

1 **COLLINS, MESEREAU, REDDOCK & YU**
2 Thomas A. Mesereau, Jr., State Bar Number 091182
3 Susan C. Yu. State Bar Number 195640
4 1875 Century Park East, 7th Floor
5 Los Angeles, CA 90067
6 Tel.: (310) 284-3120, Fax: (310) 284-3133

7 **SANGER & SWYSEN**
8 Robert M. Sanger. State Bar Number 058214
9 Stephen K. Dunkle. State Bar Number 227136
10 233 East Carrillo Street. Suite C
11 Santa Barbara, CA 93101
12 Tel.: (805) 962-4887, Fax: (805) 963-7311

13 Attorneys for Defendant
14 **MICHAEL JOSEPH JACKSON**

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAY 17 2005

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

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

17 THE PEOPLE OF THE STATE OF)
18 CALIFORNIA,)

19 Plaintiffs,)

20 vs.)

21 MICHAEL JOSEPH JACKSON,)

22 Defendant.)

Case No. 1133603

MR. JACKSON'S RESPONSE TO THE
GOVERNMENT'S SUPPLEMENTAL
MOTION TO EXCLUDE HEARSAY
TESTIMONY OF DEFENSE WITNESS
ANGEL VIVANCO PURSUANT TO
EVIDENCE CODE SECTION 352

DATE: TBA
TIME: TBA
DEPT: SM-8

23 MEMORANDUM OF POINTS AND AUTHORITIES

24 INTRODUCTION

25 With the exception of two of the statements, all of the statements of Angel Vivanco that
26 have been labeled hearsay by the prosecution, are admissible as prior inconsistent statements of
27 Davellin Arvizo. (Evidence Code Section 1235.) The prosecution made an issue of the Arvizo

28 MR. JACKSON'S RESPONSE TO THE GOVERNMENT'S SUPPLEMENTAL MOTION TO EXCLUDE
HEARSAY TESTIMONY OF DEFENSE WITNESS ANGEL VIVANCO PURSUANT TO EVIDENCE CODE
SECTION 352

1 family's closeness and of Davellin's relationship with Jay Jackson during their direct
2 examination of Davellin. Mr. Vivanco's testimony is relevant impeachment testimony.

3 The following citations to the record demonstrate that Mr. Vivanco's testimony is
4 admissible as impeachment against Davellin Arvizo:

5 A. **That Davellin did not get along with her mother.** Davellin testified that she was close
6 with her mother and was in the habit of calling her frequently. (RT 634:4-635:1.) On
7 cross-examination Davellin testified that she was "with [her] mom always." (RT 830:5-
8 10.) She said that Janet Arvizo was a "very, very good mother." (RT 866:18-19.)
9 Statements inconsistent with this testimony should be admitted as prior inconsistent
10 statements.

11 B. **That Davellin did not like the 'new' boyfriend.** On direct examination, the District
12 Attorney solicited testimony that Davellin had a "very nice relationship" with Jay Jackson
13 and that he was "very, very loving." (RT 663:6-9.) The statement is inconsistent with
14 this testimony.

15 C. **That Davellin thought the new boyfriend was a bad influence on her mother.** This
16 tends to undercut Davellin's testimony that she had a great relationship with Jay Jackson.
17 (RT 633:6-9.)

18 D. **That Davellin said her mother would do whatever the boyfriend would say.** This
19 tends to undercut Davellin's testimony that she had a great relationship with Jay Jackson.
20 (RT 633:6-9.)

21 E. **That Davellin called her mother 'Psycho Mom,' and spoke badly of her all the time.**
22 Davellin testified that she was close with her mother and was in the habit of calling her
23 frequently. (RT 634:4-635:1.) When shown a picture of Janet Arvizo, she stated that the
24 photo was of her "Mommy." (RT 622:23-623:10.) Mr. Vivanco's testimony that
25 Davellin was critical of her mother is inconsistent with Davellin's testimony under oath.

26 F. **That Davellin 'didn't think much of her brothers.'** On direct examination, the District
27

28 MR. JACKSON'S RESPONSE TO THE GOVERNMENT'S SUPPLEMENTAL MOTION TO EXCLUDE
HEARSAY TESTIMONY OF DEFENSE WITNESS ANGEL VIVANCO PURSUANT TO EVIDENCE CODE
SECTION 352

1 Attorney solicited testimony that Davellin was "very close" with her brothers. (RT 634:4-
2 635:1.) She further testified that there was a change in the closeness of her family after
3 leaving Neverland. (RT 761:25-762:22.) Davellin further testified that Gavin loved to be
4 held and kissed by his big sister, but that he stopped enjoying this affection after leaving
5 Neverland. (RT 794:1-796:24.) This statement is relevant to impeach Davellin's
6 testimony about the closeness of her family, including changes in how close they were.

7 **G. That Davelin said her mother was 'not okay in the head.'** This testimony is
8 inconsistent with Davellin's testimony that she had a close relationship with her mother.
9 (RT 634:4-635:1.)

10 **H. That Davellin missed her real father.** On direct examination, Davellin testified
11 regarding her father's alleged violence. (RT 600:8-601:5.) She referred to her mother as
12 "Mommy," but to her father as "David." (RT 622:23-623:10.)

13 **I. That the divorce of her parents was all her mother's fault because she had an affair.**
14 On direct examination, Davellin gave the impression that her father's domestic violence
15 was the reason for the breakup of her parent's marriage. Davellin told the jury that her
16 father molested her. (RT 870:17-20.) Given the prosecution's theory that David Arvizo
17 is responsible for the J.C. Penney lawsuit, and other Arvizo family schemes, this
18 testimony tends to impeach Davellin's account of her parents' marriage.

19 **J. That Davelin said her mother was 'making her do something' and 'something bad is
20 going to happen.'** On cross-examination, Davellin denied that her family was planning a
21 lawsuit against Mr. Jackson. (RT 824:4-9.) Davellin was asked about her mother's
22 meetings with Larry Feldman. She stated that she did not know if her mother ever met
23 with Mr. Feldman. She explained that she did not know because she is a "full-time
24 student" and "full-time cashier." (RT 831:16-26.) Davellin denied ever discussing
25 meetings with Mr. Feldman with her mother. (RT 831:23-26.)

26 **K. That Davellin 'doesn't want to talk to her mom, doesn't want to see her mom.'** As
27

28 MR. JACKSON'S RESPONSE TO THE GOVERNMENT'S SUPPLEMENTAL MOTION TO EXCLUDE
HEARSAY TESTIMONY OF DEFENSE WITNESS ANGEL VIVANCO PURSUANT TO EVIDENCE CODE
SECTION 352

1 discussed above, Davellin was allowed to testify that she was close with her mother and
2 spoke with her frequently. This statement is inconsistent with that testimony.

3 L. That Davellin commented on the size of her mother's breasts prior to receiving
4 implants. The defense does not intend to ask Mr. Vivanco about this statement.

5 M. That Davellin said her mother would leave her and the boys alone 'for no reason.'
6 This statement is inconsistent with Davellin's testimony that the family was close and
7 that the closeness changed after they left Neverland.

8 N. That Davelin discussed her sexually history with Vivanco. The defense does not
9 intend to ask Mr. Vivanco about these statements.

10 CONCLUSION

11 The Court should admit testimony regarding the above-listed prior inconsistent
12 statements.

13 Dated: May 16, 2005

14 COLLINS, MESEREAU, REDDOCK & YU
15 Thomas A. Mesereau, Jr.
16 Susan C. Yu

17 SANGER & SWYSEN
18 Robert M. Sanger
19 Stephen K. Dunkle

20 By: 

21 Robert M. Sanger
22 Attorneys for Defendant
23 MICHAEL JOSEPH JACKSON
24
25
26
27
28

MR. JACKSON'S RESPONSE TO THE GOVERNMENT'S SUPPLEMENTAL MOTION TO EXCLUDE
HEARSAY TESTIMONY OF DEFENSE WITNESS ANGEL VIVANCO PURSUANT TO EVIDENCE CODE
SECTION 352