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19 **MICHAEL JOSEPH JACKSON**

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
21 **FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION**

22 **THE PEOPLE OF THE STATE OF**  
23 **CALIFORNIA,**

24 Plaintiffs,

25 vs.

26 **MICHAEL JOSEPH JACKSON,**

27 Defendant.

28 Case No. 1133603

MR. JACKSON'S REPLY IN SUPPORT OF  
MOTION IN LIMINE TO LIMIT  
UNCHARGED CONSPIRATOR HEARSAY  
AND ACCOMPANYING DOCUMENTS

Honorable Rodney S. Melville

Date: January 28, 2005

Time: 9:30 a.m.

Dept: SM 2

FILED UNDER SEAL

**FILED**  
SUPERIOR COURT of CALIFORNIA  
COUNTY of SANTA BARBARA

JAN 26 2005

GARY M. BLAIR, Executive Officer

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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SANTA BARBARA

1           **A. Introduction**

2           Mr. Michael Jackson submits this Reply in support of his Motion in Limine to Preclude Reference  
3 to Co-Conspirator Hearsay. Mr. Jackson's Motion in Limine seeks to exclude any reference to hearsay  
4 statements from unindicted co-conspirators unless and until plaintiff establishes by independent evidence  
5 the existence of the alleged conspiracy. That showing, while made to the jury, must be approved by the  
6 court as sufficient to establish the preliminary fact of the conspiracy by a preponderance of the evidence  
7 standard. In the alternative, the court may hold a section 402 preliminary fact hearing to establish the  
8 existence of the conspiracy by independent evidence sufficient to sustain a finding by a preponderance of  
9 evidence.

10           **B. Uncharged Conspirator Hearsay Should Not Be Permitted Unless and Until Plaintiff**  
11           **Establishes by Independent Evidence the Existence of the Alleged Conspiracy.**

12           Plaintiff states that it cannot determine what the "required procedure should be to obtain a  
13 determination that sufficient evidence exists to support a finding by the trier of fact by a preponderance of  
14 the evidence that a conspiracy was afoot." (Plaintiff's Memo, p. 2, lines 8-10). However, People v.  
15 Herrera, 83 Cal. App. 4th 46 (2000), provides the evidence of conspiracy should be presented to the jury  
16 independent of any hearsay, and no hearsay may be introduced until the court determines that sufficient  
17 evidence of the hearsay has been presented to the jury to sustain the preliminary fact of the conspiracy by a  
18 preponderance of the evidence. *Id.* at 62. The procedure is both simple and easily followed because no  
19 hearsay is permitted unless and until such a determination is reached by the court.

20           Plaintiff acknowledges Mr. Jackson has the right to request an Evidence Code section 402 hearing  
21 as a prerequisite to admission of co-conspirator hearsay. (Plaintiff's Memo, p. 3, lines 9-10). Indeed,  
22 Herrera sets forth the proper procedure where the independent evidence needs to be presented to the trier of  
23 fact, and then the court makes its section 402 determination based on that presentation and before co-  
24 conspirator hearsay can be admitted. Should the court wish a hearing outside the presence of the jury, the  
25 court certainly has the discretion to order it, and under the circumstances of this case, such a procedure  
26 would not be inappropriate.

27           Plaintiff cites People v. Perez, 83 Cal. App. 3d 718 (1978), for the proposition the court has  
28 discretion to admit the co-conspirator hearsay either prior to or following the establishment of the

1 preliminary fact. (Plaintiff's Memo, p. 4, lines 17-21). However, Perez was decided prior to Herrera where  
2 the court identified the importance of establishing the alleged conspiracy by independent evidence. That  
3 preliminary fact should not be confused with the hearsay, nor should a weak case be bolstered by the  
4 hearsay in question. While the court has the discretion to control the order of proof, the preliminary fact  
5 should be determined first in order to prevent prejudice from a weak or non-existent conspiracy. Herrera,  
6 83 Cal. app. 4th at 62-64.

7 **C. Uncharged Conspirator Hearsay Should Not Be Considered Until the Preliminary Fact of**  
8 **the Alleged Conspiracy is Independently Established to the Trier of Fact.**

9 Plaintiff states:

10 "The People will make a formal offer of proof concerning the evidence that, in their view,  
11 demonstrate the existence of a conspiracy independent of statements by one or more alleged  
12 conspirators that do not come within other exceptions to the hearsay rule (e.g. 'verbal acts' [Evid.  
13 Code, sec. 1241]). Plaintiff will ask the court to exercise its discretion regarding the order of proof  
14 before the jury and to allow evidence of certain of the co-conspirators' statements to be put before  
15 the jury before all of the evidence of the conspiracy independent of those statements has been  
16 received." (Plaintiff's Memo, p. 4, line 24 to p. 5, line 4).

17  
18 However, an offer of proof is not enough to sustain a finding of the preliminary fact, nor in view of  
19 the inherently unbelievable and bizarre nature of the alleged conspiracy, should this Court determine such a  
20 critical fact by an offer of proof. This case is too serious, the repercussions too great, and the danger of  
21 manipulation far too dangerous for an offer of proof to suffice. California courts require that the existence of  
22 the conspiracy be established by evidence independent to the trier of fact by a preponderance of evidence  
23 sufficient to sustain the finding.. People v. Leach, 15 Cal. 3d 419, 430 (1975); People v. Hardy, 2 Cal. 4th  
24 86, 139-40 (1992); People v. Herrera, 83 Cal. App. 4th 46, 62-64 (2000).  
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1 **C. There is No Prima Facie Evidence of A Conspiracy in This Case.**

2 Mr. Jackson requests the court to remember and to take judicial notice of his Motion for Mental  
3 Examination filed November 19, 2004, and the exhibits attached to the motion, including the mental  
4 reports of the examinations of Janet Arvizo. This complaining mother is a paranoid schizophrenic with  
5 sexual delusions who infuses those delusions on her children. Plaintiff's suggestion that it will make an  
6 "offer of evidence" amounts to the adoption of a schizophrenic nightmare.  
7

8 In People v. Reber, 177 Cal. App.3d 523, 530-31 (1986), the court stated:

9 "The capacity of a witness to observe, recollect and narrate an occurrence is a proper  
10 subject of inquiry on cross-examination. If as a result of a mental condition such capacity has been  
11 substantially diminished, evidence of that condition before, at and after the occurrence ... is  
12 ordinarily admissible for use by the trier in passing on the credibility of the witness.' Certain types  
13 of mental disorders are highly probative on the issue of a witness' credibility. For example, the  
14 veracity of one afflicted with a psychosis such as paranoid schizophrenia may be impaired by  
15 distortions in his ability to perceive and recall events; a schizophrenic who suffers delusions and  
16 hallucinations may have difficulty distinguishing fact from fantasy. Where psychotherapy records  
17 contain evidence of such disorders especially probative of the ability of an important prosecution  
18 witness to comprehend and accurately relate the subject of his testimony, the constitutional  
19 confrontation clause has been held to prevail over a statutory privilege."  
20  
21

22 While plaintiff has had no compunction to adopt the psychosis of the absurd conspiracy in this case,  
23 this court should be more circumspect. A section 402 preliminary fact hearing is mandatory in this case,  
24 and in the absence of such a hearing, plaintiff should be prohibited from offering any evidence of co-  
25 conspirator hearsay unless and until sufficient independent evidence is presented to the jury to sustain a  
26 finding of conspiracy as determined by the court.  
27  
28

1 **D. Conclusion.**

2 For the foregoing reasons, Mr. Jackson requests his Motion in Limine to Limit Uncharged  
3 Conspirator Hearsay be granted.  
4

5 DATED: January 26, 2005

Respectfully submitted,

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13 By: 

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