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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

SANTA MARIA DIVISION

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. MICHAEL JOSEPH JACKSON Defendant.	CASE NO. 1133603 **MR. JACKSON'S MEMORANDUM IN SUPPORT OF OBJECTION TO SUBPOENA TO LARRY FELDMAN FOR SETTLEMENT DOCUMENTS** **TIME:** None Set **DATE:** None Set **PLACE:** Department SM-2

A. Introduction.

Mr. Michael Jackson submits this Memorandum in support of his Objection to Subpoena of Settlement Documents from Larry Feldman. Mr. Jackson's Objection is based on the following grounds:

(1) Evidence of prior civil settlement agreement or amounts is irrelevant and inflammatory, and such evidence will destroy Mr. Jackson's right to fair trial with reversible error;

(2) The introduction of evidence of prior civil settlement agreements constitutes a violation of Evidence Code section 1152(a), cannot be used to establish state of mind, and do not show any type of admission;

(3) Plaintiff cannot establish the source of the funds utilized to settle the claims involved, and because insurance policies permitting the insurer to settle over the wishes of the insured were involved, introduction of settlement agreements will deprive Mr. Jackson of due process of law.

B. Evidence of Prior Civil Settlement Agreement Is Irrelevant and Inflammatory.

Plaintiff has subpoenaed a settlement document from a 1994 settlement in which Mr. Jackson compromised a civil claim filed against him by Evan Chandler, Guardian for Jordan Chandler. The settlement provides there is no admission of liability by any of the parties and that the settlement is designed to compromise negligence claims asserted against Mr. Jackson by the plaintiffs in a civil proceeding. Plaintiff seeks to obtain the settlement documents by way of subpoena for the purpose of introducing the document into evidence to establish some kind of admission against Mr. Jackson which not only does not exist, but also constitutes an impermissible inference of an admission against interest.

Mr. Jackson was not liable for any of the claims compromised by the settlement agreement, and plaintiff cannot present evidence of the nature, source, individuals, or companies who actually paid the settlement amounts evidenced by the settlement agreement. Because insurance companies were the source of the settlement amounts, and the insurance companies make the payments based on their contractual rights to settle the proceeding without Mr. Jackson's permission, the settlement does not constitute an admission and cannot be used to create such an impermissible inference to the jury. Introduction of the document would be improper because the settlement payment from a third party with the contractual right to make the settlement regardless of Mr. Jackson's wishes is irrelevant to any issue of this proceeding

Evidence of insurance settlements not only deprives Mr. Jackson of due process of law, but also is an inflammatory violation of Evidence Code section 352 where no probative value exists. The speculative suggestion that Mr. Jackson somehow made an admission when an insurance company required a settlement, and in fact paid for the settlement, creates an impermissible inference to the jury that would deprive Mr. Jackson of due process of law.

C. The 1993 Civil Settlement was Made by Mr. Jackson's Insurance Company and was Not Within Mr. Jackson's Control.

The plaintiff seeks to introduce evidence of the civil settlement of the 1993 lawsuit through the testimony of Larry Feldman, attorney for the current complaining family and attorney for the plaintiff in the 1993 matter. The settlement agreement was for global claims of negligence and the lawsuit was defended by Mr. Jackson's insurance carrier. The insurance carrier negotiated and paid the settlement, over the protests of Mr. Jackson and his personal legal counsel.

It is general practice for an insurer to be entitled to control settlement negotiations and the insured is precluded from any interference. Shapero v. Allstate Ins. Co., 114 Cal. App.3d 433, 438 (1971); Ivy v. Pacific Automobile Ins. Co., 156 Cal. App.2d 652, 660 (1958)(the insured is precluded from interfering with settlement procedures). Under the majority of contracts for liability insurance, the absolute control of the defense of the matter is turned over to the insurance company and the insured is excluded from any interference in any negotiation for settlement or other legal proceedings (emphasis added). Merritt v. Reserve Ins. Co., 34 Cal. App.3d 858, 870 (1973). An insurance carrier has the right to settle claims covered by insurance when it decides settlement is expedient and the insured may not interfere with nor prevent such settlements. 44 Am. Jur. 2d, Insurance, sec. 1392, at 326-27 (rev. ed 2002)

In Brown v. Guarantee Ins. Co., 155 Cal. App. 2d 679, 685 (1957), the court stated:

"It is generally understood that these are rights and privileges which it is necessary for the insurer to have in order to justify or enable it to assume obligations which it does in the contract of insurance. So long as recovery does not exceed the limits of the insurance, the question of whether the claim be compromised or settled, or the matter in which it shall be defended, is a matter of no concern to the insured." .

The insurer's right to control the defense of any action against the insured includes the right to ... negotiate settlement, and to otherwise conduct defense of the action. The consent of the insured is usually superfluous. ' "Liability policies usually specifically prohibit the insured from settling or negotiating for a settlement or interfering in any manner with the defense except upon request of the insurer unless the insurer is in breach of contract. By accepting a liability insurance policy, the insured is bound by these terms." (Croskey, et. al, Cal. Practice Guide: Insurance Litigation 3, supra, section 12:207, p. 12B-2.) "For this reason, it is common practice for insurance counsel and an adjuster to handle the negotiation of insurance funded settlements with out the superfluous involvement of a fully protected insured.' Fiege v. Cooke, ___ Cal. App. 4th ____ (2004).

It is unfair for an insurance company's settlement to be now held against Mr. Jackson or for the Settlement Agreement to be admitted as evidence of Mr. Jackson's prior conduct or guilt. Mr. Jackson could not control nor interfere with his insurance carrier's demand to settle the dispute. No admission against interest nor acknowledgment of criminality can be inferred regarding Mr. Jackson from the act of the insurance carrier in settling the litigating.[4]

D. Evidence of Settlement Agreements is Irrelevant to Establish State of Mind, Criminal Culpability, or Efforts to Conceal Prior Acts.

Plaintiff's claim that Mr. Jackson reached settlements with civil claimants in the past is irrelevant to this proceeding, and the speculation about the amount of those settlements or the source of payment, whether by third parties or insurance carriers, is improper because plaintiff has produced no evidence in discovery concerning those agreements or amounts. (See discussion of insurance coverage at p. 6 n.2 & 3, and p. 7 n.4, infra.). Such evidence is irrelevant because the inference of state mind from the prior

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[4] On January 28, 2005, the court ruled on Mr. Jackson's Motion in Limine to Preclude Evidence of Settlement Amounts and stated that before it would permit plaintiff to introduce any evidence of settlement amounts, it would first have to consider the strengths and weaknesses of the prosecution's case in chief, and then it would have to hold an Evidence Code section 402 hearing where the relevance and prejudicial effect of the testimony was assessed. In such a hearing, the burden will be on the prosecution to demonstrate the source of the payment made under the settlement agreement in question came from Mr. Jackson and that the settlement was his act and not the act of his insurance carrier. The prosecution has no such evidence because the fact is the 1994 settlement was undertaken at the direction and insistence of Mr. Jackson's insurance company where Mr. Jackson had no choice in the matter.

settlement may not be used to establish culpability for subsequent acts whether similar in nature or not. Covell v. Superior Court, 159 Cal. App. 3d 39, 42-43 (1984). The amount of any civil settlement Mr. Jackson made with third parties, of which there are thousands of such civil settlements, whether made last year or 10 years ago, and whether accomplished to stop a frivolous claim or any other claim, should not be permitted to come before the jury.

Evidence Code section 1152(a) provides:

"Evidence that a person has, in compromise or for humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain, or claims that he has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his liability for the loss or damage or any part of it."

The Law Revision Commission Comment to section 1152 states:

"The words 'as well as any conduct or statement made in negotiation thereof' make it clear that statements made by parties during negotiations for the settlement of a claim may not be used as admissions in later litigation. This language will change the existing law under which certain statements made during settlement negotiations may be used as admissions. People v. Forster, 58 Cal.2d 257, 23 Cal.Rptr. 582, 373 P.2d 630 (1962). The rule excluding offers is based upon the public policy in favor of the settlement of disputes without litigation. The same public policy requires that admissions made during settlement negotiations also be excluded. The rule of the Forster case that permits such attempts to be admitted places a premium on the form of the statement. The statement "Assuming, for the purposes of these negotiations, that I was negligent ..." is inadmissible; but he statement "All right, I was negligent! Let's talk about damages .. " may be admissible. See the discussion in People v. Glen Arms Estate, Inc., 230 Cal.App.2d 241, 863, 864, 41 Cal.Rptr. 303, 316 (1964). The rule of the Forster case is changed by Section 1152 because that rule prevents the complete candor between the parties that is most conductive to settlement."

Section 1152(a) makes inadmissible not only the offer for compromise, but also any conduct or statements made in negotiations to reach the settlement. San Joaquin v. Galletti, 252 Cal. App. 2d 840, 843 (1967). Settlements are often motivated by a desire to "buy peace" and avoid litigation, and the public

policy in favor of settlements makes inadmissible settlements to penalize person entering into them. Hasler v. Howard, 121 Cal. App. 4th 1023, 1026 (2004); 1 B. Witkin, California Evidence, Circumstantial Evidence, sec. 424, at 398 (3d ed. 1986). Evidence of money paid to a former plaintiff or a dismissal given to a former defendant does not necessarily indicate liability because the former plaintiff may have been forced by economic circumstances to take a paltry sum, and the former defendant may have been coerced into an excessive payment by considerations foreign to the litigation. Granville v. Parsons, 259 Cal. App. 2d 298, 304 (1968).[2/]

The alleged settlement agreement and amount are not settlements or payments to the complaining witnesses in this case and have no probative value to any issue in this case. For plaintiff to pick and choose among non-criminal, uncharged civil settlements, and place the terms and amounts of such settlements before the jury is an improper effort to infer a criminal state of mind where no such inference can be drawn. Brown v. Pacific Elec. Ry. Co., 79 Cal. App. 2d 613, 616 (1947)(proof of settlement establishes no evidence of an admission of liability and showed no more the defendant's desire "to buy its peace" with claimant). Such evidence is irrelevant, and the attempt to create such an inference from civil settlements eleven (11) years ago is remote, prejudicial, and of no probative value. Evidence Code section 352.[3/]

E. **Evidence Code section 1152 Applies to this Proceeding.**

When the court ruled on January 28, 2005, that a section 402 hearing was required for the introduction of any settlement claims, plaintiff cited People v. Muniz, 213 Cal. App. 3d 1508 (1989), for

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2/ In addition, settlements 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 settlements and that no insurance was involved, plaintiff's claim of conscious state or proof of criminality lacks foundation and is irrelevant.

3/ Evidence that inflames the jury with no probative value to any issue of the case should be excluded under Evidence Code section 352. People v. Burns, 109 Cal. App. 524, 541-42 (1952). In Asuagyo v. Compton & Knowles Corp., 183 Cal. App. 3d 1032, 1038 (1986), the court stated:

> "The trial court is vested with very broad discretion in ruling on the admissibility of evidence. A trial court acts within its discretion when excluding cumulative and time consuming evidence, (Evid. Code, sec. 352; Vossler v. Richards Manufacturing Co. (1983) 143 Cal.App.3d 952, 961.) The weighing process under section 352 depends upon the trial court's consideration of the unique facts and issues of each case, rather than upon mechanically automatic rules. (People v. Yu (1983) 143 Cal.App.3d 358, 377.)."

the proposition Evidence Code section 1152 does not apply to criminal proceedings. However, Muniz, which was disapproved by the Supreme Court in People v. Escobar, 3 Cal. 4th 740 (1992),[4/] provided only that offers to the alleged "victim" are not covered by section 1152. Civil settlements 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 settlements 13 years earlier, nor do such civil settlements 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 oral copulation and sexual penetration 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 settlement offer that could not be introduced under Evidence Code section 1152(a). Defendant was convicted of forced oral copulation. The Court of Appeal affirmed, finding Evidence Code section 1152(a)'s prohibitions against admission of settlements 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 settlement suggestion to the current complaining witnesses. The evidence involving settlement amounts regards an 11-year old "civil" cases where the settlement would be introduce to show civil "liability," not an admission against interest. The proffered evidence fits squarely

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[4/] 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.

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.[5/]

F. Settlement Agreement Evidence Deprives Mr. Jackson of Effective Cross-Examination.

Under Evidence Code section 1154, Mr. Jackson is precluded from effectively cross-examining any witness who wished to testify concerning the offer or acceptance of an agreement or a sum of money in satisfaction of a claim. To permit the prosecution to introduce evidence of the amount of any settlement would violate Mr. Jackson's rights to due process and cross-examination because he could not thereafter introduce any evidence that the individual accepted a sum of money so as to prove "the invalidity of the claim or any part of it." Evidence Code section 1154. The statutory scheme regarding such evidence is comprehensive, and a fair trial cannot take place by ignoring one of the Code provisions because of the existence of the corollary Code provision protecting persons who have accepted such settlements.

Evidence Code section 1154 provides:

> "Evidence that a person has accepted or offered or promised to accept a sum of money or any other thing, act, or service in settlement of a claim, as well as any conduct or statement made in negotiations thereof, is inadmissible to prove the invalidity of the claim or any part of it."

Section 1154 prohibits introduction of evidence regarding offers to discount a claim, any conduct or statements made in settlement negotiations against those who have accepted such settlements, and any evidence "to prove the invalidity of the claim or any part of it." Young v. Keele, 188 Cal. App. 3d 1090, 1093-04 (1987). Where section 1152 prohibits the introduction of evidence of a compromise offer to prove liability, section 1154 prohibits the same evidence for purposes of proving invalidity of the claim. Law Revision Commission Comment, Evidence Code section 1154. Taken together, the sections prohibit the introduction into evidence of an offer to compromise a claim for the purpose of proving validity or invalidity of any claim. Fletcher v. Western National Life Ins. Co., 10 Cal. App. 3d 376, 396 (1970)

[5/] Allowing these materials into evidence would result in a violation of Mr. Jackson's right to a fair trial, due process of law, a fair and impartial jury, and violate the constitutional guarantees of the 4th, 5th, 6th, and 14th Amendments to the United States Constitution and the California Constitution. Plaintiff is offering these items only because of the public nature of these proceedings and Mr. Jackson's notoriety. The effort to inflame the jury deprives Mr. Jackson of equal protection of the laws and the privileges and immunities guaranteed others.

In Washington v. Texas, 388 U.S. 14, 19 (1967), the Supreme Court stated:

"The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law."

Mr. Jackson would be denied a fair trial if plaintiff is permitted to introduce evidence of settlement agreements or amounts, but Mr. Jackson were precluded from introducing the same or similar evidence to establish the invalidity of the very same claim. It is not enough for plaintiff to suggest it wouldn't object or would waive section 1154's prohibition because the Legislature has established a comprehensive scheme that should govern this Court's admission of evidence. There is no place for evidence of prior civil settlement agreements or amounts in this trial because such evidence is irrelevant, prejudicial, and precluded by statute.

G. Claims of Settlement Agreements Violate the Prohibitions in the Statute of Limitations.

1. The settlements agreements are time remote and time barred.

Plaintiff claims through testimony to the Grand Jury from Attorney Larry Feldman that there was a settlement with Jordan Chandler in 1994, some 11 years ago. (GJ Tr. p. 64, lns 14-19), testimony which helped lead to Mr. Jackson's indictment. However, plaintiff has no documents to back up its allegation of settlement, has produced no such documents in discovery to date, and now seeks to get documents from Larry Feldman to bolster its claims. All of this evidence, be it testimony or documents, is speculative and irrelevant.

Permitting evidence of settlement agreements or amounts would be speculative because there is no evidence Michael Jackson made the settlement. Settlements in civil suits many times are dictated by insurance companies who settle claims regardless of an individual's wishes. Although Jordan Chandler was interviewed "thereafter" by detectives seeking evidence to offer in a child molestation prosecution of Michael Jackson, "no criminal charges were filed as a result of that interview." This interview took place prior to the decision of the United States Supreme Court in Stogner v. California, 539 U.S. 607, 613

(2003), holding California's retroactive extension of the statute of limitations to be unconstitutional. In other words, Jordan Chandler's statements were not sufficient even at that earlier time, to support child molestation charges against Michael Jackson, and to now permit the suggestion of a settlement agreement for some improper act is not only irrelevant, but also a speculative violation of the statute of limitations.

In Stogner v. California, 539 U.S.607, 613 (2003), the Court said:

> "Significantly, a statute of limitations reflects a legislative judgment that, after a certain time, no quantum of evidence is sufficient to convict.... And that judgment typically rests, in large part, upon evidentiary concerns--for example, concern that the passage of time has eroded memories or made witnesses or other evidence unavailable.... Indeed, this Court once described statutes of limitations as creating 'a presumption which renders proof unnecessary.' Wood v. Carpenter, 101 U.S. 135, 139, 25 L.Ed. 807 (1879)." (Emphasis add added).

Similarly, the Court stated in United States v. Marion, 404 U.S. 307, 322 (1971):

> "The law has provided other mechanisms to guard against possible as distinguished from actual prejudice resulting from the passage of time between crime and arrest or charge.... '[T]he applicable statute of limitations . . . is . . . the primary guarantee against bringing overly stale criminal charges. "Such statutes represent legislative assessments of relative interests of the State and the defendant in administering and receiving justice; they" are made for the repose of society and the protection of those who may (during the limitation) . . . have lost their means of defense.' Public Schools v. Walker, 9 Wall. 282, 288, 19 L.Ed. 576 (1870). These statutes provide predictability by specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced."

Rarely is language as strong as this – specifying a limit beyond which there is an irrebuttable presumption that a defendant's right to a fair trial would be prejudiced – used in a criminal case. The right to a fair trial is the defendant's due process right. Permitting any testimony of settlement agreements that are from 11 years ago violates these principles and denies Mr. Jackson a right to a fair trial.

The passage of time of 11 years since this settlement renders improper the introduction of any evidence that creates an inference of criminal acts. Any allegations Jordan Chandler has made that were in any way connected to the "settlement" allegedly paid by Mr. Jackson are subject to the inference that they

were accusations motivated by a desire to persuade Mr. Jackson to pay money in order to avoid some kind of criminality. The age of this alleged, but previously unadjudicated incident renders presumptively unfair any offer of settlement for uncharged non-criminal civil "claims" to a jury, and the inference of "criminality" violates the statute of limitations in California and the due process clauses of both the California and United State Constitutions.

2. **Plaintiff cannot use 11 year old settlement agreement to show criminal intent.**

It is irrefutable that plaintiff's allegations as to a settlement agreement with Jordan Chandler would be time barred as criminal charges if the People were to seek to bring those charges against Mr. Jackson. It is also certain the highest Court in the land would conclude Mr. Jackson cannot obtain a fair trial on those time barred allegations. In this case, especially, it will be impossible for Mr. Jackson to receive a fair trial based on allegations that he settled "civil" claims 11 years ago for some amount where the nature of the "civil" claims have never been charged as a criminal matter.

Moreover, if Jordan Chandler's allegations were formal charges, Mr. Jackson would be entitled to a dismissal of such charges on both State and Federal Speedy Trial grounds because the delay in bringing these allegations to court has severely prejudiced Mr. Jackson's ability to defend against them. Barker v. Wingo, 407 U.S. 514, 530 (1972)(prejudice may be shown by loss of a material witness or other material evidence or fading memory caused by lapse of time; Jones v. Superior Court, 3 Cal.3d 734, 741 (1970). Equally, the claim that settlement amounts can be used to create an inference of criminality are also a violation of Mr. Jackson's right to a speedy trial. People v. Hill, 37 Cal.3d 491 (1984)(prosecution witness memory faded); Barker v. Municipal Court, 64 Cal.2d 806, 813 (1966).

Were the Court to allow the People to proceed in presenting evidence of long past settlement agreements concerning non-criminal "civil" claims, Mr. Jackson would be deprived of a fair trial. The evidence of "civil" settlements from 11 years ago is both remote as to time, vague as to the nature of the claim involved, and irrelevant to establish anything in connection with this case. The passage of time violates Mr. Jackson's rights to a speedy trial on the inference of "criminality" the prosecution wishes to create by reference to such settlement amounts, and exclusion of all such evidence is essential to both preserve Mr. Jackson's right to a fair trial and protect against violations of due process of law.

H. Conclusion.

For the foregoing reasons, Mr. Michael Jackson requests his Objection to Subpoena for Settlement Documents be granted and the subpoena for settlement documents to directed to Larry Feldman be quashed.

DATED: March 21, 2005

Respectfully submitted,

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By: _____

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PROOF OF SERVICE BY MAIL AND FAX

I, Maureen Jaroscak declare and say:

I am an attorney at law admitted to practice before all the courts of the state of California and I am an attorney for Mr. Michael Jackson in the above-entitled action. My business address is 14126 East Rosecrans Blvd., Santa Fe Springs, California 90670. I m over 18 years and not a party to the above-entitled action. On March 21, 2005, I served the following:

MR. JACKSON'S MEMO IN SUPPORT OBJECTION TO SUBPOENA FOR SETTLEMENT DOCUMENTS

on the interested parties by placing a true copy of the document in a sealed envelope, and depositing it in the United States Mail with first class postage prepaid at La Mirada, California, and addressed as follows:

Thomas Sneddon
1112 Santa Barbara Street
Santa Barbara, CA 93101
Fax No. 805 568-2453

In addition, on this same date, I served a copy of the document by fax to the above-indicated number by transmitting a true copy of it by facsimile pursuant to Rule 2003 of the California Rules of Court.

Executed this 21st day of March, 2005, at Santa Fe Springs, California.

Maureen Jaroscak