

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 J. GORDON AUCHINCLOSS (State Bar No. 150251)
Senior Deputy District Attorney
4 GERALD McC. FRANKLIN (State Bar No. 40171)
Senior Deputy District Attorney
5 1112 Santa Barbara Street
Santa Barbara, CA 93101
6 Telephone: (805) 568-2300
FAX: (805) 568-2398
7

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

APR - 8 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,

13 Plaintiff,

14 v.

15 MICHAEL JOE JACKSON,

16 Defendant

No. 1133603

PLAINTIFF'S MEMORANDUM
RE: THE ADMISSIBILITY OF
CERTAIN EVIDENCE TO
IMPEACH THE TESTIMONY OF
PHILLIP LEMARQUE

DATE: TBA
TIME: TBA.
DEPT: SM-2 (Melville)

19
20 A. Introduction:

21 One of plaintiff's witnesses is Phillip Lemarque, who will testify concerning his
22 observations of defendant with at least one young boy in the early 1990s, when he worked at
23 Neverland Ranch as one of defendant's employees.

24 "The Smoking Gun" ("TSG") is an Internet website that regularly features
25 sensational "background" information on aspects of the Michael Jackson prosecution. On
26 April 4th, TSG disclosed that in 1997, several years after his employment at Neverland Ranch,
27 Mr. Lemarque "launched *Virtual Sin*, a website reportedly devoted to sexually explicit
28 photographs. According to TSG, that website went off-line early last year.

1 It is reasonable to assume that defense counsel is not unacquainted with TSG and
2 with its up-dates on titillating background information concerning anticipated witnesses in this
3 matter. It is not unreasonable to assume that defense counsel might attempt to cross-examine
4 Mr. Lemarque concerning the particulars of his post-employment Internet website offerings.

5 Plaintiff respectfully submits that an attempt to impeach Mr. Lemarque's testimony
6 by reference to the focus of his later business enterprise would be improper. Whatever else
7 might be said about it, Mr. Lemarque's post-employment Internet venture was not unlawful.
8 Neither does it illuminate his character for honesty or veracity.


9 Evidence Code section 786 admonishes: "Evidence of traits of his character other
10 than honesty or veracity, or their opposites, is inadmissible to attack or support the credibility
11 of a witness." And section 787 provides: "Subject to Section 788 [prior felony conviction],
12 evidence of specific instances of his conduct relevant only as tending to prove a trait of his
13 character is inadmissible to attack or support the credibility of a witness."

14 Defense counsel has demonstrated a facility for loading a leading question on cross-
15 examination with a good many supposed "facts," followed by "Correct?" The interposition of
16 an objection to such a question, even if successful, is almost always too late; the question itself
17 has been launched over the jury rail and its prejudicial effect will not be remedied by an
18 admonition to the jury to "disregard the question; it is not evidence."

19 For that reason, plaintiff respectfully requests that the Court caution defense counsel
20 not to attempt questions on cross-examination that reveal or seek information concerning Mr.
21 Lemarque's post-employment Internet venture.

22 DATED: April 8, 2005

23 THOMAS W. SNEDDON, JR.
24 District Attorney

25 By: 
26 Gerald McC. Franklin Senior Deputy District Attorney
27 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 April 8, 2005, I served the within PLAINTIFF'S MEMORANDUM RE: THE
11 ADMISSIBILITY OF CERTAIN TESTIMONY TO IMPEACH THE TESTIMONY OF
12 PHILLIP REMARQUE on Defendant, by THOMAS A. MESEREAU, JR., ROBERT
13 SANGER and BRIAN OXMAN, by personally delivering a true copy thereof to defense
14 counsel in open court. I declare under penalty of perjury that the foregoing is true and correct.

15 Executed at Santa Maria, California on this 8th day of April, 2005.

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