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

MAY 21 2004

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

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SANTA BARBARA**  
10 **SANTA MARIA DIVISION**

11  
12 THE PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

v.

14 MICHAEL JOE JACKSON,

Defendant.

No. 1133603

PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION FOR  
REDUCTION IN PRESENT BAIL

DATE: May 28, 2004  
TIME: 8:30 a.m.  
DEPT: 9 (Melville)

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18  
19 Introduction

20 Defendant has moved, pursuant to Penal Code section 1289, for a reduction of his  
21 bail, presently set at three million dollars and secured by bond in that amount.

22 Defendant argues, "The current bail is exponentially higher than the statutory  
23 schedule for the offenses alleged. Mr. Jackson has no prior record and has not failed to make  
24 required appearances before this Court. Mr. Jackson is neither a flight risk nor a danger to the  
25 community." (Motn. 2:2-5.)

26 The People oppose defendant's motion. He, like anyone else in his situation, is a  
27 "flight risk," and only the prospect of forfeiting significant bail reduces that risk to an  
28 acceptable level.

1 Argument

2 DEFENDANT HAS A RIGHT TO *REASONABLE* BAIL.  
3 WHAT IS REASONABLE BAIL FOR AN ACCUSED  
4 DEPENDS ENTIRELY ON THE CIRCUMSTANCES  
5 OF THE INDIVIDUAL AND THE CHARGES  
6 ALLEGED AGAINST HIM

7 A The Constitutional Right To Bail

8 Both the United States Constitution (Amend. VIII) and the California Constitution  
9 (art. I, § 12) forbid the imposition of "excessive bail." "[W]e have a constitutional provision  
10 that mandates, with certain exceptions, that persons involved in the criminal process have the  
11 right to have reasonable bail set." (*In re McSherry* (2003) 112 Cal.App.4th 856, 862.)

12 B. The Requirement That Bail Be "Reasonable" And,  
13 Thus, Not "Excessive," Also Serves To Assure  
14 That It Will Be Effective In Discouraging A Given  
15 Accused From Absconding, Whatever His Wealth

16 The requirement that bail be "reasonable" in amount may not immediately be  
17 perceived as a requirement that it be fixed in an amount that takes into account the status of the  
18 accused's own finances. But since the purpose of bail is to assure the presence of a given  
19 accused in court when and as needed, that qualification of the definition of "reasonable" bail  
20 must follow.

21 The seminal expression of that qualification of the right to bail is found in *Stack v.*  
22 *Boyle* (1951) 342 U.S. 1, 72 S.Ct. 1:

23 The right to release before trial is conditioned upon the  
24 accused's giving adequate assurance that he will stand trial and  
25 submit to sentence if found guilty. [Citation.] Like the ancient  
26 practice of securing the oaths of responsible persons to stand as  
27 sureties for the accused, the modern practice of requiring a bail bond  
28 or the deposit of a sum of money subject to forfeiture serves as  
additional assurance of the presence of an accused. Bail set at a

1 figure higher than an amount reasonably calculated to fulfill this  
2 purpose is "excessive" under the Eighth Amendment. . . .

3 Since the function of bail is limited, the fixing of bail for any  
4 individual defendant must be based upon standards relevant for the  
5 purpose of assuring the presence of that defendant." (*Id.*, 342 U.S. at  
6 pp. 4-5 [72 S.Ct. at p. 3].)

7 As *Stack* makes clear, the determination of what is "adequate assurance" of an  
8 accused's willingness to "stand trial and submit to sentence if found guilty" must be made on a  
9 case-by-case basis, with, among other considerations, the financial circumstances of a given  
10 defendant in mind. As this state's Court of Appeal observed,

11 The sole purpose of bail is to assure the defendant's attendance in  
12 court when it is required. [Citations.] Accordingly, while both the  
13 seriousness of the crime or crimes charged (Pen. Code, § 1275) and  
14 the number of separate offenses thus charged [citation] are factors  
15 which are considered in determining the amount of bail required, the  
16 ultimate test is "the probability of his appearing at the trial or hearing  
17 of the case." (Pen. Code, § 1276. Thus, the amount of bail required  
18 for a defendant's release may be taken as a rational gauge of the  
19 estimation of the monetary incentive necessary to secure said  
20 defendant's return.

21 (*People v. Surety Insurance Co.* (1978) 77 Cal.App.3d 533, 537;  
22 emphasis added.)

23 (Accord, *People v. Ormiston* (2003) 105 Cal.App.4th 676, 688.)

### 24 C. "Statutory" Bail Schedule

25 Penal Code section 1269b, subdivision (c) declares, in relevant part, that "It is the  
26 duty of the superior court judges in each county to prepare, adopt, and annually revise a  
27 uniform countywide schedule of bail for all bailable felony offenses and for all misdemeanor  
28 and infraction offenses except Vehicle Code violations."

Subdivision (e) of section 1269b provides, in relevant part: "In adopting a uniform



1 countywide schedule of bail for all bailable felony offenses the judges shall consider the  
2 seriousness of the offense charged. In considering the seriousness of the offense charged the  
3 judges shall assign an additional amount of required bail for each aggravating or enhancing  
4 factor chargeable in the complaint . . . .”

5 Defendant helpfully attached this county’s bail schedule as an exhibit to his motion.  
6 He asserts that the scheduled bail for all of the offenses found by the Grand Jury is “around  
7 \$135,000.” (Motn. 5:14-15.) On the assumption that each violation of a given statute that is  
8 separately punishable is separately subject to the bail fixed for that violation, we calculate that  
9 amount to be \$435,000:

10	Conspiracy to violate Penal Code, § 278	
11	(Count 1)	\$ 50, 000
12	Conspiracy to violate Penal Code, § 236	
13	(Count 1)	25,000
14	Conspiracy to violate Penal Code, § 518	
15	(Count 1)	20,000
16	Violation of Penal Code, § 288, subd. (a),	
17	(Counts 2, 3, 4 and 5, totaled)	240, 000
18	Attempted violation of § 288, subd. (a)	
19	(Count 6)	60, 000
20	Violation of Penal Code, § 222.	
21	(Counts 7, 8, 9 and 10, totaled)	<u>40,000</u>
22		\$ 435,000

23  
24 **D. Defendant’s Personal Circumstances Make**  
25 **This County’s Bail Schedule Inappropriate**  
26 **As A Limitation On The Amount Of Bail**  
27 **That Would Be “Reasonable” In His Case**

28 Reference to the amount of bail that may be indicated on a county’s bail schedule

1 for a given offense is just the beginning of analysis whether that amount of bail is "reasonable"  
2 in the circumstances of a given case.

3 For one thing, bail schedule amounts are used primarily in fixing the bail for the  
4 release of an arrested person before he comes before the court. Thus, Penal Code section  
5 1269b, subdivision (b) provides "If a defendant has appeared before a judge of the court on the  
6 on the charge contained in the complaint, indictment, or information, *the bail shall be in the*  
7 *amount fixed by the judge at the time of the appearance*. If that appearance has *not* been made,  
8 the bail shall be in the amount fixed in the warrant of arrest or, if no warrant of arrest has been  
9 issued, *the amount of bail shall be pursuant to the uniform countywide schedule of bail for the*  
10 *county in which the defendant is required to appear, previously fixed and approved as provided*  
11 *in subdivisions (c) and (d).*" (Emphasis added.)

12 For another, a defendant who has been indicted stands on a different footing from  
13 one who has been arrested for the felony prior to an evidentiary hearing whether he should be  
14 ordered to stand trial for that offense, with respect to a determination of the appropriateness of  
15 a given amount of bail on a given felony charge. "Upon an application for admission to bail  
16 after indictment returned, the court must assume that the defendant is guilty of the offense with  
17 which he is charged." (*In re Grimes* (1929) 99 Cal.App. 10, 12.)

18 In short, a post-indictment determination of the amount of bail that will best assure a  
19 given defendant's continued attendance in the criminal proceedings pending against him,  
20 including sentencing in the event he is convicted on one or more of the charges found by the  
21 grand jury, is a highly individualized assessment.

22 The People mean no disrespect by the following, but Michael Joe Jackson's  
23 situation is truly unique. As has been noted, "the amount of bail required for a defendant's  
24 release may be taken as a rational gauge of the estimation of the monetary incentive necessary  
25 to secure said defendant's return." (*People v. Surety Insurance Co.*, *supra*, 77 Cal.App.3d 533,  
26 537.) Plainly the "monetary incentive" necessary to secure an accused's faithful attendance at  
27 pretrial, trial and sentencing proceedings can only be calculated by reference to the relative  
28 wealth of the accused and the likely strength of his desire to avoid the consequences of a

1 conviction on the charges alleged against him.

2 By all accounts, defendant is well-to-do. As his counsel notes, defendant holds title  
3 to some 2,000 acres of property in Los Olivos. In addition, he owns other, valuable tangible  
4 and intangible property.

5 The amount of bail that would prompt a wealthy individual to continue to make his  
6 appearances in court up to and including sentencing in a serious felony case, rather than risk  
7 forfeiting bail, is not answered merely by reference to a bail schedule necessarily compiled  
8 with those of no more than average wealth in mind.<sup>1</sup> Three million dollars is "exponentially  
9 higher" than the amount of bail set out on this county's bail schedule. But then, someone with  
10 Mr. Jackson's reported net worth is exponentially wealthier than the average defendant.

11  
12 E. The Temptation To Flee Must Surely Be  
13 Strong For An Individual In Defendant's  
14 Circumstances. To Suppose Otherwise  
15 Would Be To Blink Reality

16 It is not merely a "Michael Joe Jackson" who is confronted by charges that, if he is  
17 convicted on certain of them, will mandate his confinement in state prison for a very long time.  
18 The defendant here is "Michael Jackson, international celebrity," a man whose life-style to date  
19 would not have prepared him to adapt readily to a prison environment and routine, and whose  
20 physical stature will present its own problems for him in making the necessary adjustments.

21 Mr. Jackson has doubtlessly given those realities considerable thought.

22 This court must carefully consider how this defendant will assess his predicament,  
23 post-indictment, and what he may likely regard, as an intensely practical matter, as the options  
24 available to him.

25  
26  
27 <sup>1</sup> Andrew Luster, the heir to the Max Factor cosmetics fortune, took leave of the proceedings in his rape  
28 trial in Ventura County in January, 2003 and departed the United States for Mexico, notwithstanding  
his one million dollar bail bond.



1 Flight certainly is one of those "options," for this defendant as, indeed, it likely  
2 would be for anyone in his shoes. If the impulse to flee rather than face the disagreeable  
3 consequences of one's actions was not so universally experienced and understood, the  
4 requirement that "reasonable" bail is that amount which discourages flight would not exist.

5 Mr. Jackson is known and adored – "adored" is not too strong a word – in many of  
6 the countries of Europe, the Near East and Africa. Several of those countries do not have  
7 extradition treaties with the United States. As the day of trial approaches and Mr. Jackson  
8 makes a hard-headed assessment of his chances for an acquittal and ponders the unhappy but  
9 inevitable consequences of a conviction, he may well conclude that life as a wealthy absconder  
10 in one of those countries is preferable to what might amount to a life term in a California  
11 prison.

12 Defendant Jackson is currently at liberty on a three million dollar bail bond.  
13 Defendant has thus far made all his appearances in court as directed. One good reason for his  
14 having done so is the severe consequence of not having done so. Three million dollars is a lot  
15 of money to leave behind, even for him.

#### 16 CONCLUSION

17 The question the court must answer is what is "adequate assurance" from one of  
18 Michael Jackson's reported wealth "that he will stand trial and submit to sentence if found  
19 guilty"? In our respectful submission, three million dollars bail is little enough assurance in  
20 the unique circumstances of this case.

21 DATED: May 21, 2004

22 Respectfully submitted,

23 THOMAS W. SNEDDON, JR.  
24 District Attorney

25 By:   
26 Gerald McC. Franklin, Senior Deputy

27 Attorneys for Plaintiff

**PROOF OF SERVICE**

STATE OF CALIFORNIA  
COUNTY OF SANTA BARBARA

} SS

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and I am not a party to the within-entitled action. My business address is: District Attorney's Office; Courthouse; 1105 Santa Barbara Street, Santa Barbara, California 93101.

On May 21, 2004, I served the within PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR REDUCTION IN PRESENT BAIL on Defendant, by THOMAS A. MESEREAU, JR., STEVE COCHRAN, and ROBERT SANGER, by faxing a true copy to counsel at the facsimile number shown with the address of each on the attached Service List, and then by causing to be mailed a true copy to each counsel at that address.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Santa Barbara, California on this 21st day of May, 2004.

  
Gerald McC. Franklin



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