

KAYE SCHOLER LLP

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DAVID and MARIA VENTURA

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 12 2005

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

** Unsealed pursuant
to 1/11/05 court
order*

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

THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiffs,

v.

MICHAEL JOSEPH JACKSON,

Defendant.

CASE NO. 1133603

REPLY IN SUPPORT OF MOTION TO
QUASH AND OPPOSITION TO
SUBPOENAS DATED JANUARY 6, 2005

~~TO BE FILED UNDER SEAL~~

Date: January 14, 2005

Time: 8:30 A.M.

Dept: SM2

The Honorable Rodney S. Melville

~~TO BE FILED UNDER SEAL~~ *FJA Camera*

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 The Venturas are not complainants, and are not parties to this criminal case. They are merely
5 elderly grandparents of the victim, who have been targeted with incredibly intrusive discovery based
6 on false, unsupported accusations that are not even directed at them, and that have nothing to do with
7 the case against Mr. Jackson. This is harassment, pure and simple, and it should be stopped.

8 The subpoenas are overbroad, unwarranted, and violate the Venturas' constitutionally
9 protected right of privacy. They are not even remotely tailored to address the shrill accusations of
10 "laundering" and "fraud" that Mr. Jackson makes against others connected with the case. And, upon
11 careful examination, none of the accusations Mr. Jackson makes supports the requests for personal
12 financial records in these subpoenas. If such baseless accusations by counsel are all that is required
13 to trump a third party's constitutional privacy rights, then those rights are not worth much.

14 Even if Mr. Jackson's loosely woven story of fraud and laundering had any validity or
15 relevance to this prosecution, the subpoenas are not tailored to discovery of evidence relating to these
16 accusations. The law clearly requires that discovery directed at constitutionally protected financial
17 information must be narrowly tailored. These subpoenas are about as narrowly tailored as a clown
18 suit. The subpoenas seek all of the Venturas' banking, credit card, retirement account, and other
19 financial records, without any limitation to subject matter, payor, or payee. If allowed, Mr. Jackson
20 would be able to discover every purchase of goods or services the Venturas have made, every person
21 they have paid money to or received money from, all of their finances and assets, all in a case to
22 which the only relationship the Venturas have is as grandparents of the victim.

23 The subpoenas seeking the Venturas' financial information should be quashed entirely.
24 Alternatively, if the Court deems any of this information discoverable, Mr. Jackson should be
25 required to narrowly tailor the subpoenas to the particular issues he claims are relevant. For
26 example, at a minimum, they should be limited to any other payments to the Arvizos that were
27 deposited into the Venturas' account. In addition, the Venturas request that any documents be
28 produced to the Court for *in camera* inspection, so that the Court can determine whether they are

1 relevant before they are disclosed to anyone, including Mr. Jackson. See, e.g., Schnabel v. Superior
2 Court, 5 Cal. 4th 704, 712-14 (1993) (expressing a preference for *in camera* production in order to
3 protect a subpoenaed party's privacy rights).

4 II.

5 THE SUBPOENAS ARE OVERBROAD AND UNJUSTIFIED

6 A. The Subpoenas Seek Irrelevant and Privileged Information

7 The subpoenas' overbreadth and invasion of constitutionally protected privacy rights is
8 evident from the first category of documents requested. In the subpoenas directed to the Venturas,
9 the first request seeks "All DOCUMENTS constituting, evidencing, concerning, discussing or
10 mentioning all ACCOUNTS . . . that you have maintained . . . since January 1, 1998 . . ." (Exhs. 1
11 & 2 at 2). The subpoena directed to Bank of the West contains a nearly identical request, for "All
12 DOCUMENTS constituting, evidencing, concerning, discussing or mentioning any bank
13 ACCOUNT" in which either of the Venturas have an interest, "since January 1, 1998, including, but
14 not limited to, account number [REDACTED] . . ." (Exh. 3 at 2).

15 These requests are not limited, in any way, to transactions involving Complainants or any
16 relevant, alleged "fraud" or "money laundering" perpetrated by Ms. Arvizo. The subsequent requests
17 are no more narrowly tailored. For instance, Mr. Jackson has failed to demonstrate why gifts from
18 the Venturas to their grandchildren — the subject of the second and third requests — are in any way
19 relevant to this action. Mr. Jackson simply is not entitled to this very private information.

20 *1. Mr. Jackson's Interest in the Venturas' Finances Does Not Outweigh Their Privacy* 21 *Rights*

22 Because the financial information sought is clearly protected by California's constitutional
23 right to privacy, the Court must balance Mr. Jackson's right to discover relevant facts against the
24 Venturas' rights to keep such information confidential. In conducting this balancing test, the Court
25 must consider factors including "the purpose of the information sought, the effect that disclosure will
26 have on the parties and on the trial, [and] the nature of the objections urged by the party resisting
27 disclosure . . ." Schnabel v. Superior Court, 5 Cal. 4th 704, 712 (1993).

1 An obvious purpose of requesting all of the Venturas' financial information is the desire to
2 go on a fishing expedition that, Mr. Jackson hopes, will reveal some prejudicial evidence he can use
3 to smear the Venturas and Complainants at trial (or through leaks to the public), regardless of its
4 relevance to these proceedings. Such fishing expeditions are not allowed. See, e.g., People v.
5 Williams, 46 Cal. App. 4th 1767, 1775 (1996); People v. Municipal Court, 89 Cal. App. 3d 739,
6 750-51 (1979). More likely, the subpoenas are nothing more than an attempt to harass relatives of
7 the victim in the hope that this will gain Mr. Jackson some advantage in this prosecution unrelated to
8 its merits. Either purpose is improper, and utterly fails to outweigh the Venturas' interest in
9 maintaining the privacy of their financial transactions unrelated to this case.

10 2. *The Broad Requests Seek Information Irrelevant to These Proceedings*

11 Defense counsel's attempts to fabricate a relevancy nexus between the information sought
12 and this action lacks any basis in fact. In his opposition, Mr. Jackson repeatedly argues, without
13 factual support, that the information requested from and about the Venturas is relevant because
14 "Maria and David Ventura engaged in systematic fraud directed at Michael Jackson by laundering
15 Janet Arvizo's money through their bank account[s]." (E.g., Opp. at 4).

16 There is no factual support for this "systematic fraud" allegation sufficient to overcome the
17 Venturas' privacy rights. Rather, Mr. Jackson's relevancy argument depends on his defense
18 counsel's baseless accusation that the Venturas "engaged in a systematic scheme with Janet Arvizo
19 to defraud Mr. Jackson" (Oxman Decl. ¶ 15). Not only is there no admissible evidence
20 supporting this accusation, but Mr. Jackson presents no explanation for why depositing funds into a
21 parent's account constitutes a fraud on Mr. Jackson, or how the Venturas' other banking records
22 would support such a claim. See, e.g., CAL. CIV. CODE § 1709 (defining fraud).¹

23 Much of the "evidence" attached to defense counsel's declaration is inadmissible hearsay.
24 See CAL. EVID. CODE § 1200 (providing that "evidence of a statement that was made other than by a
25

26 ¹ Mr. Jackson does not claim that he saw other bank accounts and was led to believe that Ms.
27 Arvizo had no money. At a minimum, he would need evidence along these lines to make
28 even a prima facie showing of fraud that has anything to do with the two deposits of money
into the Venturas' account.

1 witness while testifying . . . and that is offered to prove the truth of the matter stated” is hearsay and
2 generally is inadmissible). For instance, a printout from the “Celebrity Justice” website is attached
3 as Exhibit E, as support for the accusation that Janet Arvizo “bilked the readers of the El Monte
4 News out of more than a thousand dollars for non-existent medical expenses.” (Oxman Decl. ¶ 5).
5 This is not factual support, but rumor and innuendo. Beyond this, none of the transactions Mr.
6 Jackson cites in his opposition has anything to do with the accusations against Mr. Jackson. Mr.
7 Jackson relies on the following “evidence”:

8 • Mr. Jackson claims that David and Janet Arvizo deposited two checks from a third
9 party, Louise Palanker, into the Venturas’ account. However, Mr. Jackson presents no evidence that
10 there was anything improper about these deposits, or that they were used to defraud anyone, let alone
11 “launder” money or deceive anyone else. Mr. Jackson’s argument that third parties were somehow
12 deceived into contributing money to the Arvizos is completely unsubstantiated. More importantly,
13 this has nothing to do with whether Mr. Jackson committed the acts of which he is accused, and does
14 not outweigh the Venturas’ constitutional privacy rights.

15 • Mr. Jackson argues that Janet Arvizo deposited a settlement check she received from
16 JC Penney (totally irrelevant to Mr. Jackson) into the Venturas’ account, and that Ms. Arvizo then
17 denied receiving settlement funds in a welfare application. It is not clear what more Mr. Jackson
18 hopes to learn about this transaction that he does not already know. He also fails to explain how
19 depositing the money into the Venturas’ account would have concealed the settlement from anyone.
20 Moreover, again, this has nothing to do with whether Mr. Jackson committed the acts of which he is
21 accused, and does not outweigh the Venturas’ constitutional privacy rights.

22 • Mr. Jackson also suggests that there is something sinister about Jay Jackson using the
23 Venturas’ address on a credit card application. This could have been for any number of reasons —
24 he could have been moving or staying at a temporary address. Mr. Jackson does not even attempt to
25 explain how this is evidence of some kind of fraud, let alone on him. Moreover, it again has nothing
26 to do with the charges against Mr. Jackson, and does not outweigh the Venturas’ constitutional
27 privacy rights.

1 The rest of the “evidence” Mr. Jackson cites — evidence of gifts and purchases for the
 2 Arvizos or their son — likewise has nothing to do with the discovery he now seeks. There is no
 3 justification for this intrusive discovery into the Venturas’ finances.

4 **B. Defense Counsel’s Self-Serving Declaration in Support of Defendant’s Opposition Is**
 5 **Improper and Should Be Disregarded**

6 Defense counsel establishes no foundation for his testimony in the declaration supporting the
 7 opposition to the motion to quash, and in it he improperly testifies as a witness. For instance,
 8 defense counsel “testifies” that the Arvizos “have repeatedly misrepresented their dire financial
 9 condition to Mr. Jackson claiming that medical bills are unpaid and have impoverished them in order
 10 to get Michael Jackson to give them money.”² (Oxman Decl. ¶ 4). This testimony lacks foundation,
 11 and there is no reason to believe defense counsel would have personal knowledge of what any of the
 12 Arvizos said to Mr. Jackson. See CAL. EVID. CODE § 402 (placing the burden on the proponent of
 13 proffered evidence to establish foundation and personal knowledge of preliminary facts). Were
 14 defense counsel to have such personal knowledge, he would be a witness to this case, and thus
 15 prohibited from acting as an advocate. See CAL. RULE OF PROF’L CONDUCT 5-210.

16 Defense counsel’s declaration provides virtually the entire “factual” support for Mr.
 17 Jackson’s argument that all of the Venturas’ financial information is relevant to this action and
 18 discoverable by him. But this improper declaration cannot establish relevance. Just because defense
 19 counsel says Ms. Arvizo is a liar does not make it so. Moreover, again, this subpoena is not directed
 20 to Ms. Arvizo or her bank — it is directed to the Venturas. Such baseless accusations by a lawyer
 21 without personal knowledge (even if they had anything to do with the discovery sought or the case
 22 against Mr. Jackson) are not sufficient to overcome this important constitutional protection.

23 **C. The Subpoenas Are Not Narrowly Tailored to Protect the Venturas’ Privacy Rights**

24 To the extent Mr. Jackson wants documents related to specific transactions that he argues are
 25 relevant, such as the Venturas’ receipt of checks payable to the Arvizos, payments from a JC Penny
 26

27 ² None of the alleged payments by Mr. Jackson to the Arvizos are for medical expenses.
 28 Rather, Mr. Jackson introduces receipts for meals, a computer, clothing, and manicures.
 (Oxman Decl. ¶ 7 & Exhs. G-O).

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1 settlement, or proceeds from fundraising activities related to this case, he must narrowly tailor his
2 requests to seek such documents. See, e.g., Schnabel, 5 Cal. 4th at 712 (citing Valley Bank of
3 Nevada v. Superior Court, 15 Cal. 3d 652 (1975) and Rifkind v. Superior Court, 123 Cal. App. 3d
4 1045 (1981)). As they are currently drafted, the subpoenas seek *all* of the Venturas' financial
5 records, and *all* records of any gifts to their children and grandchildren.

6 The subpoenas are overbroad and improper. If the Court concludes that any of the records
7 sought are relevant, then Mr. Jackson should be ordered to serve new subpoenas narrowly tailored to
8 the allegations he makes. At a minimum, they should be limited to records of deposits of checks
9 payable to Ms. Arvizo. In any event, the subpoenas as written are clearly overbroad and should be
10 quashed.

11 III.
12 CONCLUSION

13 For the reasons stated above, the Venturas respectfully ask that this Court issue an order
14 quashing these subpoenas. To the extent the Court deems any part of the subpoenas enforceable, the
15 Venturas request the Court to require that production be made to it for *in camera* inspection, so that
16 the Court can determine whether any documents produced are relevant before they are disclosed to
17 anyone, including Mr. Jackson.

18
19 Dated: January 12, 2005

KAYE SCHOLER LLP

20
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22 By: 

23 Julian Brew
24 Attorneys for David and Maria Ventura
25
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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1999 Avenue of the Stars, Suite 1700, Los Angeles, California 90067.

On January 12, 2005, I served the following documents described as:

REPLY IN SUPPORT OF MOTION TO QUASH AND OPPOSITION TO SUBPOENAS DATED JANUARY 6, 2005

by placing a true copy of the above entitled document in a sealed envelope addressed as follows:

Thomas A. Mesereau, Jr.
1875 Century Park East, Suite 700
Los Angeles, CA 90067

Brian Oxman
14126 E. Rosecrans
Santa Fe Springs, CA 90670

X by **FEDERAL EXPRESS**

— by **U.S. MAIL** (I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.)

OR

— by **PERSONAL SERVICE**

— by personally delivering such envelope to the addressee.

— by causing such envelope to be delivered by messenger to the office of the addressee.

X (State) I declare under penalty of perjury under the laws of the State of California that the above 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.

KAYE SCHOLER LLP

1 Executed on January 12, 2005, at Los Angeles, California.

2
3 Deborah G. Clow
4 Name

Deborah G. Clow
Signature

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