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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAY - 5 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**

11
12 THE PEOPLE OF THE STATE OF CALIFORNIA,
13 Plaintiff,

14 vs.

15
16 MICHAEL JOE JACKSON,
17 Defendant.

No. 1133603

**PLAINTIFF'S MOTION TO
EXCLUDE HEARSAY
TESTIMONY OF DEFENSE
WITNESS MICHAEL VINER
PURSUANT TO EVIDENCE
CODE § § 352**

DATE: May 5, 2005
TIME: 8:30 AM
DEPT.: SM2 (Melville)

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21 **INTRODUCTION**

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23 The defense has provided an interview report regarding the proposed testimony of
24 witness Michael Viner. Mr. Viner will apparently testify that sometime in 2004 he was present
25 during a breakfast meeting with Larry King and Larry Feldman. Viner claims that Larry
26 Feldman was critical of the credibility of the victim and his mother during this 'meeting.'

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1 This witness will also testify as to an opinion he claims was given by Feldman regarding the
2 victim's motives with respect to the child molestation claims.

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4 **I.**
5 **EVIDENCE OF A WITNESS' SEXUAL CONDUCT**
6 **SHOULD BE EXCLUDED UNDER E.C. 352**

7 The issue of whether or not Larry Feldman has previously shared an opinion as to
8 the veracity of the victims of this case, or what he may or may not have opined regarding their
9 motives, is completely irrelevant to the issue of this defendant's guilt. The proposed testimony
10 of witness Viner fails to clear a number of evidentiary hurdles.

11 Initially, it is hearsay. This witness proposes to relate the statements of another
12 witness made outside this court proceeding. There is no exception allowing the statement at
13 this first level. Secondly, the statement purportedly made by Feldman is nothing more than a
14 lay opinion of another witness' credibility, if Feldman made that statement at all. Lay opinion
15 testimony about the credibility of another witness particular statements is inadmissible.

16 People v. Zambrano. (2004) 124 Cal.App.4th 228, has this to offer on the subject:
17 "Our state Supreme Court has recognized that a lay witness's opinion about the veracity of
18 another person's particular statements is *inadmissible* and *irrelevant* on the issue of the
19 statements' **credibility**. (People v. Melton (1988) 44 Cal.3d 713, 744 [244 Cal. Rptr. 867, 750
20 P.2d 741].) The high court reasoned that such **lay opinion** testimony invades the province of
21 the jury as the ultimate fact finder, is generally not helpful to a clear understanding of the lay
22 **witness's** testimony, is not "properly founded character or reputation evidence," and does not
23 bear on "any of the other matters listed by statute as most commonly affecting **credibility**" in
24 Evidence Code section 780, subdivisions (a) through (k). (People v. Melton, supra, at p. 744.)
25 The high court therefore concluded that "such an opinion has no 'tendency in reason' to
26 disprove the veracity of the statements." (*Ibid.*: see also Evid. Code. §§ 210, 350, 780 & 800;
27 People v. Sergill (1982) 138 Cal. App. 3d 34, 39-40 [187 Cal. Rptr. 497]; People v. Smith
28 (2003) 30 Cal.4th 581, 628 [134 Cal. Rptr. 2d 1, 68 P.3d 302] [jury as capable as expert to
assess **credibility** of defendant's statement].)(Id. At 239-240.)

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2 Viner's testimony is clearly inadmissible based upon the above precedents and
3 should not be allowed. However, assuming the court determines that there is some basis for
4 allowing an exception to the above stated rules of evidence, and allows Viner to testify as to
5 these matters, then the People should be allowed to call witness Feldman to testify as to all the
6 reasons he *does* believe the victim and his mother. Such testimony would include all of the
7 factual similarities between the current case and those of the previous child molest allegations
8 against this same defendant with other children.

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10 DATED: May 5, 2005

11 Respectfully submitted,

12 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY

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14 By: 

15 Mag M. Nicola
16 Senior Deputy District Attorney

17 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 January 18, 2005, I served the within **PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION RE: EVIDENCE CODE § 402 ISSUES** on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger.

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

Executed at Santa Barbara, California on this 24th day of January, 2005.


Mag M. Nicola

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