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10 Attorneys for Defendant  
11 **MICHAEL JOSEPH JACKSON**

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

14  
15 THE PEOPLE OF THE STATE OF )  
16 CALIFORNIA, )  
17 Plaintiffs, )  
18 vs. )  
19 MICHAEL JOSEPH JACKSON, )  
20 Defendant. )

Case No. 1133603

) OPPOSITION TO DISTRICT  
) ATTORNEY'S MOTION IN LIMINE FOR  
) ADMISSION OF EXPERT TESTIMONY  
) ON DEFENDANT'S FINANCES AND MR.  
) JACKSON'S MOTION IN LIMINE TO  
) EXCLUDE ANY REFERENCE TO MR.  
) JACKSON'S FINANCIAL STATUS

) UNDER SEAL

) Honorable Rodney S. Melville  
) Date: January 28, 2005  
) Time: 9:30 a.m.  
) Dept.: 8

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

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28 OPPOSITION TO DISTRICT ATTORNEY'S MOTION IN LIMINE FOR ADMISSION OF EXPERT  
TESTIMONY ON DEFENDANT'S FINANCES AND MOTION IN LIMINE TO EXCLUDE ANY REFERENCE  
TO MR. JACKSON'S FINANCIAL STATUS

**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

JAN 24 2005

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

*Unsealed pursuant  
\* to 1/16/05 court  
order*

1 AUCHINCLOSS:

2 PLEASE TAKE NOTICE that, on January 28, 2005, at 8:30 a.m., or as soon thereafter as the  
3 matter may be heard, Mr. Jackson will move, and hereby does move, for:

4 (1) An order prohibiting the District Attorney from offering any evidence of and prohibiting  
5 the District Attorney and witnesses from making any reference in the presence of jurors or  
6 prospective jurors to Mr. Jackson's financial condition, financial motive, wealth, or rising or  
7 declining financial fortunes, unless or until the District Attorney establishes one of the recognized  
8 exceptions to the prohibition to the introduction of such evidence where (a) the defendant places his  
9 wealth in issue, or (b) defendant experienced an increase in monetary resources immediately after  
10 a theft:

11 (2) An order requiring the prosecution to instruct their witnesses of the court's exclusionary  
12 order on this motion; or in the alternative;

13 (3) An order requiring the District Attorney, prior to making any reference, comment, or  
14 assertions concerning Mr. Jackson's financial condition, to approach the bench and make an offer  
15 of proof to the court so that the court, prior to any presentation of the above-referenced evidence to  
16 the jury, can make a preliminary determination of the relevancy, admissibility, and foundation  
17 thereof;

18 (4) and for such other and further relief as the Court may deem just and proper.

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

20 (1) Allowing these materials into evidence would result in a violation of Mr. Jackson's  
21 federal and state constitutional rights to a fair trial, due process of law, and equal protection pursuant  
22 to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1,  
23 Sections 7, 15 and 24 of the California Constitution.

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

26 (3) Evidence of Mr. Jackson's financial condition may not be introduced to establish a  
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1 motive for a serious offense because neither his wealth, financial resources, nor loss of money are  
2 relevant to or probative of the commission of the crime, and any probative value is outweighed by  
3 the prejudicial effect of such evidence under Evidence Code Section 352;

4 (4) Evidence of a defendant's wealth may not be used to establish a motive because it  
5 utilizes a suspect criteria in an unfair discrimination that violates Mr. Jackson's rights to equal  
6 protection and to a fair trial to prove a motive where the same thing can be said whether the  
7 defendant is rich or poor.

8 This motion is based on this opposition and motion, the memorandum of points and  
9 authorities attached hereto, the records, pleadings and papers herein, and such other and further  
10 matters as may be submitted to the Court.

11 Furthermore, Mr. Jackson respectfully requests that the defense response to the prosecution's  
12 motion, filed on January 21, 2005, be withdrawn and that this opposition and motion in limine be  
13 filed in its place.

14 Mr. Jackson absolutely objects to the introduction of testimony regarding his finances. Such  
15 testimony is inadmissible under California law. Allowing such testimony would significantly  
16 prejudice Mr. Jackson without any providing any probative value. It would deprive Mr. Jackson  
17 of his federal and state constitutional rights to a fair trial, due process of law, and equal protection  
18 to the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article 1,  
19 Sections 7, 15, and 24 of the California Constitution.

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28 **OPPOSITION TO DISTRICT ATTORNEY'S MOTION IN LIMINE FOR ADMISSION OF EXPERT  
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1 The prosecution's motion expressly seeks to show that Mr. Jackson's finances were  
2 "withering" and that was a motive for the alleged crimes. Mr. Jackson denies the validity of that  
3 characterization. However, even if it could be proven, the prosecution does not cite any authority  
4 for the proposition that a defendant's alleged poverty or indebtedness may be used to show motive  
5 to engage in criminal activity. In fact, the law is steadfastly to the contrary.

6 Dated: January 24, 2005

7 Respectfully submitted,  
8 COLLINS, MESEREAU, REDDOCK & YU  
9 Thomas A. Mesereau, Jr.  
Susan C. Yu

10 SANGER & SWYSEN  
11 Robert M. Sanger

12 OXMAN & JAROSCAK  
13 Brian Oxman

14 By: Robert M. Sanger  
15 Robert M. Sanger  
16 Attorneys for Defendant  
17 MICHAEL JOSEPH JACKSON  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 ARGUMENT

3 I.

4 EVIDENCE OF A DEFENDANT'S ALLEGED POVERTY OR INDEBTEDNESS IS NOT  
5 ADMISSIBLE TO SHOW A MOTIVE TO COMMIT A CRIME

6 The prosecution argues that Mr. Jackson's finances were "withering" and that testimony from  
7 a forensic accountant is necessary to "give the jury insight into defendant's motive to commit the  
8 charged offense in Count 1 of the indictment." (Motion, page 2.) The prosecution, however, does  
9 not cite any case law that supports the introduction of this type of testimony to show motive. This  
10 is because the case law squarely holds that such testimony is inadmissible.

11 It is a well-established rule that a defendant's poverty or indebtedness may not be admitted  
12 to prove a motive to commit crimes of financial gain. (*People v. Koontz* (2002) 27 Cal.4th 1041,  
13 1076, stating that "a defendant's poverty generally may not be admitted to prove a motive to commit  
14 a robbery or theft . . ."; *People v. Wilson* (1992) 3 Cal.4th 926, 938-938., stating that evidencce of  
15 defendant's debt, admitted for the purpose of establishing a motive to commit robbery and murder,  
16 was not admissible on any proper ground.) "[F]or over a century courts have recognized the  
17 potential unfairness in admitting such evidence." (*People v. Carrillo* (2004) 119 Cal.App.4th 94,  
18 101.)<sup>1</sup> While there are obvious reasons for the prosecution to want to use a defendant's poverty "to  
19 provide a convincing harmony to the factual melody of the crime," such evidence deprives a  
20 defendant of a fair trial and constitutes reversible error. (*People v. Carrillo, supra*, 119 Cal.App.4th  
21 94, 97.)

22 Evidence of a defendant's poverty may be admissible for the limited purpose of refuting a  
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24 <sup>1</sup> It is worth noting that the law of California has expressly prohibited the introduction of  
25 evidence such as this since, at least, 1901. (*People v. Kelly* (1901) 132 Cal. 430.) The  
26 prosecution failed to acknowledge these contrary cases. One can only assume that, once again,  
27 the prosecution's desire to convict a celebrity had an effect on its willingness to acknowledge the  
28 law.

1 claim that he did not commit the offense because he did not need the money, or to explain sudden  
2 occurrences of wealth after the occurrence of a crime (*People v. Koontz, supra*, 27 Cal.4th 1041,  
3 1076), the case law stands firmly against the prosecution's position that such evidence is admissible  
4 to prove a motive to commit a crime. Here, no such claim has been made by the defense.

5 In *People v. Carrillo* (2004) 119 Cal. App. 4th 94, defendant was charged with robbery and  
6 aggravated assault. The evidence showed that defendant's boyfriend and father of her child grabbed  
7 a necklace and chain from a man on the street and knocked him to the ground unconscious. He then  
8 ran to defendant's car and jumped in the back seat. However, the vehicle was blocked from escaping  
9 by a bystander's vehicle. The prosecution introduced extensive evidence of defendant's dire  
10 financial straits to establish a motive of why she would have assisted her boyfriend in the robbery.  
11 and the jury convicted her. The Court of Appeal reversed, finding evidence of financial motive was  
12 inadmissible, and its introduction as evidence through cross-examination or otherwise was reversible  
13 error. The court stated:

14 To ensure the fairness of criminal trials, the law provides that evidence of the  
15 defendant's poverty is generally inadmissible. In this case, however, the prosecution  
16 introduced a considerable amount of evidence showing Eva Carrillo was in difficult  
17 financial straits when she allegedly aided and abetted her boyfriend in a robbery. Her  
18 poverty was used to provide convincing harmony to the factual melody of the crime.  
19 The result was a composition that convinced the jury, but contravened the law. We  
20 find this evidence deprived Carrillo of a fair trial and reverse the judgment.  
(*People v. Carrillo, supra*, 119 Cal. App. 4th 94, 97.)

21 The court further stated that:

22 It is fundamental to our conception of a fair trial that equality of treatment must be  
23 afforded to all without regard to differences in social status or economic condition.  
24 In a society which cherishes the ideal of equal justice for all and seeks to accord the  
25 equal protection of the laws to all those who are accused of crime, it would be  
26 difficult to accept any other view. (*United States ex rel. Mertz v. State of New Jersey*  
27 (3rd Cir. 1970) 423 F.2d 537, 541; see also 2 Wignore, Evidence, § 392, p. 431  
28 (Chadbourn rev. ed. 1979) [practical result of poverty evidence "would be to put a  
poor person under so much unfair suspicion and at such a relative disadvantage that  
for reasons of fairness (such evidence) has seldom been countenanced"].)  
(*Id.* At 102.)

The court concluded that "the jury would well have viewed her as a feckless pauper whose

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1 station in life and lack of support for her two children provided her with a motive to steal.” (*Id.* at  
2 104.) Such evidence and the prosecutor’s insinuations concerning it were found to be reversible  
3 error. (*Id.*)

4 In *People v. Carrillo, supra*, 119 Cal. App. 4th 94 the Court acknowledged that admitting  
5 such evidence would violate the Constitutional right of the defendant to a fair trial. This fair trial  
6 and due process right is secured by the Fifth and Fourteenth Amendments to the United States  
7 Constitution and Article I Section 15 of the California Constitution. As also stated in *Carrillo,*  
8 *supra*, at fn.1, if defense counsel did not object, the admission of this testimony may violate the  
9 Constitutional right to the effective assistance of counsel under the Sixth and Fourteenth  
10 Amendments and Article I Section 15 of the California Constitution. In addition, the singling out  
11 of Michael Jackson for the proffer of evidence that has been deemed inadmissible for over 100 years  
12 suggests that he is being denied the equal protection of the laws and the privileges and immunities  
13 of citizens of this country based on his celebrity as prohibited by the Fourteenth Amendment to the  
14 United States Constitution and Article I Section 7 of the California Constitution.

15 II.

16 **EVEN IF THIS TYPE OF EVIDENCE WERE ADMISSIBLE THE COURT COULD**  
17 **NOT ALLOW IT BECAUSE THE PROSECUTION HAS NOT NAMED OR PROVIDED**  
18 **STATEMENTS OF THE “EXPERT FROM THE ENTERTAINMENT INDUSTRY”**

19 As noted above, the prosecution fails to acknowledge that the law prohibits the introduction  
20 of this type of testimony. Instead, the prosecution cites statutes and case law regarding the general  
21 standards for the admissibility of expert testimony. (See Motion, pages 1-2.) Even if this type of  
22 financial testimony were admissible, which it is not, the prosecution fails to establish that it’s  
23 purported expert is qualified or that his or her testimony is relevant.

24 The prosecution claims that an expert will testify that Mr. Jackson will lose “tens of millions  
25 of dollars in future earnings.” (Motion, page 3.) However, the prosecution has not even provided  
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1 the name of this expert, let alone a statement of what he or she would say at trial.<sup>2</sup> It is impossible  
2 for the court to make a determination as to whether the prosecution's expert is qualified and as to  
3 whether the expert's opinion is admissible, without knowing the name of the expert and what he or  
4 she will actually say at trial.

5 Evidence Code Section 720(a) states that a "person is qualified to testify as an expert if he  
6 has special knowledge, skill, experience, training or education sufficient to qualify him as an expert  
7 on the subject to which his testimony relates." Stating that the expert will be an "expert from the  
8 entertainment industry" does not provide an adequate foundation for the Court to conclude that the  
9 yet to be named expert is qualified to testify to the opinion described in summary by the prosecution  
10 in the form or argument. For example, the Court has no way of determining whether the unnamed  
11 expert is qualified to opine as to whether tens of millions of dollars would be lost by Mr. Jackson  
12 as a result of damage to his public image. The prosecution has failed to meet its burden of  
13 demonstrating that its experts are, in fact, qualified pursuant to Evidence Code Section 720(a).

14 Of course, even if the prosecution finds an expert to support its preformed opinion, this  
15 evidence is clearly inadmissible. It has been inadmissible in California for over 100 years and does  
16 not become admissible because this is a celebrity case.

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24 <sup>2</sup> The District Attorney is apparently in the process of tracking down an "expert from the  
25 entertainment industry" who will embrace the prosecution's calculation of the potential loss.  
26 One has to stand in awe of the prosecution's transparent assertion that they have an expert  
27 opinion and they just need to find an expert to give it. Would they be both so reckless and so  
28 flagrant were they not trying to convict Michael Jackson?



1 III.

2 CONCLUSION

3 For the above stated reasons, Mr. Jackson objects to the admission of expert testimony  
4 regarding Mr. Jackson's finances.

5 Dated: January 24, 2005

6 COLLINS, MESEREAU, REDDOCK & YU  
7 Thomas A. Mesereau, Jr.  
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10 Robert M. Sanger

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

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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 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On January 24, 2005, I served the foregoing document entitled: **OPPOSITION TO DISTRICT ATTORNEY'S MOTION IN LIMINE FOR ADMISSION OF EXPERT TESTIMONY ON DEFENDANT'S FINANCES AND MR. JACKSON'S MOTION IN LIMINE TO EXCLUDE ANY REFERENCE TO MR. JACKSON'S FINANCIAL STATUS: UNDER SEAL** on the interested parties in this action by depositing a true copy thereof as follows:

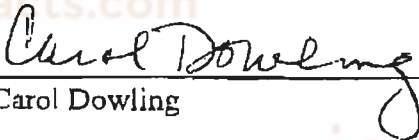
Tom Sneddon  
Gerald Franklin  
Ron Zonen  
Gordon Auchincloss  
District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
805-568-2398

       **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.

  **X**   **BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties

  **X**   **STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed January 24, 2005, Santa Barbara, California.

  
\_\_\_\_\_  
Carol Dowling