

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

MAR 18 2005

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

1 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY
County of Santa Barbara
2 By: RONALD J. ZONEN (State Bar No. 85094)
Senior Deputy District Attorney
3 GORDON AUCHINCLOSS (State Bar No. 150251)
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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,)
13 Plaintiff,)
14)
15 v.)
16 MICHAEL JOE JACKSON.)
17 Defendant.)

No. 1133603
PLAINTIFF'S NOTICE OF
MOTION AND MOTION TO
CONTINUE HEARING OF
DEFENDANT'S MOTION RE:
ADMISSIBILITY OF EVIDENCE
RELATED TO GEORGE LOPEZ
(Evid. Code, § 402)
DATE: March 17, 2005
TIME: 8:30 a.m.
DEPT: SM 2 (Melville)

21 TO: THE CLERK OF THE COURT, AND TO DEFENDANT MICHAEL JOE
22 JACKSON, AND TO THOMAS MESEREAU, JR, ROBERT SANGER AND R. BRIAN
23 OXMAN, HIS COUNSEL OF RECORD:

24 PLEASE TAKE NOTICE that on March 17, 2005, Plaintiff will request that the
25 Court continue the hearing of Defendant's "Motion Re: Admissibility Of Evidence Related To
26 George Lopez." currently calendared for that date (notice of which was filed and served on
27 March 14th) pending receipt by Court and Counsel of Mr. Lopez's written statement pursuant
28 to the Court's earlier direction in a recent conference call with Mr. Lopez's counsel.

1 This motion is made on the ground that Mr. Lopez's statement will be necessary to
2 an informed ruling on the pending motion. It will be based on this Notice and the
3 accompanying Declaration of Gerald McC. Franklin.

4 DATED: March 16, 2005

5 Respectfully submitted,

6 THOMAS W. SNEDDON, JR.
7 District Attorney

8 By: TR 3 man
9 Gerald McC. Franklin, Senior Deputy

DECLARATION OF GERALD McC. FRANKLIN

I, Gerald McC. Franklin, say:

1. I am a lawyer admitted to practice in the State of California. I am a Senior Deputy of the District Attorney of Santa Barbara County. I am one of the lawyers of record for the People, Plaintiff in this action.

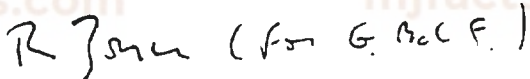
2. Defendant's "Motion Re: Admissibility of Evidence Related to George Lopez" was filed and served Tuesday, March 14, 2005. The notice of that Motion proposed that it be heard on March 17th.

3. I am informed, and thereon allege, that a conference call involving the Court, counsel for both Plaintiff and Defendant and counsel for one George Lopez was had very recently, concerning Mr. Lopez's proposed evidence, and that the Court directed Mr. Lopez's counsel to file and serve the written statement of his client before the Court took further action on Defendant's request for the admission of certain evidence concerning Mr. Lopez.

4. To my knowledge, no such statement has yet been dispatched by Mr. Lopez or his counsel, or received by the Court or counsel for the parties to this lawsuit.

5. I am informed by my co-counsel, who know more about the evidence in this matter than do I, and believe that the "facts" which Attorney Sanger alleged in his declaration supporting the pending motion and by Attorney Mesereau in his opening statement to the jury may not be correctly or fully stated. I am informed and believe that Mr. Lopez's statement likely will provide additional light and perspective on defense counsel's present view of matters.

I declare under penalty of perjury that the foregoing is true, except as to matters stated upon my information and belief, and as to such matters I belief it to be true. I execute this Declaration at Santa Barbara, California on March 16, 2005.


GERALD McC. FRANKLIN

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 With certain exceptions that may or may not be pertinent here, all relevant evidence
3 is admissible in a California criminal trial. (Cal. Const., art. 1, § 28, subd. (d).)

4 Surely, there can be no argument with the proposition that the Court ought to know
5 as much as possible about the foundation of the evidence a party seeks to introduce before it is
6 introduced: that is why Evidence Code section 402 exists.

7 The preliminary showing made by Defendant in support of his pending motion
8 appears to be contradicted in pertinent part by the police reports attached as factual support for
9 the admission of the proposed evidence. There is no evidence that Mr. Lopez himself has been
10 interviewed. There is reason to believe that Mr. Lopez's information, when it becomes
11 available, may weaken rather than strengthen the supposed relevance of his testimony to the
12 defense position in this lawsuit.

13 Be that as it may, a summary of Mr. Lopez's information, provided by Mr. Lopez
14 himself, will surely be useful and may be critical to the Court's assessment of the relevance of
15 his proposed testimony in this case.

16 For that reason, Plaintiff respectfully requests that the hearing of Defendant's
17 pending motion be continued to a date convenient to the calendars of all concerned following
18 receipt of the anticipated written statement from Mr. Lopez.

19 DATED: March 16, 2005

20 Respectfully submitted,

21 THOMAS W. SNEDDON, JR.
22 District Attorney

23 By: 

24 Gerald McC. Franklin, Senior Deputy

PROOF OF SERVICE

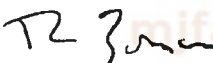
STATE OF CALIFORNIA }
COUNTY OF SANTA BARBARA } SS

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 March 16, 2005, I served the within PLAINTIFF'S NOTICE OF MOTION AND MOTION TO CONTINUE HEARING OF DEFENDANT'S MOTION RE: ADMISSIBILITY OF EVIDENCE RELATING TO GEORGE LOPEZ on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara and by transmitting a facsimile copy thereof to Attorney Mesereau at his Santa Maria fax number.

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

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



Gerald McC. Franklin

SERVICE LIST

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