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17 Attorneys for Defendant
18 **MICHAEL JOSEPH JACKSON**

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

21 **THE PEOPLE OF THE STATE OF**
22 **CALIFORNIA,**

23 Plaintiffs,

24 vs.

25 **MICHAEL JOSEPH JACKSON,**

26 Defendant.

) Case No. 1133603

)
) **OPPOSITION TO DISTRICT**
) **ATTORNEY'S MOTION FOR RULING ON**
) **ADMISSIBILITY OF DOCUMENTARY**
) **AND NON-EXPERT TESTIMONY**
) **CONCERNING DEFENDANT'S**
) **FINANCIAL CONDITION DURING**
) **RELEVANT TIMES**

) Honorable Rodney S. Melville
) Date: TBD
) Time: 8:30 a.m.
) Dept.: 8

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28 **OPPOSITION TO DISTRICT ATTORNEY'S MOTION FOR RULING ON ADMISSIBILITY OF**
DOCUMENTARY AND NON-EXPERT TESTIMONY CONCERNING DEFENDANT'S FINANCIAL
CONDITION DURING RELEVANT TIMES

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

MAR - 8 2005

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

1 DECLARATION OF ROBERT M. SANGER

2 I, Robert M. Sanger, declare:

3 1. I am an attorney at law duly licensed to practice law in the courts of the State of
4 California, a partner in the law firm of Sanger & Swysen, and co-counsel for Michael Jackson.

5 2. The court ruled, on January 28, 2005, that the District Attorney cannot use evidence of
6 indebtedness or poverty to show motive. The Court reserved ruling on whether the District
7 Attorney would be allowed to present general testimony from an entertainment management
8 expert regarding the impact of "Living with Michael Jackson" on Mr. Jackson, pending an
9 Evidence Code Section 402 hearing.

10 3. The statement that "[t]he Court finds that general testimony as it relates to this particular
11 situation may be admissible . . .," in the minute order, relates to the proposed testimony by an
12 entertainment management expert, and not to evidence of indebtedness.

13 4. In Mr. Sneddon's opening statement, he stated that Mr. Jackson was "heavily in debt."
14 (RT 27:13-14.) Mr. Mesereau objected, and the Court sustained the objection, but not until after
15 the jury heard the inadmissible statement.

16 5. On March 2, 2005, Mr. Auchincloss attempted to ask witness Ann Gabriel about Mr.
17 Jackson's finances. Mr. Mesereau objected and the Court restricted Mr. Auchincloss to a
18 question regarding media reports of Mr. Jackson's financial condition but not for the truth of the
19 matter. (RT 504:2-19.)

20 6. The District Attorney continues to issue subpoenas duces tecum seeking this inadmissible
21 information. Holthouse, Carlin & Van Tright, Mr. Jackson's former accountants, have received
22 two subpoenas from Mr. Auchincloss. The first subpoena was issued on February 3, 2005 and
23 the second subpoena was issued on February 23, 2005. Bernstein, Fox, Whitman & Company,
24 Mr. Jackson's current accountants, have received two subpoenas duces tecum from Mr.
25 Auchincloss. The first subpoena was issued on February 3, 2005 and the second subpoena was
26 issued on February 23, 2005. The District Attorney has also issued at least three subpoenas to
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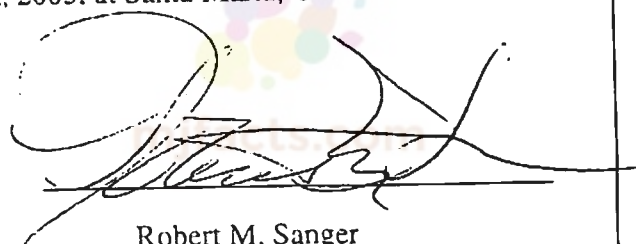
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1 Bank of America seeking similar information.

2 7. The prosecutions subpoenas duces tecum seek detailed financial information that dates
3 back to as far as 1999.

4 I declare under the penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct this 7th day of March, 2005, at Santa Maria, California.

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9 Robert M. Sanger

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 ARGUMENT

3 I.

4 THE INTRODUCTION OF EVIDENCE OF A DEFENDANT'S ALLEGED POVERTY
5 OR INDEBTEDNESS CONSTITUTES REVERSIBLE ERROR

6 Despite the Court's ruling that detailed financial evidence of Mr. Jackson's alleged
7 indebtedness is not admissible at trial, the District Attorney continues to seek to introduce such
8 evidence. In Mr. Sneddon's opening statement, he stated that Mr. Jackson was "heavily in debt."
9 (RT 27:13-14.) Mr. Mesereau objected, and the Court sustained the objection, but not until after
10 the jury heard the inadmissible statement. On March 2, 2005, Mr. Auchincloss attempted to ask
11 witness Ann Gabriel about Mr. Jackson's finances. Mr. Mesereau objected and the Court
12 restricted Mr. Auchincloss to a question regarding media reports of Mr. Jackson's financial
13 condition but not for the truth of the matter. (RT 504:2-19.)

14 The District Attorney now seeks the Court's permission to introduce documentary and
15 non-expert testimony concerning Mr. Jackson's financial condition. The prosecution provides no
16 authority whatsoever to support their argument that they are entitled to introduce such evidence.
17 This is because the law is squarely against the prosecution's position. The prosecution is
18 essentially attempting to introduce the same evidence that the Court has previously ruled
19 inadmissible. The District Attorney makes no attempt to make any legal distinction between
20 documentary and non-expert testimony, regarding Mr. Jackson's finances, and expert testimony
21 regarding the same matters. This is because, as demonstrated by the cases cited below, evidence
22 of indebtedness or poverty cannot be used to show a motive to commit a crime for financial gain,
23 regardless of the manner in which the evidence is presented.

24 The prosecution's latest attempt at introducing this inadmissible evidence emphasizes
25 that they are seeking to introduce evidence on the state of defendant's finances "at the times
26 relevant to this lawsuit." (Motion, page 3.) The prosecution's argument lacks merit. First, the

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1 subpoenas duces tecum issued by the prosecution seek records that date back to as far as 1999,
2 which is far removed from the relevant time period. (Declaration of Robert M. Sanger.) Second,
3 the case law, as argued below, holds that evidence of poverty or indebtedness, at the time of the
4 alleged crime, is inadmissible.

5 It is a well-established rule that a defendant's poverty or indebtedness may not be
6 admitted to prove a motive to commit crimes of financial gain. (*People v. Koontz* (2002) 27
7 Cal.4th 1041, 1076, stating that "a defendant's poverty generally may not be admitted to prove a
8 motive to commit a robbery or theft . . ."; *People v. Wilson* (1992) 3 Cal.4th 926, 938-938.,
9 stating that evidence of defendant's debt, admitted for the purpose of establishing a motive to
10 commit robbery and murder, was not admissible on any proper ground.) "[F]or over a century
11 courts have recognized the potential unfairness in admitting such evidence." (*People v. Carrillo*
12 (2004) 119 Cal.App.4th 94, 101.)

13 It is reversible error to introduce evidence that a criminal defendant was motivated by
14 poverty or indebtedness to commit a crime for financial gain. (*People v. Carrillo, supra*, 119
15 Cal.App.4th 94, 97.) The District Attorney's argument that such evidence fits nicely with the
16 District Attorney's theory of the case was directly addressed in *Carrillo* and was rejected by the
17 court. The court stated that the use of such evidence "to provide a convincing harmony to the
18 factual melody of the crime," while convincing to the jury, "contravened the law." (*People v.*
19 *Carillo, supra*, 119 Cal.App. 4th 94, 97.)

20 There is simply no authority to support the prosecution's argument. The Court should
21 rule that evidence of Mr. Jackson's finances is not admissible to ensure that further reversible
22 error does not occur.

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1 II.

2 CONCLUSION

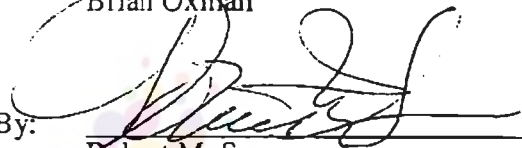
3 For the above stated reasons, the Court should deny the prosecution's motion.

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5 Dated: March 8, 2005

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

9 SANGER & SWYSEN
10 Robert M. Sanger

11 OXMAN & JAROSCAK
12 Brian Oxman

13 By: 
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 301 East Cook Street, Suite A, Santa Maria, California 93454.

On March 8, 2005, I served the foregoing document: OPPOSITION TO DISTRICT ATTORNEY'S MOTION FOR RULING ON ADMISSIBILITY OF DOCUMENTARY AND NON-EXPERT TESTIMONY CONCERNING DEFENDANT'S FINANCIAL CONDITION DURING RELEVANT TIMES 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's Office
312 East Cook Street
Santa Maria, CA 93454

 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.

 BY FACSIMILE - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties at the above-referenced number.

 X **BY HAND** - I caused the document to be hand delivered to the interested parties at the address above.

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

Executed March 8, 2005, at Santa Maria, California.

Jessica Kraft
Jessica Kraft