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FILED
 SUPERIOR COURT of CALIFORNIA
 COUNTY of SANTA BARBARA

MAY 02 2005

GARY M. BLAIR, 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

12 THE PEOPLE OF THE STATE OF CALIFORNIA,	)	No. 1133603
)	
15 Plaintiff,	)	PLAINTIFF'S MEMORANDUM
	)	RE: ADMISSIBILITY OF
14 v.	)	STATEMENTS MADE BY
	)	CONSPIRATORS. BECAUSE "IN
15	)	FURTHERANCE OF
	)	CONSPIRACY" OR FOR OTHER
16 MICHAEL JOE JACKSON,	)	REASONS
	)	(Evid. Code, §§ 1223, 1241, 1250)
17 Defendant,	)	DATE: TBA
	)	TIME: 8:30 a.m.
18	)	DEPT: TBA (Melville)

19
 20 A. Introduction:

21 Plaintiff anticipates that Rudy Provencio will testify to certain statements made in
 22 his presence by Marc Schaffel, identified as a member of the conspiracy charged in Count I,
 23 during the time the conspiracy is alleged to have been up and running.

24 Plaintiff anticipates the evidence will show, preliminarily, that Mr. Provencio was
 25 employed by Mr. Schaffel as his assistant when they created and managed "Neverland Valley
 26 Entertainment" on behalf of defendant as one of his business enterprises. Plaintiff anticipates
 27 that the evidence will show that other individuals identified as co-conspirators with Defendant
 28 Jackson, both in the indictment and by other evidence, regarded Mr. Provencio as a close

1 associate of Mr. Schaffel and as one who, therefore, ought to be kept *au courant* respecting
2 breaking developments affecting their combined efforts to limit the prejudicial outfall of the
3 broadcast of "Living with Michael Jackson."

4 This Memorandum discusses, briefly, the scope of Evidence Code section 1223's
5 exception to the "hearsay rule" of statements "made by the declarant while participating in a
6 conspiracy to commit a crime . . . and in furtherance of the objective of that conspiracy . . ."

7 It also discusses the admissibility of certain statements made by alleged co-
8 conspirators in which they employed "words of art" peculiarly relevant to their efforts to
9 further the goal of the conspiracy and which, precisely because they were uttered, tend to
10 corroborate the testimony of other witnesses concerning the existence of a conspiracy and the
11 identity of the conspirators.

12 B. Evidence Code § 1223

13 Evidence Code section 1223 provides as follows:

14 Evidence of a statement offered against a party is not made inadmissible
15 by the hearsay rule if:

16 (a) The statement was made by the declarant while participating in a
17 conspiracy to commit a crime or civil wrong and in furtherance of the
18 objective of that conspiracy;

19 (b) The statement was made prior to or during the time that the party
20 was participating in that conspiracy; and

21 (c) The evidence is offered either after admission of evidence sufficient
22 to sustain a finding of the facts specified in subdivisions (a) and (b) or, in
23 the court's discretion as to the order of proof, subject to the admission of
24 such evidence.

25 C. The Meaning Of "Furtherance" Of The Conspiracy

26 Not every statement by a conspirator while the conspiracy is afoot will come in
27 under Evidence Code section 1223's exception to the hearsay rule. "I see the Dodgers are
28 leading the league by three games" might be as idle chit-chat and hearsay unless uttered by a
member of a conspiracy that is shown to involve, e.g., an illegal betting pool or point-shaving

1 agreement. On the other hand, a statement need not literally "advance" the progress of the
2 conspiracy toward the agreed-upon goal to come within section 1223's exception. It appears
3 that any statement that relates to the objects of the conspiracy and, e.g., serves to keep other
4 conspirators apprised of the progress of matters or of set-backs or problems also qualify.

5 Sec, e.g, *People v. Saing* (1972) 7 Cal.3d 844, 852, n. 8: "Although it has been held
6 that statements which merely narrate past events are not to be deemed as made in furtherance
7 of the conspiracy [citations], such a rule cannot be applied mechanically. Jurgenson's
8 statements to Carnes were clearly made in furtherance of the conspiracy to kill Catherine
9 Murphy, as it was necessary that Carnes be made aware of the departure from the original
10 scheme in order that he, in the best interests of himself and his coconspirators, be able to
11 maintain the integrity of their security until they received payment for their participation in the
12 crime." And see *People v. Perez* (1978) 83 Cal.App.3d 718, 729-730 [statements by co-
13 conspirator to a third party that he had been willing to "burn" her by selling her an inert
14 substitute for the bargained-for heroin and cautioning her not to say anything because
15 defendant didn't like to deal with people that talked too much, held as admissible against
16 defendant pursuant to Evidence Code section 1223].

17 D. Non-Hearsay Basis For Admitting Evidence of Certain
18 Statements By Alleged Co-Conspirators

19 Plaintiff anticipates that Witness Provencio will testify that Vinnie Amen told him
20 that at the direction of one of the conspirators, signs had been posted at Neverland Ranch
21 directing security personnel not to allow the Arvizo children to leave the ranch.

22 Plaintiff anticipates that Mr. Provencio will testify that, in response to his question
23 to Marc Schaffel regarding why Mr. Schaffel's colleagues were so busy "driving them [the
24 Arvizos] around. Mr. Schaffel responded, in a sarcastic tone, "Well, you know, because of the
25 'killers.'" And Mr. Provencio will testify that Vinnie Amen, when asked about "the 'killers,'"
26 responded to the effect that there weren't any "killers," but that Gavin Arvizo was experiencing
27 trouble at with his peers at school and they needed a reason to get him out of there.

28 Evidence of the fact that both Marc Schaffel and Vinnie Amen used the word

1 "killers" in the context of relating and explaining their collective efforts to isolate the Arvizo
2 family is not offered for the truth of the matter asserted – i.e., that there were "killers" at large
3 who had bad intentions with respect to the Arvizo family – but as part of contemporaneous
4 statements, evidence of which is "offered to explain, qualify, or make understandable conduct
5 of the declarant" (Evid. Code, § 1241). It is admissible for that reason.

6 That evidence also is highly relevant. Janet Arvizo reported, and later testified, that
7 she had been told by one or more of the conspirators that "killers" had targeted her and her
8 children because of Gavin's appearance with Michael Jackson in "Living with Michael
9 Jackson." The defense has devoted considerable effort, in and out of court, to characterize
10 Mrs. Arvizo's report as evidence of a mental state approaching insanity. "'Killers,' indeed!"

11 How relevant, then, must be evidence of the fact that that very word was used by
12 Vinnie Amen and Marc Schaffel (and with a revealingly "wink, wink, nudge, nudge" emphasis
13 by Schaffel) in exactly the context described by Mrs. Arvizo, and at a time when the much-
14 denigrated "conspiracy" was actively being pursued.

15 Vinnie Amen informed Mr. Provencio that a tape recorder had secretly been used at
16 the interview by Los Angeles County DCFS investigators with the Arvizo family. That
17 statement disclosed Mr. Amen's knowledge of and participation in efforts on behalf of Michael
18 Jackson to monitor and manage the information that might otherwise be made public.

19 With respect to the "vacation" in Brazil arranged by Mr. Schaffel and his colleagues
20 for the Arvizo family, Schaffel informed Mr. Provencio that Janet Arvizo didn't want to go to
21 Brazil. Mr. Schaffel informed Provencio Janet Arvizo wanted to leave Neverland Ranch and
22 that she did leave two days later. And after the entire family left together with the assistance of
23 an understanding Neverland Ranch employee, Mr. Schaffel informed Mr. Provencio they had
24 "escaped."

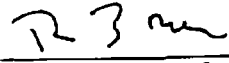
25 Those latter statements by Mr. Schaffel to his associate are revealing of his state of
26 mind and intent in managing the conspiratorial efforts to keep the Arvizo family members out
27 of the public eye while efforts to counteract the impression left by "Living with Michael
28 Jackson" proceeded. Statements circumstantially evidencing a relevant state of mind of the

1 declarant are admissible. (See Evid. Code, § 1250, and see 1 Witkin, Cal. Evidence (4th ed.
2 2000) Hearsay, §§ 36, 37, pp. 718, 719; §§ 199, 200, pp. 916-918.)

3 DATED: May 2, 2005

4 Respectfully submitted.

5 THOMAS W. SNEDDON, JR.
6 District Attorney

7 By: 
8 Ronald J. Zonen, Senior Deputy

9 Attorneys for Plaintiff
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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF SANTA BARBARA) SS

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

On May 2, 2005, I served the within PLAINTIFF'S MEMORANDUM RE: ADMISSIBILITY OF STATEMENTS MADE "IN FURTHERANCE OF CONSPIRACY" (Evid. Code, § 1223) on Defendant, by THOMAS A. MESEREAU, JR. and ROBERT SANGER, by personally delivering a true copy of it to them in open court.

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

Executed at Maria, California on this 2nd day of May, 2005.



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