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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

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

THE PEOPLE OF THE STATE OF CALIFORNIA,)
Plaintiff,)
vs.)
MICHAEL JOSEPH JACKSON)
Defendant.)

CASE NO. 1133603

MR. JACKSON'S MOTION IN LIMINE
TO EXCLUDE REFERENCE TO [REDACTED]
AND
ACCOMPANYING DOCUMENTS

TIME: 9:30 a.m.
DATE: January 28, 2005
PLACE: Department SM-2

~~FILED UNDER SEAL~~

1 A. Introduction.

2 Mr. Michael Jackson submits this Memorandum in support of his Motion in Limine to Exclude
3 Reference to [REDACTED]. Mr. Jackson requests the court make the following orders in
4 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 the amount of any [REDACTED] Mr. Jackson has made in the past;

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

10 (3) An order requiring the attorney for the plaintiffs, prior to making any reference, comment, or
11 assertions concerning any [REDACTED] to approach the bench and make an offer of proof to the court
12 so that the court, prior to any presentation of the above-referenced evidence to the jury, can make a
13 preliminary determination of the relevancy, admissibility, and foundation thereof.

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

15 (1) Evidence of prior [REDACTED] are irrelevant and inflammatory, and these orders are
16 necessary to insure Mr. Jackson will be accorded a fair trial with a the trial record that will not be tainted
17 with reversible error;

18 (2) The introduction of evidence of prior [REDACTED] constitutes a violation of
19 Evidence Code section 1152(a), cannot be used to establish state of mind, and do not show criminality;

20 (3) Plaintiff failed to disclose settlement amounts in discovery, and introduction of [REDACTED]
21 [REDACTED] will deprive Mr. Jackson of due process of effective cross-examination of witnesses.^{1/}

22
23 _____
24 1/ 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 **B. Evidence of [REDACTED] Is Irrelevant and Inflammatory.**

2 Plaintiff's counsel have repeatedly made references during this proceeding that Mr. Jackson entered
3 into [REDACTED] regarding claims made against him, including not only claims by former employees
4 regarding their employment, but also claims asserted by individuals the Mr. Jackson [REDACTED]. Mr.
5 Jackson has never been found liable for any of these claims in any court of law, and plaintiff has presented
6 no evidence of the nature, amounts, or details of [REDACTED]. None of the discovery in this case
7 involves the disclosure of any written materials involving [REDACTED], and plaintiff has failed to
8 provide any materials in discovery that would permit the introduction of [REDACTED].

9 [REDACTED] was asked in front of the Grand Jury:

10 "Q And eventually did the matter which you had filed the lawsuit against Mr. Jackson result
11 in a [REDACTED] in your favor?

12 "A It did.

13 "Q [REDACTED]

14 "A [REDACTED]." (GJ Tr. p. 64, lns 14-19)

15 [REDACTED] further testified:

16 "If I wanted to [REDACTED] wanted to do that, or the kid wanted to
17 do that, all I had to do was pick up a phone and tell them what I had." (GJ Tr., p. 78, ln 5).

18 This kind of testimony is not only irrelevant, but it is also inflammatory. More important, it is
19 nonsense and speculation. The speculative opinion of an incompetent attorney should never be permitted
20 to come before the jury.

21 It was obvious the [REDACTED] had an unduly prejudicial impact on the Grand Jurors. At
22 one point a Grand Juror stated:

23 "GRAND JUROR 300000785: Well, there's -- what I had in mind was a question from [REDACTED]

24 [REDACTED] It didn't occur to me back then. And had to do [REDACTED]."

25 [REDACTED]: Yeah. I think we'll just -- as far as that question goes, I will refer
26 you to the admonishment that we read." (GJ Tr., p. 492, lns. 14-20).

27 Instead of acknowledging the prosecution had deliberately mislead the Grand Jury regarding
28 [REDACTED], plaintiff hid from the Grand Jury the inadmissibility of such evidence. Such prosecutorial

1 misconduct is not only disingenuous, but also reversible error. The Court not permit this kind of
2 "misconduct" to take place before the jury.

3 In plaintiff's Motion to Admit [REDACTED] dated December 10, 2004, they argue that Mr.
4 Jackson entered into a [REDACTED] with lawyers for [REDACTED]
5 (12-10-04 Motion, p. 18, lns 11-13.) However, the nature of the claims, the terms of the [REDACTED]
6 [REDACTED] and evidence of payment have not been disclosed in the course of discovery in this case.

7 All evidence of prior [REDACTED] violates the statutory prohibitions of Evidence Code
8 sections 1151(a) and 1154. None of the [REDACTED] have involved any charged crime, and in Mr.
9 Jackson's business career there have been thousands of [REDACTED]. To pick and chose among [REDACTED]
10 [REDACTED] and claim such a [REDACTED], and the amount of the [REDACTED], is evidence of a conscious state
11 or criminality or an attempt to cover up improper conduct would not only unduly prejudice the jury, but
12 also would be a speculative effort to inflame the jury without foundation. The court should exclude all
13 evidence of [REDACTED] in this case.²⁷

14 C. Evidence of [REDACTED] is Irrelevant to Establish State of Mind, Criminal
15 Culpability, or Efforts to Conceal [REDACTED]

16 Plaintiff's claim that Mr. Jackson reached [REDACTED] in the past is irrelevant to
17 this proceeding, and the speculation about the [REDACTED] or the [REDACTED]
18 whether by third parties or insurance carriers, is improper because plaintiff has produced no evidence in
19 discovery concerning those amounts. (See discussion of insurance coverage at p. 4 n.2 & p 6 n.3, *infra*.)
20 Such evidence is irrelevant because the inference of state mind from the [REDACTED] may not be used to
21 establish culpability for subsequent acts whether similar in nature or not. *Covell v. Superior Court*, 159 Cal.
22 App. 3d 39, 42-43 (1984). The [REDACTED] Mr. Jackson made with third parties, of
23

24
25 ²⁷ On January 12, 2005, this Court ruled that before it would permit plaintiff to introduce any evidence of
26 prior acts involving Mr. Jackson under Evidence Code section 1108, it would first have to consider the
27 strengths and weaknesses of the prosecution's case in chief, and then it would have to hold an Evidence
28 Code section 402 hearing where the relevance and prejudicial effect of the testimony was assessed. To
permit the prosecution to introduce any evidence of [REDACTED] would violate the Court's
January 10, 2005, Order. Such evidence is not only irrelevant, but also inflammatory because it has nothing
to do with the issues to be presented before the jury in this case.

1 which there are thousands of such [REDACTED], whether made last year or 10 years ago, and whether to
2 stop a frivolous claim or any other type of claim, should not be permitted to come before the jury.

3 Evidence Code section 1152(a) provides:

4 "Evidence that a person has, in compromise or for humanitarian motives, furnished or
5 offered or promised to furnish money or any other thing, act, or service to another who has
6 sustained or will sustain, or claims that he has sustained or will sustain loss or damage, as well as
7 any conduct or statements made in negotiation thereof, is inadmissible to prove his liability for the
8 loss or damage or any part of it."

9 The Law Revision Commission Comment to section 1152 states:

10 "The words 'as well as any conduct or statement made in negotiation thereof' make it clear
11 that statements made by parties during negotiations for the [REDACTED] may not be used as
12 admissions in later litigation. This language will change the existing law under which certain
13 statements made during [REDACTED] may be used as admissions. *People v. Forster*, 58
14 Cal.2d 257, 23 Cal.Rptr. 582, 373 P.2d 630 (1962). The rule excluding offers is based upon the
15 public policy in favor of the [REDACTED] without litigation. The same public policy
16 requires that admissions made during [REDACTED] also be excluded. The rule of the
17 Forster case that permits such attempts to be admitted places a premium on the form of the
18 statement. The statement "Assuming, for the purposes of these negotiations, that I was negligent
19 ..." is inadmissible; but the statement "All right, I was negligent! Let's talk about damages .." may
20 be admissible. See the discussion in *People v. Glen Arms Estate, Inc.*, 230 Cal.App.2d 241, 863,
21 864, 41 Cal.Rptr. 303, 316 (1964). The rule of the Forster case is changed by Section 1152 because
22 that rule prevents the complete candor between the parties that is most conducive to [REDACTED]"

23 Section 1152(a) makes inadmissible not only the [REDACTED], but also any conduct or
24 [REDACTED] to reach the [REDACTED]. *San Joaquin v. Galletti*, 252 Cal. App. 2d 840, 843
25 (1967). [REDACTED] are often motivated by a desire to "buy peace" and avoid litigation, and the public
26 policy in favor of [REDACTED] makes inadmissible [REDACTED] to penalize person entering into them. *Hasler*
27 *v. Howard*, 121 Cal. App. 4th 1023, 1026 (2004); 1 B. Witkin, *California Evidence, Circumstantial*
28 *Evidence*, sec. 424, at 398 (3d ed. 1986). Evidence of money paid to a former plaintiff or a dismissal given

1 to a former defendant does not necessarily indicate liability because the former plaintiff may have been
2 forced by economic circumstances to take a paltry sum, and the former defendant may have been coerced
3 into an excessive payment by considerations foreign to the litigation. Granville v. Parsons, 259 Cal. app.
4 2d 298, 304 (1968).^{3/}

5 The alleged s [REDACTED] are not payments to the complaining witnesses in this case and have
6 no probative value to any issue in this case. For plaintiff to pick and choose among non-criminal,
7 [REDACTED], and place the amounts of such s [REDACTED] before the jury is an improper effort
8 to infer a criminal state of mind where no such inference can be drawn. Brown v. Pacific Elec. Ry. Co., 79
9 Cal. App. 2d 613, 616 (1947)(proof of [REDACTED] establishes no evidence of an admission of liability and
10 showed no more the defendant's desire "to buy its peace" with claimant). Such evidence is irrelevant, and
11 the attempt to create such an inference from [REDACTED] is remote, prejudicial,
12 and of no probative value. Evidence Code section 352.^{4/}

13 **D. [REDACTED] Evidence Deprives Mr. Jackson of Effective Cross-Examination.**

14 Under Evidence Code section 1154, Mr. Jackson is precluded from effectively cross-examining any
15 witness who wished to testify concerning the [REDACTED]
16 [REDACTED] To permit the prosecution to introduce evidence of the [REDACTED] would violate Mr.
17 Jackson's rights to due process and cross-examination because he could not thereafter introduce any
18 evidence that the individual accepted [REDACTED] so as to prove "the invalidity of the claim or any part
19 _____

20 ^{3/} In addition, s [REDACTED] are often involuntary and dictated by insurance companies. Western Polymer
21 Technology, Inc. v. Reliance Ins. Co., 32 Cal. App. 4th 14, 23-28 (1995). Unless the plaintiff is prepared to
22 prove Mr. Jackson [REDACTED] and that no insurance was involved, plaintiff's
claim of conscious state or proof of criminality lacks foundation and is irrelevant.

23 ^{4/} Evidence that inflames the jury with no probative value to any issue of the case should be excluded
24 under Evidence Code section 352. People v. Burns, 109 Cal. App. 524, 541-42 (1952). In Asuagvo v.
Compton & Knowles Corp., 183 Cal. App. 3d 1032, 1038 (1986), the court stated:

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

1 of it." Evidence Code section 1154. The statutory scheme regarding such evidence is comprehensive, and
2 a fair trial cannot take place by ignoring one of the Code provisions because of the existence of the
3 corollary Code provision protecting persons who have accepted [REDACTED].

4 Evidence Code section 1154 provides:

5 "Evidence that a person has accepted or offered or promised to [REDACTED] or
6 any other thing, act, or service in [REDACTED], as well as any conduct or statement made in
7 negotiations thereof, is inadmissible to prove the invalidity of the [REDACTED] or any part of it."

8 Section 1154 prohibits introduction of evidence regarding offers to discount a claim, any conduct or
9 statements made in [REDACTED] against those who have accepted such [REDACTED], and any
10 evidence "to prove the invalidity of the claim or any part of it." Young v. Keele, 188 Cal. App. 3d 1090,
11 1093-04 (1987). Where section 1152 prohibits the introduction of evidence of a [REDACTED] to prove
12 liability, section 1154 prohibits the same evidence for purposes of proving invalidity of the claim. Law
13 Revision Commission Comment, Evidence Code section 1154. Taken together, the sections prohibit the
14 introduction into evidence of an offer to [REDACTED] for the purpose of proving validity or
15 invalidity of any claim. Fletcher v. Western National Life Ins. Co., 10 Cal. App. 3d 376, 396 (1970)

16 In Washington v. Texas, 388 U.S. 14, 19 (1967), the Supreme Court stated:

17 "The right to offer the testimony of witnesses, and to compel their attendance, if necessary,
18 is in plain terms the right to present a defense, the right to present the defendant's version of the
19 facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused
20 has the right to confront the prosecution's witnesses for the purpose of challenging their testimony,
21 he has the right to present his own witnesses to establish a defense. This right is a fundamental
22 element of due process of law."

23 Mr. Jackson would be denied a fair trial if plaintiff is permitted to introduce evidence of [REDACTED]
24 [REDACTED], but Mr. Jackson were precluded from introducing the same or similar evidence to establish the
25 invalidity of the very same claim. It is not enough for plaintiff to suggest it wouldn't object or would waive
26 section 1154's prohibition because the Legislature has established a comprehensive scheme that should
27 govern this Court's admission of evidence. There is no place for evidence [REDACTED]
28 in this trial because such evidence is irrelevant, prejudicial, and precluded by statute.

1 F. [REDACTED] Violate the Prohibitions in the Statute of Limitations.

2 1. The [REDACTED] are time remote and time barred.

3 Plaintiff claims that [REDACTED] "lawyers [REDACTED] . . . against Michael
4 Jackson [REDACTED]" (12-10-04 Motion, p. 18, lns 11-13).
5 Plaintiff also presented testimony to the Grand Jury from [REDACTED] that there was a
6 [REDACTED]. (GJ Tr. p. 64, lns 14-19). All of this
7 testimony is speculative and irrelevant.

8 Permitting evidence of [REDACTED] would be speculative because there is no evidence
9 Michael Jackson made the [REDACTED]. [REDACTED] many times are dictated by insurance
10 companies who [REDACTED] regardless of an individual's wishes. Although [REDACTED] and [REDACTED]
11 [REDACTED] were interviewed "thereafter" by detectives seeking evidence [REDACTED]
12 prosecution of Michael Jackson, "no criminal charges were filed as a result of that interview." These
13 interviews took place prior to the decision of the United States Supreme Court in Stogner v. California, 539
14 U.S. 607, 613 (2003), holding California's retroactive extension of the statute of limitations to be
15 unconstitutional. In other words, both [REDACTED] and [REDACTED] were not sufficient
16 even at that earlier time, to support [REDACTED] against Michael Jackson, and to now permit
17 the suggestion of a [REDACTED] for some improper act is not only irrelevant, but also a speculative
18 violation of the statute of limitations.

19 In Stogner v. California, 539 U.S.607, 613 (2003), the Court said:

20 "Significantly, a statute of limitations reflects a legislative judgment that, after a certain
21 time, no quantum of evidence is sufficient to convict.... And that judgment typically rests, in large
22 part, upon evidentiary concerns—for example, concern that the passage of time has eroded memories
23 or made witnesses or other evidence unavailable.... Indeed, this Court once described statutes of
24 limitations as creating 'a presumption which renders proof unnecessary.' Wood v. Carpenter, 101
25 U.S. 135, 139, 25 L.Ed. 807 (1879)." (Emphasis add added).

26 Similarly, the Court stated in United States v. Marion, 404 U.S. 307, 322 (1971):

27 "The law has provided other mechanisms to guard against possible as distinguished from
28 actual prejudice resulting from the passage of time between crime and arrest or charge.... '[T]he

1 applicable statute of limitations . . . is . . . the primary guarantee against bringing overly stale
2 criminal charges. "Such statutes represent legislative assessments of relative interests of the State
3 and the defendant in administering and receiving justice; they" are made for the repose of society
4 and the protection of those who may (during the limitation) . . . have lost their means of defense.'
5 Public Schools v. Walker, 9 Wall. 282, 288, 19 L.Ed. 576 (1870). These statutes provide
6 predictability by specifying a limit beyond which there is an irrebuttable presumption that a
7 defendant's right to a fair trial would be prejudiced."

8 Rarely is language as strong as this – specifying a limit beyond which there is an irrebuttable
9 presumption that a defendant's right to a fair trial would be prejudiced – used in a criminal case. The right
10 to a fair trial is the defendant's due process right. Permitting any testimony of [REDACTED] that are
11 from [REDACTED] violates these principles and denies Mr. Jackson a right to a fair trial.

12 The passage of time of [REDACTED] since these [REDACTED] renders improper the
13 introduction of any evidence that creates an inference of criminal acts. Any allegations [REDACTED] or
14 [REDACTED] have made that were in any way connected to the alleged "[REDACTED]" by Mr. Jackson
15 are subject to the inference that they were accusations motivated by a desire to persuade Mr. Jackson [REDACTED]
16 [REDACTED]. The age of these alleged, but previously adjudicated
17 incidents renders presumptively unfair any [REDACTED] for uncharged non-criminal [REDACTED]
18 [REDACTED] a jury, and the inference of "criminality" violates the statute of limitations in California and
19 the due process clauses of both the California and United State Constitutions.

20 **2. Plaintiff cannot use [REDACTED] to show criminal intent.**

21 It is irrefutable that plaintiff's allegations as to a [REDACTED] and [REDACTED]
22 [REDACTED] would be time barred as criminal charges if the People were to seek to bring those charges against
23 Mr. Jackson. It is also certain the highest Court in the land would conclude Mr. Jackson cannot obtain a
24 fair trial on those time barred allegations. In this case, especially, it will be impossible for Mr. Jackson to
25 receive a fair trial based on allegations [REDACTED] for some [REDACTED]
26 where the nature of the [REDACTED] have never been charged as a criminal matter.

27 Moreover, if [REDACTED] and [REDACTED] allegations were formal charges, Mr. Jackson
28 would be entitled to a dismissal of such charges on both State and Federal Speedy trial grounds because the

1 delay in brining these allegations to court has severely prejudiced Mr. Jackson's ability to defend against
2 them. Barker v. Wingo, 407 U.S. 514, 530 (1972)(prejudice may be shown by loss of a material witness or
3 other material evidence or fading memory caused by lapse of time; Jones v. Superior Court, 3 Cal.3d 734,
4 741 (1970). Equally, the claim that [REDACTED] can be used to create an inference of criminality are
5 also a violation of Mr. Jackson's right to a speedy trial. People v. Hill, 37 Cal.3d 491 (1984)(prosecution
6 witness memory faded); Barker v. Municipal Court, 64 Cal.2d 806, 813 (1966).

7 Were the Court to allow the People to proceed in presenting evidence of long past [REDACTED]
8 [REDACTED] concerning non-criminal [REDACTED], Mr. Jackson would be deprived of a fair trial. The
9 evidence of [REDACTED] are both remote as to time, vague as to the nature
10 of the claim involved, and irrelevant to establish anything in connection with this case. The passage of time
11 violates Mr. Jackson's rights to a speedy trial on the inference of [REDACTED] the prosecution wishes to
12 create by reference to such [REDACTED] and exclusion of all such evidence is essential to both
13 preserve Mr. Jackson's right to a fair trial and protect against violations of due process of law.

14 III.

15 CONCLUSION

16 For the foregoing reasons, Mr. Michael Jackson requests his Motion in Limine to Exclude
17 [REDACTED] be granted.

18 DATED: January 18, 2005

Respectfully submitted,

19 Thomas A. Mescreau, Jr.
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