COLLINS, MESEREAU, REDDOCK & YU
Thomas A. Mesereau, Jr., State Bar Number 091182
Susan C. Yu, State Bar Number 195640
1875 Century Park East, 7th Floor
Los Angeles, CA 90067
Tel.: (310) 284-3120, Fax: (310) 284-3133

SANGER & SWYSEN
Attorneys at Law
Robert M. Sanger, State Bar No. 058214
233 East Carrillo Street, Suite C
Santa Barbara, CA 93101
Tel.: (805) 962-4887, Fax: (805) 963-7311

OXMAN & JAROSCAK
Brian Oxman, State Bar No. 072172
14126 East Rosecrans
Santa Fe Springs, CA 90670
Tel.: (562) 921-5058, Fax: (562) 921-2298

Attorneys for Defendant
MICHAEL JOSEPH JACKSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiffs, vs. MICHAEL JOSEPH JACKSON, Defendant.	Case No. 1133603 MR. JACKSON'S REPLY IN SUPPORT OF MOTION IN LIMINE TO EXCLUDE REFERENCE TO CIVIL [redacted] AND ACCOMPANYING DOCUMENTS Honorable Rodney S. Melville Date: January 28, 2005 Time: 8:30 a.m. Dept: SM 2 ~~FILED UNDER SEAL~~

A. Introduction

Mr. Michael Jackson submits this Reply in support of his Motion in Limine to Preclude Reference to [redacted]. Mr. Jackson's Motion in Limine seeks to exclude any reference to [redacted] from civil [redacted] with third parties. Civil [redacted] that are remote in time and dictated by considerations which prevent plaintiff from making a claim they constitute an "admission" have no place in this proceeding and are irrelevant.

B. Evidence of Prior Civil [redacted] Amounts Is Irrelevant and Inflammatory.

Plaintiff claims evidence of civil [redacted], which it has not yet decided to seek leave for admission in evidence, is relevant as an admission against interest. (Plaintiff's Memo, p. 2, lines 10-11). However, a civil [redacted] is neither an admission against interest, nor relevant to determine the purpose for which a civil [redacted] was made. Any number of reasons compel a civil [redacted], including insurance, third parties, and economic circumstances which have nothing to do with an admission against interest. Further, the [redacted] itself states it is not an admission of guilt or liability.

Plaintiff states:

> "The prosecution obtained its copies of the relevant documents [involving civil lawsuits] from the Internet. The People are not required to make 'discovery' of them to defendant because they do not come within the provisions of Penal code section 1054.1, nor are they 'Brady' material." (Platiniff's Memo, p. 3, ln 27 to p. 4, ln 3).

However, plaintiff's claim is not the standard for section 1054.1. More important, if plaintiff is claiming the [redacted] is an "admission" against interest, which is a witness statement, and there is no question that plaintiff needed to disclose the information. Any witness statement must be disclosed, and plaintiff has not disclosed it despite getting it off "the Internet."

Witness statements are always relevant to the proceeding and must be disclosed. Penal Code section 1054.1(f); Thompson v. Superior Court, 53 Cal. App. 4th 480, 488 (1997). Any interview or statements a witness has made, and any writing regarding that statement, should be disclosed to the defendant. Funk v. Superior Court, 52 Cal. 2d 423, 424 (1959). The courts have gone to great lengths to assure that statements a person has made in the possession of law enforcement are disclosed to a defendant. Izazaga v. Superior Court, 54 Cal: 3d 456, 377; Hubbard v. Superior Court, 66 Cal. App. 4th 1163, 11167 (1997).

C. Evidence of [redacted] is Irrelevant to Establish State of Mind, Criminal Culpability, or Efforts to Conceal Prior Acts.

Plaintiff claims that if a lawsuit alleged [redacted], and there was a [redacted], then there "was a tacit admission that there was merit to the lawsuit." (Plaintiff's Memo, p. 3, lines 4-5). However, not only is the conclusion contrary to fact, but also there is no relevance to the conclusion because the claim a lawsuit has merit is not material to this case. [redacted] of a civil proceeding is neither an admission against interest nor an admission the lawsuit has merit because numerous other factors having nothing to do with "admissions" or "merit" are involved in civil [redacted]. Further, the [redacted] itself recites there is no "admission" contained in the act or the [redacted].

Plaintiff cites People v. Muniz, 213 Cal. App. 3d 1508 (1989), for the proposition evidence Code section 1152 does not apply to criminal proceedings. (Plaintiff's Memo, p. 4, lines 20-21). However, Muniz, which was disapproved by the Supreme Court in People v. Escobar, 3 Cal. 4th 740 (1992),[1] provided only that offers to the alleged "victim" are not covered by section 1152. Civil [redacted] to third parties are neither addressed nor covered by the Muniz decision, and the public policy considerations of permitting statements a defendant makes to an alleged "victim" are not present with regard to third party civil [redacted] 13 years earlier, nor do such civil [redacted] constitute "admissions" as did the statements defendant made to the victim in Muniz.

In People v. Muniz, 213 Cal. App. 3d 1508 (1989), defendant was charged with forced [redacted] and [redacted] with a sharp object. The prosecution sought to introduce testimony that defendant offered to pay for some of the alleged victim's medical expenses and made offers to the alleged victim. The court permitted the testimony over defendant's objection the offer in compromise was a [redacted] that could not be introduce under Evidence Code section 1152(a). Defendant was convicted of forced [redacted]. The Court of appeal affirmed, finding Evidence Code section

---

[1] Plaintiff correctly points out Muniz was disapproved by the Supreme Court in People v. Escobar, 3 Cal. 4th 740 (1992) (Plaintiff's Memo, p. 5, lines 6-10). However, the disapproval goes much further than plaintiff contends because it was the Supreme Court's disapproved the conclusion of the nature of the injuries in Muniz. Those injuries did not constitute great bodily injury, and defendant's offer to pay medical bills was part of that determination. Plaintiff is asking this court to make a decision to admit evidence in this case based on a Court of Appeal decision plaintiff knows was disapproved by the Supreme Court.

1152(a)'s prohibition against admission of [redacted] to establish liability are not applicable to criminal case if the issue was guilt or innocence for the act to which the offer of compromise was made. Id. at 1515. Use of such evidence to show "guilt" is not the same as the use of such evidence in a civil case to show "liability." Id. The statement was an admission against interest as to the issue alleged crime being tried, and not as to some other act or past occurrence. Id. Further, the statement defendant wished to pay for medical expenses was not an offer in compromise, but rather an admission against interest. Id. at 1516.

Mr. Jackson has made no offer or [redacted] suggestion to the current complaining witnesses. The evidence involving [redacted] regards an 11 and 13-year old "civil" cases where the [redacted] would be introduce to show civil "liability," not an admission against interest. The proffered evidence fits squarely within the prohibition of section 1152(a) and is not offered to show "guilt" in this case, but rather to show civil "liability" in a prior civil case which is irrelevant.

D. [redacted] Evidence Deprives Mr. Jackson of Effective Cross-Examination.

Plaintiff claims that Evidence Code section 1154 was intended to prevent the defendant in a civil case from using the fact that a plaintiff offered to [redacted] his claim for a small amount as evidence that the claim had no real merit if the offer was spurned and the matter went to trial. (Plaintiff's Memo, p. 5, ln 26, to p. 6, ln 1). However, section 1154 covers much more than using evidence against a plaintiff who offered a small amount. The section prohibits any evidence a person has "accepted" a sum of money in [redacted] of a claim, and that section prohibits Mr. Jackson from cross-examining any witness who has accepted a sum of money in [redacted] of their claim "to prove the invalidity of the claim or any part of it."

Mr. Jackson will not be able to ask witnesses why they accepted what they accepted in [redacted] of their invalid claim. He will not be able to ask them the nature of the terms of the [redacted] to prove the invalidity of their claim. It is not a question of the [redacted] of the [redacted] because it is a question of the "invalidity" of the claim that Evidence Code section 1154 prohibits when it creates a prohibition against questioning any person about a [redacted] "to prove the invalidity of the claim or any part of it."

The violation of Mr. Jackson's right to a fair trial and due process are patent because he cannot cross-examine the witnesses plaintiff wants to present against him. It is not enough for plaintiff to say that if the court will waive section 1152, it will waive section 1154. The Legislature recognizes that evidence of

[redacted] from third parties who are not complaining witnesses in this criminal case are irrelevant to any issue in this case. What plaintiff proposes is a direct violation of Mr. Jackson's rights to a fair trial.

E. No "Admission" Can be Inferred from An 11 or 13-Year Old Third Party Civ[redacted]

Plaintiff claims the [redacted] Mr. Jackson subscribed in the [redacted] lawsuit was subscribed by Mr. Jackson and therefore he made the [redacted] (Plaintiff's Memo, p. 6, lines 20-21). Apparently, plaintiff is referring to a document it has not produced in discovery in this case. More important, it is not a question of who signed the document, but rather who made and paid the [redacted] that is at the heart of the "admission" plaintiff wishes to assert.

The admission plaintiff wants to assert is that the payment of a [redacted] is an admission against interest, not the [redacted] itself. It is the [redacted] of the [redacted] that this Motion in Limine requests be excluded from evidence, because it is the [redacted] of the [redacted] that is irrelevant. Plaintiff's claim that Mr. Jackson reached [redacted] with civil claimants in the past is irrelevant to this proceeding, and the speculation about the [redacted] of those [redacted] or the source of payment, whether by third parties or insurance carriers, is improper because plaintiff has produced no evidence in discovery concerning those [redacted] or who paid them.

[redacted] are often involuntary and dictated by insurance companies. Western Polymer Technology, Inc. v. Reliance Ins. Co., 32 Cal. App. 4th 14, 23-28 (1995). Unless the plaintiff is prepared to prove Mr. Jackson paid every dime of these [redacted] and that no insurance was involved, plaintiff's claim of conscious state, admission, or proof of criminality lacks foundation and is irrelevant. The time for plaintiff to make this showing was for this hearing, and plaintiff has made no showing.

Plaintiff states "But it was defendant's signature on the [redacted] and [redacted], not the representative of his insurance carrier." (Plaintiff's Memo, p. 7, lines 13-14). However, insurance carriers rarely if ever sign [redacted] involving their insured because their only interest is to get a release from the claimant, and the issue here is not who signed the [redacted], but who made and paid for the [redacted]

What plaintiff is asking this court to do is engaged in a debate over a [redacted] made 11-years ago and another made 13-years ago where witnesses have disappeared, memories have faded, and documents do not exist. This 11 and 13-year old debate is not only stale, but also far too remote to have any relevance to this case. The use of a claimed admission from 11 and 13-years ago is not only a violation of the statute of

limitations, but also a violation of Mr. Jackson's right to a speedy trial. The prohibition against stale claims is specifically designed to prevent precisely what has happened here from fading memories and disappearance of witnesses.

F. Claims of [redacted] Violate the Prohibitions in the Statute of Limitations.

1. The [redacted] are time remote and time barred.

Plaintiff claims:

"Evidence Code section 1108 permits the introduction of evidence of other of the defendant's [redacted] quite apart fromt he statute of limitations for the earlier of those offenses." (Plaintiff's Memo, p. 8, lines 7-8).

However, prior offense evidence does not include prior [redacted], nor the speculation of who paid the [redacted] or why it was made. Prior offense evidence under section 1108 was not designed to permit an plaintiff from claiming an admission from a stale third party civil [redacted] where th[redacted] of the [redacted] is irrelevant.

Plaintiff cites People v. Branch, 91 Cal. app. 4th 274 (2001), for the proposition that evidence of "[redacted]" committed 30 years earlier is admissible under section 1108. (Plaintiff's Memo, p. 8, lines 9-10)./ However, evidence of "[redacted]" is not evidence of a civil [redacted], nor is it an attempt to create an "admission" where no such admission exists.

In People v. Branch, 91 Cal. App. 4th 274, 281 (2001), the court stated:

> "In this regard, section 1108 implicitly abrogates prior decisions ... indicating that 'propensity' evidence is per se unduly prejudicial to the defense. [Citation.]" (People v. Falsetta (1999) 121 Cal.4th 903, 911 (Falsetta).) Our Supreme Court has determined that the admission of evidence regarding a defendant's propensity to commit a sex act under section 1108 does not violate the defendant's right to due process of law. (Falsetta, supra, at pp. 910, 922.)

The existence of a [redacted] does not establish a "propensity" to commit an offense, nor did the abrogation of "propensity" evidence in section 1108 cover the "propensity" to [redacted]. Mr. Jackson, just like any other large business, has [redacted] thousands of civil claims in his lifetime. The

abrogation of "propensity" evidence for sex acts by section 1108 never included civil [redacted] with third parties, and such evidence is both irrelevant and outside the scope of section 1108.

2. **Plaintiff cannot use 13 year old [redacted] to show criminal intent.**

Evidence of civil [redacted] should be excluded under Evidence Code section 352 because it has no probative value. Such evidence has no logical connection to the claimed "admission" plaintiff seeks to assert, and any such connection is far outweighed by the prejudicial effect of such evidence. The evidence is speculative as to the reasons for the [redacted], who paid the [redacted], and whether the [redacted] was voluntary, involuntary, or compelled by irrelevant circumstances that render it far more prejudicial than any probative value.

E. Conclusion.

For the foregoing reasons, Mr. Jackson requests his Motion in Limine to Exclude Reference to [redacted] be granted.

DATED: January 26, 2005

Respectfully submitted,

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

Robert M. Sanger
SANGER & SWYSEN

Brian Oxman
OXMAN & JAROSCAK

By: _____
R. Brian Oxman
Attorneys for defendant
Mr. Michael Jackson