

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

4 **KATTEN MUCHIN ZAVIS ROSENMAN**
5 Steve Cochran, State Bar Number 105541
Stacey McKee Knight, State Bar Number 181027
6 2029 Century Park East, Suite 2600
Los Angeles, California 90067-3012
7 Tel.: (310) 788-4455, Fax: (310) 712-8455

8 **SANGER & SWYSEN**
Robert M. Sanger, State Bar Number 058214
9 233 East Carrillo Street, Suite C
Santa Barbara, CA 93101
10 Tel.: (805) 962-4887, Fax: (805) 963-7311

11 **OXMAN & JAROSCAK**
Brian Oxman, State Bar Number 072172
12 14126 East Rosecrans
Santa Fe Springs, CA 90670
13 Tel.: (562) 921-5058, Fax: (562) 921-2298

14 Attorneys for Defendant
MICHAEL JOSEPH JACKSON

15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA

17 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

18 THE PEOPLE OF THE STATE OF
19 CALIFORNIA,

20 Plaintiffs,

21 vs.

22 MICHAEL JOSEPH JACKSON,

23 Defendant.

REDACTED VERSION

Case No. 1133603

MOTION TO RECONSIDER ORDER
DENYING BAIL REDUCTION (C.C.P. §
1008) AND REQUEST FOR AN
EVIDENTIARY HEARING; DECLARATION
OF ROBERT M. SANGER

UNDER SEAL

Honorable Rodney Melville

~~Date: September 16, 2004~~

~~Time: 10:00 am.~~

~~Dept: SM 8~~

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DECLARATION OF ROBERT M. SANGER

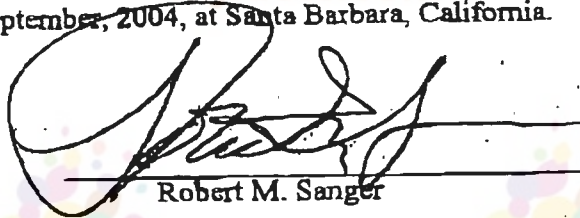
I, Robert M. Sanger, declare:

1. I am an attorney at law duly licensed to practice law in the courts of the State of California, a partner in the law firm of Sanger & Swysen, and co-counsel for Michael Jackson.
2. Mr. Jackson moved for a reduction in the amount of his bail on May 30, 2004. The Motion was taken under submission, and on June 11, 2004, the Court denied the Motion. Mr. Jackson subsequently filed a writ with the Court of Appeals. The Court of Appeals remanded the issue for further proceedings and findings pursuant to Penal Code Section 1275 and *In re Christie* (2001) 92 Cal.4th 1105. On August 31, 2004, the Court issued the Order Denying Bail Reduction.
3. The Court in its ruling made reference to testimony and allegations from sources outside of any hearing on bail in this case. These sources include testimony in the grand jury transcripts, in camera submissions with reference to Mr. Jackson's payment of legal fees to former counsel, and the civil settlement of claims asserted in the 1993-1994 investigation of Mr. Jackson.
4. The purported facts referenced by this Court's order are not supported by the grand jury transcripts. For instance, the Court referenced purported testimony that Mr. Jackson said he would join the Doe family in Brazil. However, there is nothing in the grand jury transcripts that supports the statement that "[d]efendant said he would join them in Brazil." (Order Denying Bail Reduction, page 2.)
5. The Court's order improperly assumes not only the allegations in the indictment to be true, but also allegations that are not in the indictment, and that did not sustain a finding of probable cause by the grand jury, to be true.
6. The order also references the 1993-1994 investigation of Mr. Jackson. That investigation involved the convening of two separate grand juries, neither of which found probable cause to indict Mr. Jackson.
7. It is improper to assume the allegations contained in the indictment to be true when making its bail determination. The popular assumption that the Court must assume the

1 allegations to be true when determining bail is based on a clear misreading of *Ex Parte Duncan*
2 (1879) 53 Cal. 410. It is also improper to consider allegations that fall outside of the grand jury's
3 determination of probable cause to be true when making its determination of the amount of bail.

4 8. It is necessary to conduct a proper bail hearing to give Mr. Jackson an opportunity to
5 present different facts and circumstances so that this Court may reconsider its Order to Deny Bail
6 Reduction.

7 I declare under the penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct this 10th day of September, 2004, at Santa Barbara, California.

9
10 
11 Robert M. Sanger

I

**THE COURT SHOULD RECONSIDER THE DENIAL OF MR. JACKSON'S BAIL
REDUCTION MOTION AND HOLD AN EVIDENTIARY HEARING TO DETERMINE
A REASONABLE AMOUNT OF BAIL**

It is necessary to hold a proper hearing to determine the appropriate amount of bail. The Court has considered information from outside any bail hearing in this case to justify its determination of the amount of bail. The Court has improperly assumed not only the allegations in the indictment to be true, but also allegations that are not in the indictment, and that did not sustain a finding of probable cause by the grand jury, to be true. As argued below, different facts exist that sufficiently refute so-called evidence presented to the grand jury that is now relied upon by the Court in its determination of the proper amount of bail. The Court should allow Mr. Jackson the opportunity to present those new and different facts at a proper bail hearing.

II.

**THE COURT ERRED BY ASSUMING GUILT WHEN MAKING ITS
DETERMINATION OF WHETHER TO REDUCE BAIL**

It is not appropriate to assume the charges in the indictment are true for the purpose of reviewing the amount of bail. The principle that the Court must assume guilt in order to determine bail evolved from a clear misreading of case law. Unfortunately, this misreading has been perpetuated by Witkin. (Witkin & Epstein, California Criminal Law 2008, pages 2368-1369 (2d. Ed. (1989).)

This fallacy evolved from a results-oriented reading of *Ex Parte Duncan* (1879) 53 Cal. 410, in which the California Supreme Court notes that a habeas review of a trial court bail setting is based by an assumption of guilt standard. (*Id.* at 411.) The Court contrasts that standard with the trial court standard that would have been appropriate "had the proceedings to let him to bail been originally before us . . ." (*Ibid.*)

III.

FACTS EXIST TO SHOW THERE IS ABSOLUTELY NO EVIDENCE THAT MR.

1 **JACKSON HIMSELF INTENDED TO TRAVEL TO BRAZIL OR THAT HE**
2 **INTENDED TO SEND THE DOE FAMILY TO BRAZIL**

3 The grand jury transcript does not detail any evidence that Mr. Jackson, himself, "sought
4 to arrange for the Doe family to travel to Brazil" (Order Denying Bail Reduction, page 2) or that
5 he "said he would join them in Brazil." (Order Denying Bail Reduction, page 2.) Despite
6 repeated attempts by the prosecution to prompt the Doe family into implicating Mr. Jackson,
7 personally, in the alleged scheme to take them to Brazil, there is no evidence that Mr. Jackson
8 had any involvement in such a plan. Furthermore, there is absolutely no evidence whatsoever
9 that Mr. Jackson personally planned to travel to Brazil at any time, for any reason.

10 At most, there is evidence that certain unindicted co-conspirators were planning a trip to
11 Brazil. The brother of the complaining witness testified that he heard about family taking a trip
12 to Brazil from [REDACTED] (RT 157:17-21.) The complaining witness testified that [REDACTED]
13 [REDACTED] first mentioned the family's trip to Brazil. (RT 403:19-404:5.) He also testified that
14 the ambiguous "they" told him that Mr. Jackson would come to Brazil, a week later. (RT 404:17-
15 20.)

16 Evidence exists, however, that demonstrates that Mr. Jackson never planned on traveling
17 to Brazil and had no involvement in the alleged plan to send the Doe family there. The sister of
18 the complaining witness testified that Mr. [REDACTED] and Mr. [REDACTED] did not tell the Doe family that
19 Mr. Jackson would be traveling with them to Brazil and that they said that "maybe later" he
20 would join them. (RT 270:5-10.) The transcript reveals that the prosecution gave the
21 complaining witness many opportunities to testify that Mr. Jackson was involved in the trip to
22 Brazil, however, the complaining witness stated that he never discussed this alleged trip
23 with Mr. Jackson. (RT 404:27-406:23.)

24 Furthermore, Mr. Jackson's security guard testified that it was Mr. [REDACTED] and Mr.
25 [REDACTED] who mentioned Brazil. (RT 581:22-26; 995:12-17) He also testified that no one ever
26 told him that Mr. Jackson was going to Brazil and that he would have known if Mr. Jackson was
27 making such a trip. (RT 582:6-19.)

1 Surprisingly, the Court states that the grand jury transcript provides evidence that
2 "[d]efendant said he would join them in Brazil." (Order Denying Bail Reduction, page 2.) The
3 grand jury transcripts contain no references to such a statement by Mr. Jackson. Even the highly
4 incredible testimony of the Doe family does not go as far as to claim that Mr. Jackson actually
5 spoke with them about the trip to Brazil, let alone that he personally told them that he would be
6 joining them. In fact, there is evidence to the contrary. (See RT 270:5-10; RT 404:27-406:23.)

7 The evidence of any involvement in the trip to Brazil by Mr. Jackson was so flimsy that
8 the indictment itself does not contain any allegations that Mr. Jackson intended, planned, or was
9 even aware of the alleged plan to send the Doe family to Brazil. A fair review of the grand jury
10 transcript reveals that, even under the far-fetched verison of events proposed by the prosecution
11 witnesses, the only people involved in planning a trip to Brazil are the alleged co-conspirators,
12 who have not even been charged in this case, let alone been required to post bail.

13 IV.

14 **THE UNSUBSTANTIATED ALLEGATIONS FROM THE 1993-1994 INVESTIGATION**
15 **OF MR. JACKSON DO NOT JUSTIFY THE EXCESSIVE BAIL AMOUNT**

16 It is inappropriate for this Court to consider supposed evidence from the 1993-1994
17 allegations against Mr. Jackson when determining the amount of his bail. Two separate grand
18 juries heard testimony regarding these allegations, and neither of them found probable cause to
19 return an indictment against Mr. Jackson. The District Attorney failed to prove any wrongdoing
20 by Mr. Jackson and it is improper for the Court to now assume charges that were rejected by two
21 separate grand juries to be true.

22 The fact that Mr. Jackson entered into a civil settlement in connection with those
23 allegations is not a proper basis to deny a bail reduction now. As a matter of law and policy a
24 civil settlement cannot be used to infer that the defendant committed the alleged acts. Like any
25 entertainer who makes his living in the public eye, Mr. Jackson had to consider the damage to his
26 reputation that would have been caused by a public civil lawsuit, no mater how baseless the
27 allegations. Even though he would have been entirely vindicated by such a proceeding, that
28

1 vindication would have come a tremendous cost to his public image. His decision to settle that
2 case is not a valid basis for setting bail in the present case.

3 V.

4 **CONCLUSION**

5 For the reasons stated above, the Court should reconsider its Order Denying Bail
6 Reduction.

7 Dated: September 10, 2004

8 Respectfully submitted,

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

10
11 KATTEN MUCHIN ZAVIS ROSENMAN
Steve Cochran
12 Stacey McKee Knight

13 SANGER & SWYSEN
Robert M. Sanger

14 OXMAN & JAROSCAK
15 Brian Oxman

16
17 By: 

18 Robert M. Sanger
Attorneys for
19 MICHAEL JOSEPH JACKSON