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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

JAN 31 2005

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

** Unsealed pursuant
to Feb 6 2005 Court
Order*

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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,
13 Plaintiff,
14 v.

No. 1133603

PLAINTIFF'S MOTION TO
LIMIT INTRODUCTION OF
EVIDENCE OF PRIOR
LITIGATION INVOLVING THE
DOE FAMILY

16 MICHAEL JOE JACKSON,
17 Defendant.

DATE: February 10, 2005
TIME: 9:30 a.m.
DEPT: TBA (Melville)

~~UNDER SEAL~~

20 TO: THE CLERK OF THE SUPERIOR COURT AND TO DEFENDANT AND HIS
21 COUNSEL:

22 PLEASE TAKE NOTICE that on February 10, 2005, Plaintiff will move the court
23 for its order limiting introduction of evidence of prior litigation involving the Doe family.

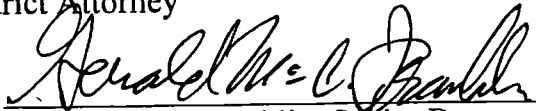
24 The motion will be based on this notice and the accompanying Memorandum of
25 Points and Authorities.

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27 ////
28 ////

1 DATED: January 31, 2005

2 Respectfully submitted,

3 THOMAS W. SNEDDON, JR.
4 District Attorney

5 By: 
6 Gerald McC. Franklin, Senior Deputy

7 Attorneys for Plaintiff
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 A. Evidence Code Section 402 Prescribes The Procedure
3 To Determine the Existence or Non-Existence Of A
4 Preliminary Fact That Is In Dispute

5 Evidence Code section 402 provides:

6 (a) When the existence of a preliminary fact is disputed, its existence or
7 nonexistence shall be determined as provide in this article.

8 (b) The court may hear and determine the question of the admissibility of
9 evidence out of the presence or hearing of the jury; but in a criminal action,
10 the court shall hear and determine the question of the admissibility of a
11 confession or admission of the defendant out of the presence and hearing
12 of the jury if any party so requests.

13 (c) A ruling on the admissibility of evidence implies whatever finding of
14 fact is prerequisite thereto; a separate or formal finding is unnecessary
15 unless required by statute/

16 B. Background Facts:

17 In 1998 Jane Doe, her then-husband David Doe and their two sons, John Doe and
18 James Doe, then age 8 and 7, were in a shopping mall in West Covina. Jane Doe had gone into
19 Oshman's Sporting Goods store to process an employment application while her husband and
20 sons went into JCPenney's. The most reasonable interpretation of what happened at the
21 JCPenney store is that David handed his 8-year-old son clothing (the boy's school uniform) and
22 directed him out the door without paying for the clothing. Security guards followed David and
23 the children and detained them. David got in a fight with the security guards, who were not in
24 uniform just, as Jane Doe was emerging from Oshman's. Jane Doe came to her husband's
25 rescue. She fought with the security guards and incurred injury. She accused one of them of
26 fondling her breasts and vaginal area during the confrontation.

27 Jane Doe and David Doe were arrested and charged with burglary. Ultimately
28 charges were dismissed against both of them. They filed a law suit against JCPenney and
Tower Records (employer of one of the security guards), resulting in a settlement of over

1 \$150,000.

2 C. Defendant's Likely Contentions

3 Defendant likely will seek to introduce into evidence the facts of the JCPenney
4 litigation to show the following:

- 5 1. That John Doe is a shoplifter (stated publicly by Attorney Messereau in court on
6 Friday, January 28, 2005);
- 7 2. That Jane Doe was involved in a criminal enterprise to burglarize the JCPenney store;
- 8 3. That Jane Doe and her sons lied during their depositions.
- 9 4. That Jane Doe coached her sons as to the appropriate answers to questions put to them
10 in those depositions.

11 D. Argument:

12 1. The "John Doe Is A Shoplifter" Allegation

13 The report from the security guard is that David Doe handed his 8-year-old son
14 clothing (a school uniform) and directed him out the door. There is no competent evidence that
15 John Doe had any understanding he was stealing anything. No action was taken against John
16 Doe. He was not detained or taken into custody. He was never referred to the probation
17 department or subjected to any juvenile disciplinary action.

18 No one appears reasonably to believe that John Doe actually committed an act of
19 shoplifting. In fact, the security guard testified in his deposition that John Doe twice attempted
20 to return to the store and was directed by his father back toward the car.

21 Attorney Messereau called John Doe a "shoplifter" in court. His allegation was of
22 course repeated in the Los Angeles Times. Unless the defense has additional information not
23 yet shared with the court about this matter or any other allegation of shoplifting, they should be
24 prohibited from calling John Doe a "shoplifter," or referring to his act of obedience to his
25 father's direction as evidence of moral turpitude. No such allegation should be made by
26 defense counsel in his opening statement, nor should it be suggested by his questions to the
27 witnesses during the trial, without prior permission of the court.

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1 **2. Any Allegation That Jane Does Was Engaged In**
2 **A Criminal Enterprise**

3 If Defendant believes Jane Doe knew that her then-husband was attempting to steal
4 merchandise from JCPenney and intentionally interfered with security officer's effort to arrest
5 him so he could get away with the crime, his belief was not shared by JCPenney. JCPenney did
6 not file a counter suit against either Jane Doe or David Doe. They did not allege that either of
7 the Does committed conspiracy, conversion, theft or any other cause of action in the form of a
8 cross complaint. Nor did they allege that Jane Doe was even in the JCPenney store that day.
9 They simply conceded they were liable and handed over more than \$150,000.

10 JCPenny was, indeed, liable for false arrest, battery and related torts. Jane Doe was
11 beaten by the JCPenney security guards. Photographs confirm the injuries. Because of the
12 material misrepresentations of its employees, Jane Doe was arrested and charged with a crime
13 she did not commit. It took a number of months for the truth to come out, and the truth resulted
14 in the complete dismissal of charges.

15 The defense should not be allowed to argue or introduce into evidence information
16 that Jane Doe was involved in some form of criminal conspiracy with her ex-husband to steal
17 from JCPenney unless they can offer competent evidence that such a conspiracy existed. Nor
18 should the defense be allowed to refer to the matter in opening statement without prior
19 approval of the court.

20 **3. Jane Doe Lied During Her Deposition, But On A Collateral Matter**

21 Jane Doe was asked during her deposition if her husband had ever been violent
22 toward her. She answered that he had not. She has readily acknowledged that the answer she
23 gave was not truthful. At the time of her deposition she had not revealed to anyone that she
24 was a victim of domestic violence. Only her children knew, because they had witnessed it. If
25 asked why she lied she will say that she was living with her ex-husband at the time and that the
26 consequence to her of disclosing his abuse would have been severe.

27 Her answer to that question is collateral to the issues at bench. Although she readily
28 admits that she was not truthful on that question it still constitutes impeachment on a collateral

1 matter, one that is old and subject to unique circumstances. The probative value of the fact
2 Jane Doe lied about David Doe's violence is limited, given the circumstances of the statement.
3 A debate over that statement and the circumstances that gave rise to it likely would lead to a
4 broader inquiry into the circumstances of the JCPenney case itself. Once that door opens there
5 will be no shortage of issues to litigate.

6 **4. The Allegation That Jane Doe Coached Her Children To**
7 **Lie In Their Depositions In The JCPenney Lawsuit Is**
8 **Speculative, And Its Resolution Would Confuse The**
9 **Jury On A Collateral And Consume Undue Time**

10 Defendant likely will attempt to show that Jane Doe had her kids give false
11 testimony during the JCPenney depositions. His claimed evidence of that is the consistency of
12 the information given by the children in their depositions.

13 This case was litigated five years ago. Depositions were taken of many witnesses
14 and parties to the action. Thousands of pages of materials were generated in an effort to
15 determine exactly what happened during the altercation, an altercation that everyone agrees
16 was started for reasons that had nothing to do with Jane Doe. Ultimately JCPenney paid a
17 substantial amount of money to resolve the case.

18 Any debate about the accuracy of statements made during depositions by any of the
19 witnesses or parties to this action by either side will result in an endless comparison of
20 statements from one deposition to another, from one witness to another and potentially from
21 witnesses called to testify in the case at bench. Whether witnesses gave answers to questions
22 because they were coached or because they viewed the same incident is a question that will not
23 be resolved without a great deal of litigation, potentially weeks, on a matter that is remote in
24 time and entirely collateral to the Jackson trial.

25 JCPenney did not settle this case for nuisance value. That corporation understood
26 what happened and that their agents had abused and injured Jane Doe and her eight-year-old
27 son. It was JCPenney who had the means to engage in lengthy litigation, not Jane Doe, who
28 had no money. The decision to resolve the case was not made on the basis of similarities in the

1 depositions of two small boys. It was because JCPenney knew it was liable and the company
2 did not want a jury deciding how much it should have to pay.

3 The JCPenney litigation and all of its issues are collateral to the current prosecution.
4 The effort to resolve issues generated during that litigation years ago will consume endless
5 hours and days of court time. Ultimately it will be confusing and misleading to the jury
6 because the issues have little to do with whether or not Michael Jackson invited a 13-year-old
7 boy into his bedroom and then molested him. The endless litigation over JCPenney will not
8 help resolve any of the issues properly before the court.

9 **5. Dr. Hochman's Opinion That Jane Doe Suffers From "Paranoid**
10 **Schizophrenia" And Had Her Children Lie Should Not Be**
11 **Admitted In The Trial Of This Case**

12 Jane Doe was evaluated by Dr. Hochman, a psychiatrist retained by JCPenney. In
13 his written report he concluded that she suffers from depression. In his deposition he changed
14 the diagnosis to "paranoid schizophrenia." He then concluded that she influenced her
15 children's testimony because of her mental illness.

16 Neither Dr. Hochman's diagnosis of Jane Doe nor his conclusion that she
17 influenced her children in their testimony are relevant to this trial.

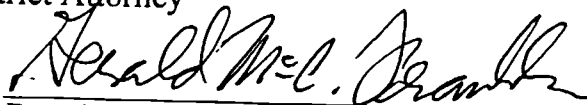
18 There is certainly some truth to the depression diagnosis, particularly at the time of
19 her examination. Sixteen years of marriage to a violent man will depress any woman. The
20 probative value of a very questionable schizophrenia diagnosis by a psychiatrist retained by the
21 defense is only marginally relevant to this trial. Whether she is or is not schizophrenic has
22 nothing to do with whether Michael Jackson molesting her oldest son -- one of many boys with
23 whom Michael Jackson admits to having had "sleepovers" -- while he was in bed with him. In
24 fact, the diagnosis of schizophrenia, a major mental illness characterized by chronic and severe
25 thought disorders, would cut against the notion that Jane Doe had the ability to coordinate a
26 conspiracy of this magnitude.

27 Dr. Hochman's opinion that Jane Doe influenced her children to lie in the JCPenney
28 litigation is not only his speculation; it exceeds the scope of permissible expert testimony. It is

1 also collateral impeachment to the case at bench and not probative to any of the issues before
2 the court.

3 DATED: January 31, 2005

4 THOMAS W. SNEDDON, JR.
5 District Attorney

6 By: 
7 Ronald J. Zonen, Senior Deputy
8 Gerald Franklin
9 Attorneys for Plaintiff

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3 **PROOF OF SERVICE**


4 STATE OF CALIFORNIA
5 COUNTY OF SANTA BARBARA } SS

6 I am a citizen of the United States and a resident of the County aforesaid; I am over
7 the age of eighteen years and I am not a party to the within-entitled action. My business
8 address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara,
9 California 93101.

10 On January 31, 2005, I personally served the within PLAINTIFF'S RESPONSE TO
11 DEFENDANT'S IN LIMINE MOTION FOR AN ORDER EXCLUDING "FOURTEEN (14)
12 ITEMS OF IRRELEVANT EVIDENCE" on Defendant, by THOMAS A. MESEREAU, JR.,
13 ROBERT SANGER and BRIAN OXMAN in open court

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

15 Executed at Santa Maria, California on this 31st day of January, 2005.

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18 Gerald McC. Franklin

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