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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 18 2005

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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SANTA BARBARA
16 SANTA MARIA DIVISION
17

18 THE PEOPLE OF THE STATE OF CALIFORNIA,)
19 Plaintiff,)
20 vs.)
21 MICHAEL JOSEPH JACKSON)
22 Defendant.)
23

CASE NO. 1133603
MR. JACKSON'S MOTION IN LIMINE
TO PRECLUDE REFERENCE TO
MATERIALS AS [REDACTED] AND
ACCOMPANYING DOCUMENTS
TIME: 9:30 a.m.
DATE: January 28, 2005
PLACE: Department SM-2

~~FILED UNDER SEAL~~

MOTION IN LIMINE TO PRECLUDE REFERENCE TO MATERIALS AS [REDACTED]

1 **A. Introduction.**

2 Mr. Michael Jackson submits this Memorandum in support of his Motion in Limine to Preclude
3 Reference to Materials as [REDACTED]. Mr. Jackson requests the court make the following orders in
4 limine:

5 (1) An order prohibiting the attorneys for plaintiff from utilizing the legal conclusion that materials
6 are [REDACTED] or any similar term, and prohibiting plaintiff's attorneys and witnesses from
7 making any references in the presence of jurors or prospective jurors that any books, magazines,
8 photographs, and computer generated images of [REDACTED] involved in this case are
9 [REDACTED] or any similar term;

10 (2) An order requiring the attorneys for plaintiff to instruct their witnesses of the court's
11 exclusionary order on this motion; or in the alternative,

12 (3) An order requiring the attorney for the plaintiffs, prior to making any reference, comment, or
13 assertions concerning [REDACTED] or any similar term, to approach the bench and make an
14 offer of proof to the court so that the court, prior to any presentation of the above-referenced evidence to
15 the jury, can make a preliminary determination of the relevancy, admissibility, and foundation thereof.

16 Mr. Jackson's Motion is based on the following grounds:

17 (1) Use of the legal conclusion [REDACTED] or similar term for the materials
18 involved in this case is an improper legal conclusion contrary to fact, and use of such a term not only lacks
19 probative value, but also any probative value is outweighed by its prejudicial effect;

20 (2) The use of the term [REDACTED] or similar term is an attempt by the
21 prosecution to create an improper inference that the materials, books, and photographs in questions are
22 somehow [REDACTED] that fall within statutory definitions of illegal [REDACTED]

23 (3) These orders are necessary to insure Mr. Jackson will be accorded a fair trial and the trial record
24 of this case will not be tainted with reversible error to Mr. Jackson through use of a prejudicial term lacking
25 foundation.¹¹

26 _____
27 ¹¹ Allowing these materials into evidence would result in a violation of Mr. Jackson's right to a fair trial,
28 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

1 **B. The Government Should be Precluded from Describing Books, Magazines, and Pictures as**
2 **██████████ Because it is an Improper Legal Conclusion Contrary to Fact.**

3 Plaintiff should be precluded from utilizing terms like ██████████ or the like to
4 describe any of the books and magazines they seized from Neverland Ranch because there has never been
5 an adjudication that these materials are in fact ██████████. Instead, they are ordinary over
6 the counter magazines and books that can be purchased at the local drug or book store or checked out of the
7 local library. These ██████████ revealing materials do not violate ██████████ laws and the government
8 should not be permitted to provide a legally untenable label and invalid legal conclusion to materials that
9 are by definition not ██████████.

10 In Roth v. United States, 354 U.S. 476, 480 (1957), the court held that the proper test to determine
11 whether something was ██████████ and ██████████ was “whether to the average person, applying
12 contemporary community standards, the dominant theme of the material taken as a whole appears to
13 prurient interests.” In Ginsberg v. United States, 383 U.S. 463 (1965), the Court ruled that to find material
14 ██████████ the materials themselves must be examined in the context of the circumstances of their
15 production, sale, and publication. The setting in which the publications were presented must be considered
16 as an aid to determining the question of ██████████ and ██████████. Id. at 468

17 In Jacobellis v. Ohio, 378 U.S. 184 (1964), appellant was convicted of showing a movie with an
18 ██████████. The Supreme Court, after viewing the film and noting its high praise by critics,
19 concluded that it was not ██████████. The Court declared that it must make an independent determination of
20 the factual question whether the material is constitutionally protected. The proper standard is laid down in
21 the Roth case. That standard is governed by “contemporary community standards” of the Roth opinion,
22 and does not mean varying local standards, but those of “society at large” necessarily including a national
23 standard.

24
25
26 offering these items only because of the public nature of these proceedings and Mr. Jackson's notoriety.
27 The effort to inflame the jury deprives Mr. Jackson of equal protection of the laws and the privileges and
28 immunities guaranteed others. Many of these items have not been provided in discovery, and plaintiff's
effort to introduce them will deprive Mr. Jackson of the right to adequately prepare for trial, along with
destroying his rights to a fair trial.

1 In Miller v. California, 413 U.S. 15 (1973), the Court stated: "apart from the initial formulation of
2 the Roth case, no majority of the Court has at any given time been able to agree on a standard to determine
3 what constitutes [REDACTED] material subject to regulation under the States' police power." Id.
4 at 20. The Court held the new formulation for [REDACTED] and [REDACTED] material was:

5 "[W]e now confine the permissible scope of such regulation of works which depict or describe
6 [REDACTED] conduct. That conduct must be specifically defined by the applicable state law, as written or
7 authoritatively construed. A state offense must also be limited to works which, taken as a whole,
8 appeal to the [REDACTED] which portray [REDACTED] in a patently offensive way, and
9 which, taken as a whole, do not have serious literary, artistic, political, or scientific value." Id. at
10 20.

11 Unless and until plaintiff can present evidence that the magazines and books taken from Neverland
12 Ranch were contrary to applicable state law, that taken as a whole, appeal to the [REDACTED]
13 which portray [REDACTED] in a patently offensive way, and which taken as a whole do not have serious
14 literary, artistic, political, or scientific value, they cannot refer to these materials as [REDACTED]
15 [REDACTED]" The suggestion these materials, which can be purchased on any corner drug store, are illegal is
16 prejudicial to the jury because the inference is false. The government should be precluded from utilizing
17 the terms [REDACTED] when referring to these materials.

18 **C. The Court Should Prohibit Plaintiff's Use of the Improper Legal Conclusion.**

19 Application of the terms [REDACTED] to the materials involved in this case is an
20 improper legal conclusion. Legal conclusions should be disregarded. Krug v. Meeham, 109 Cal. App. 2d
21 274, 276-77 (1952); Chacksfield v. L.A. County Flood Control Dist., 245 Cal. App. 2d 193, 195 (1966).
22 Legal conclusions are not evidence. Solovij v. Gourley, 87 Cal. App. 4th 1229, 1233 (2001). Legal
23 conclusions provide no evidentiary value and cannot substitute for facts which are deemed to be real
24 evidence. August v. Department of Motor Vehicles, 264 Cal. App. 2d 52, 62 n. 3 (1968). Legal
25 conclusions are not properly placed before the jury and should be excluded from evidence. Downer v.
26 Bramet, 152 Cal. App. 3d 837, 8941 (1984).

27 [REDACTED] materials are illegal materials outlawed by statute and constitute
28 contraband. Penal Code section 311.4; People v. Cochran, 28 Cal. 4th 396, 402 (2002). The term

1 [REDACTED] is applied to those items that are made unlawful by statute and materials that fit within the
2 definition of items not having any constitutional protection. People v. Cantrell, 7 Cal. App. 4th 523, 540
3 (1992). The prohibition against [REDACTED] materials requires specific elements of criminal activity and
4 must conform to narrowly tailored statutory prohibitions. People v. Pitts, 223 Cal. App. 3d 606, 885-86
5 (1990).

6 The use of the terms "[REDACTED]" and "[REDACTED]" are a legal conclusions, and plaintiff's efforts
7 to use these legal conclusions is improper. The court should not permit the effort to confuse and fool the
8 jury with legal conclusions contrary to law and fact. The court should prohibit plaintiff from utilizing what
9 it knows to be a "false" description of the materials seized at Neverland Ranch.

10 **D. Use of the Terms "[REDACTED]" or "[REDACTED]" Would Be Prejudicial and Any Probative**
11 **Value is Outweighed by its Prejudicial Impact.**

12 None of the items seized at Neverland Ranch are "[REDACTED]" and none of them fit within the
13 definition of [REDACTED] or [REDACTED]. The books, magazines, and photographs do not depict any
14 crime, let alone the alleged crime in this case, nor do they establish the participation of any person in any of
15 the acts alleged to be part of this proceeding. All of the books and magazines are readily available at local
16 merchants or major book sellers, and the inference of illegality plaintiff wishes to portray in front of the
17 jury is not only disingenuous, but also contrary to both law and fact.

18 Efforts to inflame the jury have no probative value and should not be permitted under Evidence
19 Code section 352. People v. Burns, 109 Cal. App. 524, 541-42 (1952). As in People v. Smith, 33 Cal.
20 App. 3d 51, 69 (1978), disapproved on other grounds in People v. Wetmore, 22 Cal. 3d 318, 324 n. 5
21 (1978), "[t]hey supplied no more than a blatant appeal to the jury's emotions. Their prejudice-arousing
22 effect heavily outweighed their probative value." See also People v. Gibson, 56 Cal. app. 3d 119, 135
23 (1976). In Asuagyo v. Compton & Knowles Corp., 183 Cal. App. 3d 1032, 1038 (1986), the court stated:

24 "The trial court is vested with very broad discretion in ruling on the admissibility of evidence. A
25 trial court acts within its discretion when excluding cumulative and time consuming evidence,
26 (Evid. Code, sec. 352; Vossler v. Richards Manufacturing Co. (1983) 143 Cal.App.3d 952, 961.)

27 The weighing process under section 352 depends upon the trial court's consideration of the unique
28

1 facts and issues of each case, rather than upon mechanically automatic rules. (People v. Yu (1983)
2 143 Cal.App.3d 358, 377.)”

3 There is no legitimate purpose for plaintiff to be permitted to refer to these books, magazines,
4 photographs, and physical depictions of [REDACTED] as “[REDACTED]” or “[REDACTED]” The appeal
5 to the jury’s emotions by using the term is illegitimate and an effort to “fool” jurors into believing the Court
6 has sanctioned the view that ordinary books and magazines are contraband. Plaintiff’s improper legal
7 conclusions should not be permitted because their probative value are far outweighed by their prejudicial
8 effect.

9 **E. Conclusion.**

10 For the foregoing reasons, Mr. Michael Jackson requests his Motion in Limine to Preclude
11 Reference to Materials as [REDACTED] be granted.

12 DATED: January 18, 2005

Respectfully submitted,

13 Thomas A. Mescreau, Jr.
14 Susan Yu
15 COLLINS, MESEREAU, REDDOCK & YU

16 Robert M. Sanger
SANGER & SWYSEN

17 Brian Oxman
18 OXMAN & JAROSCAK

19 By: _____

20 R. Brian Oxman
21 Attorneys for defendant
22 Mr. Michael Jackson