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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAY 12 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**

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13 THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,
14 vs.
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19 MICHAEL JOE JACKSON,
Defendant.

No. 1133603

**PLAINTIFF'S
SUPPLEMENTAL MOTION
TO EXCLUDE HEARSAY
TESTIMONY OF DEFENSE
WITNESS ANGEL
VIVANCO PURSUANT TO
EVIDENCE CODE § 352**

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

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22 **INTRODUCTION**
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24 The purpose of this supplemental motion is to oppose additional statements of Mr.
25 Vivanco purportedly made to him by Davelin Arvizo. The statements are hearsay and lay
26 opinion evidence and not relevant to any issue in this case, as will be discussed below.

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I.
HEARSAY STATEMENTS AND LAY OPINION EVIDENCE
ARE INADMISSIBLE UNDER THESE CIRCUMSTANCES

The Defense has not offered a basis for the admissibility of the following hearsay/opinion statements allegedly made by Davelin Arvizo to their witness Angel Vivanco:

- a) That Davelin did not get along with her mother;
- b) That Davelin did not like the 'new' boyfriend;
- c) That Davelin thought the new boyfriend has a bad influence on her mother;
- d) That Davelin said her mother would do whatever the new boyfriend would say;
- e) That Davelin called her mother 'Psycho Mom', and spoke badly about her all the time;
- f) That Davelin 'didn't think much of her brothers';
- g) That Davelin said her mother was 'not okay in the head';
- h) That Davelin missed her real father;
- i) That the divorce of her parents was all her mother's fault because she had an affair;
- j) That Davelin said her mother was 'making her do something' and 'something bad is going to happen';
- k) That Davelin 'doesn't want to talk to her mom, doesn't want to see her mom';
- l) That Davelin commented on the size of her mother's breasts prior to receiving implants;
- m) That Davelin said her mother would leave her and the boys alone 'for no reason.'
- n) That Davelin discussed her sexual history with Vivanco;

Furthermore, none of these alleged statements are relevant to the issues before the Court.

Insofar as many of the statements seem to offer an opinion from Davelin regarding her mother or Jay Jackson's credibility, such opinions are clearly inadmissible. People v. Zambrano, (2004) 124 Cal.App.4th 228, has this to offer on that subject: "Our state Supreme

1 Court has recognized that a lay **witness's** opinion about the veracity of another person's
2 particular statements is *inadmissible* and *irrelevant* on the issue of the statements' **credibility**.
3 (People v. Melton (1988) 44 Cal.3d 713, 744 [244 Cal. Rptr. 867, 750 P.2d 741].) The high
4 court reasoned that such **lay opinion** testimony invades the province of the jury as the ultimate
5 fact finder, is generally not helpful to a clear understanding of the lay **witness's** testimony, is
6 not "properly founded character or reputation evidence," and does not bear on "any of the other
7 matters listed by statute as most commonly affecting **credibility**" in Evidence Code section
8 780, subdivisions (a) through (k). (People v. Melton, supra, at p. 744.) The high court therefore
9 concluded that "such an opinion has no 'tendency in reason' to disprove the veracity of the
10 statements." (Ibid.; see also Evid. Code, §§ 210, 350, 780 & 800; People v. Sergill (1982) 138
11 Cal. App. 3d 34, 39-40 [187 Cal. Rptr. 497]; People v. Smith (2003) 30 Cal.4th 581, 628 [134
12 Cal. Rptr. 2d 1, 68 P.3d 302] [jury as capable as expert to assess **credibility** of defendant's
13 statement].)(Id. At 239-240.)

14 The People request these hearsay statements and lay opinion matters be excluded as
15 without proper foundation and pursuant to section 352 of the Evidence Code.

16 DATED: May 11, 2005

17 Respectfully submitted,

18 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

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21 By: _____

Mag M. Nicola
Senior Deputy District Attorney

22 Attorneys for Plaintiff
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3 **PROOF OF SERVICE**

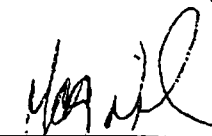
4 STATE OF CALIFORNIA }
5 COUNTY OF SANTA BARBARA } SS

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 May 12, 2005, I served the within **PLAINTIFF'S SUPPLEMENTAL**
11 **MOTION TO EXCLUDE HEARSAY TESTIMONY OF DEFENSE WITNESS ANGEL**
12 **VIVANCO PURSUANT TO EVIDENCE CODE § § 352** on Defendant. by THOMAS A.
13 MESEREAU, JR., and ROBERT SANGER, by faxing a true copy thereof to Mr. Sanger.

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

15 Executed at Santa Barbara, California on this 12th day of May, 2005.

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19 Mag M. Nicola

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28 **SERVICE LIST**

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