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County of Santa Barbara
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REGISTERED MAIL
CALIFORNIA
CLERK
GARY W. PLAIN, Executive Officer
BY *Carrie L. Wagner*
CARRIE L. WAGNER, Deputy Clerk

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

11 ~~PROPOSED~~ REDACTED VERSION

12 THE PEOPLE OF THE STATE OF CALIFORNIA,) No. 1133603
13 Plaintiff,)
14 v.) PLAINTIFF'S MOTION FOR
15) RECONSIDERATION OF
16 MICHAEL JOE JACKSON,) DEFENDANT'S MOTION FOR
17) AN ORDER EXCLUDING
18 Defendant.) "FOURTEEN (14) ITEMS OF
19) IRRELEVANT EVIDENCE";
20) DECLARATION OF GERALD
21) McC. FRANKLIN IN SUPPORT
22) THEREOF; MEMORANDUM OF
23) POINTS AND AUTHORITIES
24)
25) DATE: February 10, 2005
26) TIME: 8:30 a.m.
27) DEPT: TBA (Melville)
28)

21 ~~UNDER SEAL~~

22 TO: THE CLERK OF THE SUPERIOR COURT AND TO DEFENDANT AND
23 HIS COUNSEL: .

24 PLEASE TAKE NOTICE that on February 10, 2005, Plaintiff will respectfully
25 move the court to re-open and consider Defendant's "Motion for Order Excluding Fourteen
26 (14) Items Of Irrelevant Evidence," notwithstanding Plaintiff's conspicuous failure to file the
27 Response (see attached) it had prepared in anticipation of the hearing on January 28, 2005.

28 Plaintiff's motion will be made on the grounds that (1) our failure to file our

1 Response was due to an oversight by the prosecutor who prepared that and several other
2 responses for filing on January 20, 2005, and who mistakenly believed he had filed all of those
3 several responses, (2) that certain of the "items" of evidence characterized as "irrelevant" are in
4 fact quite relevant and relate to other evidence to be introduced by the People in their case in
5 chief, and (3) no prejudice to Defendant will result, other than having to confront evidence the
6 Court may well deem to be admissible and relevant.

7 This motion is supported by the attached Declaration of Gerald McC. Franklin and
8 the accompanying memorandum of points and authorities.

9 DATED: January 31, 2005

10 Respectfully submitted,

11 THOMAS W. SNEDDON, JR.
12 District Attorney

13 By: 
14 Gerald McC. Franklin, Senior Deputy

15 Attorneys for Plaintiff
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DECLARATION OF GERALD McC. FRANKLIN

I, Gerald McC. Franklin, say:

1. I am a lawyer admitted to practice in all the Courts of this state. I am employed as a Senior Deputy of the District Attorney of Santa Barbara County. I am one of the prosecutors representing the People in the above-entitled action. My primary responsibility is the drafting of legal memoranda in this matter (motions, oppositions to Defendant's motions, etc.) and editing memoranda prepared by District Attorney Tom Sneddon, Senior Deputy Ronald Zonen or Senior Deputy Gordon Auchincloss.

2. Defendant timely filed and served his "Notice of Motion and Motion In Limine to Exclude Fourteen (14) Items of Irrelevant Evidence ('Motion In Limine Group #1')" on January 18, 2005, prepared for him by Attorney Susan Yu.

3. Defendant's "14 Items" Motion was one of (I believe) eight defense motions to arrive on January 18th, each noticed for hearing on January 28th and each of which required that a response be prepared and filed in a short period of time. For Plaintiff's part, we were readying several motions of our own for hearing on the 28th. (The Court will recall that there were 15 motions on its calendar for hearing on January 28th.) All of Plaintiff's motions and responses passed through my word processor.

4. Senior Deputy District Attorney Ronald Zonen drafted a response to Defendant's "14 Items" motion and forwarded it to me for editing and typing in final form.

5. I completed my work on our response to that motion on January 20th. As with our other motions and responses, I also prepared the redacted versions of those submissions that required redaction, and, as well, the accompanying motions for sealing. (I attach as Exhibit A the draft of "Plaintiff's Response to Defendant's Motion for an Order Excluding 'Fourteen (14) Items of Irrelevant Evidence,'" the proposed redaction of that motion and our Request for Sealing of the Response.)

6. I made a copy of my "14 Items" response for Mr. Zonen and set those documents to one side while I worked on other motions and responses. I took a number of them to copier for copying and to our FAX machine for transmission to the court and opposition counsel. I

1 quite overlooked our "14 Items" response, and it went out of my conscious mind when I
2 dispatched our other submissions.

3 7. I was surprised and embarrassed to hear the Court state that no response had
4 been received from us to Defendant's "14 Items" motion, and to hear Mr. Sanger state
5 Defendant had not received a response to that motion from us, either. I personally delivered a
6 copy of several of our submissions filed on January 20th to his office, and mistakenly assumed
7 that our "14 Items" response was one of them. Shortly after court recessed Friday afternoon, I
8 asked Mr. Beebe to kindly check to see whether the court might have received our response and
9 had misfiled it. I have since satisfied myself that I neither filed the response nor served
10 defendant with a copy thereof. I have apologized to my colleagues for embarrassing them, and
11 I apologize to the Court for my error.

12 I declare that the foregoing is true, except for matters stated upon my information
13 and belief, and as to those matters I believe it to be true. I execute this declaration at Santa
14 Maria, California on Monday, January 31, 2005.

15 
16 _____
17 Gerald McC. Franklin

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 CERTAIN OF THE EVIDENCE "ITEMS" LISTED BY
4 DEFENDANT ARE ACUTELY RELEVANT TO THE
5 PEOPLE'S CASE IN CHIEF. THE COURT SHOULD NOT
6 EXCLUDE THAT EVIDENCE FOR NO BETTER REASON
7 THAN PLAINTIFF'S INADVERTENT AND DEEPLY-
8 REGRETTED FAILURE TO REPLY IN TIMELY
9 FASHION TO DEFENDANT'S MOTION

10 Public policy dictates that criminal charges be tried and defended on their merits.
11 All relevant evidence not made inadmissible by the constitution, the assertion of a privilege or
12 pursuant to Evidence Code section 352 should be available to the party who has the burden of
13 proof on a given issue. (Cal. Const., art. I, sec. 28, subd. (d).)

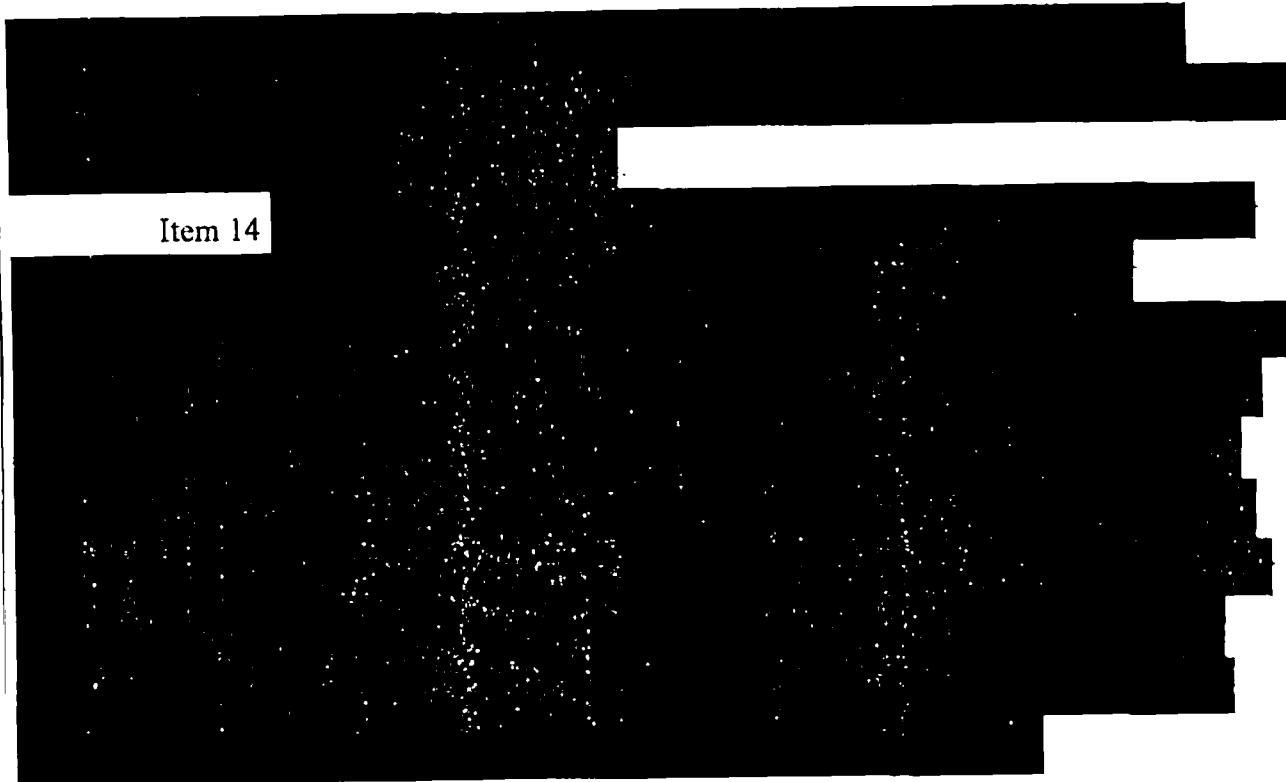
14 The caption of Defendant's "Motion In Limine to Exclude Fourteen Items of
15 Irrelevant Evidence" correctly identifies relevance as the critical element in the court's
16 consideration of the motion on its merits: If any given item of the "14 items of evidence" listed
17 in the motion would be relevant to Plaintiff's presentation of its case, that evidence should
18 remain available to Plaintiff unless the Court agrees with Defendant that "the probative value
19 of such evidence is substantially outweighed by the danger of prejudice, undue consumption of
20 court time, [or] confusion of the jury." (Motion 3:4-6.)

21 Plaintiff's tardily but respectfully-tendered Response (Exh. A) eliminates all but
22 Items 11, 13 and 14 as evidentiary matters the People presently intend to present as part of their
23 case in chief and, so, as candidates for a pre-trial ruling as to their relevance before trial
24 commences.

25 Item 11 ("Attorney General's Investigation of Mr. Jackson's Injury") is relevant as
26 evidence of the defendant's consciousness of guilt and we presently intend to offer that
27 evidence as part of Plaintiff's case-in-chief.

28 Insofar as Item 13 includes [REDACTED]

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Item 14

II

DEFENDANT WILL NOT BE PREJUDICED IN THE
PREPARATION OF HIS DEFENSE BY THE COURT'S
CONSIDERATION OF THE MERITS OF HIS "MOTION
TO EXCLUDE 14 ITEMS OF EVIDENCE" WELL
BEFORE TRIAL COMMENCES

Timely response to in limine motions brought pursuant to Evidence Code section 402 is the rule. Failure to adhere to that rule should not lightly be excused, both because casual enforcement of the rule tends to result in casual obedience to it and because, often enough, the proponent for admission or exclusion of given evidence will depend heavily on the court's ruling in preparing his side of the case.



1 [REDACTED]
2 [REDACTED]
3 Instead, Defendant has moved for the Court's order that Plaintiff may not rely on
4 that evidence on the ground that it is "irrelevant" or, at least, that its production by the People
5 will be unduly prejudicial, or will consume too much time, or will "confuse the jury" – all of
6 which implies that Defendant is satisfied that the evidence is what the People say it is.

7 In our respectful submission, the Court may reconsider the relevance of Items 11,
8 13 and 14 in light of our tardily-submitted Response in the exercise of its discretion if it is
9 moved to excuse our regretted and inadvertent failure to file and serve the attached Response in
10 timely fashion.

11 DATED: January 31, 2005

12 THOMAS W. SNEDDON, JR.
13 District Attorney

14 By: 151
15 Gerald McC. Franklin, Senior Deputy
16 Attorneys for Plaintiff
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Co-counsel for Defendant

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Santa Fe Springs, CA 90670

Co-counsel for Defendant

EXHIBIT "A" REDACTED