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

16 SANGER & SWYSEN
17 Robert M. Sanger
18 Stephen K. Dunkle

19
20 For  By: _____
21 Robert M. Sanger
22 Attorneys for Defendant
23 MICHAEL JOSEPH JACKSON
24
25

26 _____
27 ¹ We respectfully request a proffer as to all of the prosecution's purported rebuttal
28 witnesses and a full evidentiary 402 hearing if a sufficient showing is made by the prosecution.