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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

FEB - 9 2005

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

** Unsealed pursuant to
Cell 116105 Court order*

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

11
12 THE PEOPLE OF THE STATE OF CALIFORNIA,

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14
15 Plaintiff,

16 v.

17
18 MICHAEL JOE JACKSON,

19 Defendant.

No. 1133603

IN LIMINE MOTION TO
EXCLUDE EVIDENCE OF
ALLEGED SEXUAL
CONDUCT
(Evid. Code, § 782)

DATE: TBA
TIME: 8:30 AM
DEPT.: SM2 (Melville)

UNDER SEAL

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22
23 INTRODUCTION

24 Defendant has provided discovery to the People regarding an incident in which
25 defendant's 12-year-old nephew, Rio, claims he was in a guest room at Neverland with John
26 and James Doe. During this encounter, Rio claimed John and James Doe were watching "porn"
27 on the television and were each masturbating while lying on their respective beds. Rio claimed
28 he did not leave the room because he had no place else to go.

1 Irrespective of the inherent credibility issues presented by testimony of defendant's
2 relatives, the People hereby to exclude such testimony pursuant to Evidence Code section 782.

3 DATED: February 9, 2005

4 Respectfully submitted,

5 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

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7 By: *Gordon Auchincloss*
8 GORDON AUCHINCLOSS
9 Senior Deputy District Attorney

10 Attorneys for Plaintiff

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1 ARGUMENT WITH POINTS AND AUTHORITIES

2 I

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4 ANY EVIDENCE OF THE COMPLAINING WITNESS' SEXUAL
5 CONDUCT MUST BE EXCLUDED BECAUSE OF DEFENDANT'S
6 FAILURE TO COMPLY WITH EVIDENCE CODE SECTION 782

7 Evidence Code section 782 mandates that in any prosecution under Penal Code
8 section 288a the following requirements must be fulfilled by defendant before the admission
9 of sexual conduct of the complaining witness is offered to attack the credibility of the
10 complaining witness:

11 (1) A written motion shall be made by the defendant to the court and
12 prosecutor stating that the defense has an offer of proof of the relevancy
13 of evidence of the sexual conduct of the complaining witness proposed
14 to be presented and its relevancy in attacking the credibility of the
15 complaining witness.

16 (2) The written motion shall be accompanied by an affidavit in which
17 the offer of proof shall be stated. The affidavit shall be filed under seal
18 and only unsealed by the court to determine if the offer of proof is
19 sufficient to order a hearing pursuant to paragraph (3). After that
20 determination, the affidavit shall be resealed by the court.

21 (3) If the court finds that the offer of proof is sufficient, the court shall
22 order a hearing out of the presence of the jury, if any, and at the hearing
23 allow the questioning of the complaining witness regarding the offer of
24 proof made by the defendant.

25 (4) At the conclusion of the hearing, if the court finds that evidence
26 proposed to be offered by the defendant regarding the sexual conduct of
27 the complaining witness is relevant pursuant to Section 780, and is not
28 inadmissible pursuant to Section 352 of this code, the court may make
an order stating what evidence may be introduced by the defendant, and
the nature of the questions to be permitted. The defendant may then
offer evidence pursuant to the order of the court.

1 (Evid. Code, § 782.)

2 By enacting section 782, "[t]he Legislature obviously intended to protect children
3 from embarrassing personal disclosures, regardless of the blameworthiness of the child's
4 conduct." (*People v. Harlan* (1990) 222 Cal.App.3d 439, 437.) This section requires that the
5 defendant bear the burden of affirmatively offering to prove, under oath, the relevance of the
6 complaining witness' sexual conduct to attack credibility in some way other than by
7 deprecating the victim's character. (*People v. Rios* (1984) 161 Cal.App.3d 905, 917.)
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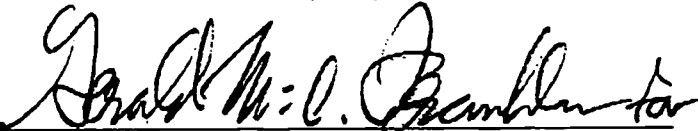
9 **CONCLUSION**

10 Evidence Code section 782 recognizes both the right of the victim to be free from
11 unwarranted intrusion into his privacy and sexual life beyond the offense charged and the right
12 of a defendant who makes the necessary sworn offer of proof in order to place the credibility of
13 the complaining witness at issue to fully establish a proffered defense. (*People v. Rios, supra*,
14 161 Cal.App.3d 905, 917.) In the present case, defendant has not only failed to meet the
15 requirements of this statute, he hasn't even tried. The People respectfully that any evidence of
16 the complaining witnesses' sexual conduct be excluded and further request that, due to court's
17 protective order and the sensitive nature of this information, that the court rule on this motion
18 without oral argument.

19 DATED: February 9, 2005

20 Respectfully submitted,

21 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

22 By: 

23 GORDON AUCHINCLOSS
24 Senior Deputy District Attorney

25 Attorneys for Plaintiff
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1 **PROOF OF SERVICE**

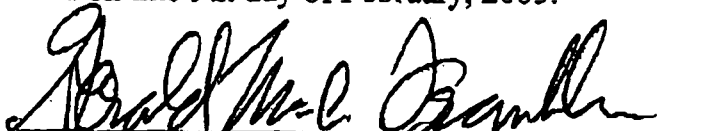
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3 STATE OF CALIFORNIA
4 COUNTY OF SANTA BARBARA } SS

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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 February 9, 2005, I served the within IN LIMINE MOTION TO EXCLUDE
11 EVIDENCE OF ALLEGED SEXUAL CONDUCT on Defendant, by THOMAS A.
12 MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN, by transmitting a facsimile
13 copy thereof to Attorney Mesereau at his Santa Maria Confidential Fax number, and to Mr.
14 Sanger at the fax number shown on the attached Service List.

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

16 Executed at Santa Barbara, California on this 9th day of February, 2005.

17 
18 _____
19 Gerald McC. Franklin

SERVICE LIST

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