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

JAN 10 2005

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

*Unsealed pursuant  
to 200505 Court  
order*

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, )

No. 1133603

13 Plaintiff, )

PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
ORDER ALLOWING USE OF  
EXPERT TESTIMONY ON  
14 THE SUBJECT OF CHILD  
ABUSE TRAUMA;  
15 MEMORANDUM OF POINTS  
AND AUTHORITIES

16 v.

17 MICHAEL JOE JACKSON,

18 Defendant. )

DATE: January 12, 2005  
TIME: 8:30 a.m.  
DEPT: SM 2 (Melville)

*FILED UNDER SEAL*

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

24 PLEASE TAKE NOTICE that on January 12, 2005, at 8:30 a.m. or as soon  
25 thereafter as the matter may be heard, the People will move the Court for its order authorizing  
26 Plaintiff to put before the trial jury expert testimony concerning "child sexual abuse  
27 accommodation syndrome" (CSAAS).

28 The motion will be based on this Notice and the accompanying Memorandum of

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Points and Authorities.

DATED: January 10, 2004

Respectfully submitted,

THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara

By: Ronald J. Zonen by Gerald WEC.  
Ronald J. Zonen, Senior Deputy Franklin

Attorneys for Plaintiff

MEMORANDUM OF POINTS AND AUTHORITIES

1  
2  
3 **A. INTRODUCTION:**

4 The People will seek to introduce expert testimony to explain the behavior of  
5 children who have been molested. The experts, former FBI special agent Kenneth Lanning  
6 and Dr. Anthony Urquiza, will testify that there are many misconceptions about how children  
7 react to having been molested, among them that children will immediately disclose the  
8 molestation to their closest relative, that children will disclose without hesitation all that  
9 occurred and that children who were molested will not have feelings of love or affection for  
10 those who molested them. Mr. Lanning will testify to the consequences of the "grooming  
11 process," the process by which children accept as normal the reality of their own molestation  
12 and how it affects their behavior thereafter.

13 **B. STATEMENT OF FACTS:**

14 Gavin Avizo met the defendant in 2001. He was 11 years old and was being treated  
15 for cancer. At the height of his illness he was not expected to live. Gavin and his younger  
16 brother, Star, had previously attended a comedy camp at the Laugh Factory, a comedy theater  
17 in Los Angeles. The owner, Jaime Masada, introduced Gavin to a number of celebrities in an  
18 effort to boost his spirits and encourage his recovery. One of the celebrities Gavin asked to  
19 meet was Michael Jackson. Masada arranged the introduction.

20 Jackson called Gavin at the hospital and had a lengthy conversation with him  
21 followed by many more phone conversations. That resulted in an invitation to visit him at  
22 Neverland, Jackson's 2800 acre ranch in Santa Ynez. The first visit was with the entire family,  
23 Gavin's mother Janet, his father, David, his sister Davellin and his brother Star. As early as  
24 the first visit Gavin and Star stayed in Jackson's room in the main residence while his parents  
25 and sister stayed in the guest cottages away from the house. On that first visit Jackson gave  
26 Gavin a lap top computer. He then showed Gavin and Star how to access pornography on the  
27 internet.

28 Gavin returned to Neverland many times thereafter, usually with his father, sister

1 and brother. If Jackson was there the boys stayed with him in his room, usually in his bed.  
2 Jackson gave Gavin a sport utility vehicle. Although Gavin's father drove it, the vehicle was a  
3 gift to Gavin. After the car broke down it was returned to Jackson. By age 12 Gavin was  
4 recovering from his cancer. These visits to Neverland began tapering off. By age 13 the boy  
5 lost contact with Jackson and had stopped visiting. Then in the spring of 2002 Gavin and Star  
6 were invited to return to Neverland by Chris Tucker, a celebrity previously introduced to the  
7 boys by Masada. Tucker took the boys back to Neverland to celebrate his son's first year  
8 birthday.

9 Later in the fall of 2002 Michael Jackson called and invited the kids back. Gavin,  
10 Star and Davellin returned to Neverland for a visit. They were introduced to a man named  
11 Martin Bashir. Although the boys did not know it, Bashir was a journalist working on a  
12 documentary on Michael Jackson. Gavin had previously told Jackson he was interested in  
13 being an actor. Jackson asked Gavin to agree to be interviewed by Bashir, telling him it would  
14 be like an audition.

15 In February, 2003 the Bashir documentary "Living with Michael Jackson" aired in  
16 England. It was highly critical of Jackson's lifestyle and revealed his custom of sleeping with  
17 children not his own. Gavin was featured seated next to Jackson, holding his hand and leaning  
18 his head on Jackson's shoulder. He was identified by his true first name.

19 Soon after "Living with Michael Jackson" aired in England, Gavin received a call  
20 from Jackson. Jackson asked that he come with him to Miami to appear in a press conference  
21 which hopefully would stem some of the negative publicity. Gavin said he would do so but  
22 only if his siblings and his mother came with him. Jackson objected to Gavin's mother coming  
23 along, but he ultimately agreed.

24 Gavin, his sister, brother and mother were flown to Miami with Chris Tucker in a  
25 private jet. Gavin's father, David, was no longer part of the picture. After years of abusing  
26 Janet and his children, he was restrained by court order from seeing his wife or children.  
27 Jackson was well aware of the strife in the Arvizo family.

28 In Miami the family stayed at the Turnberry Resort hotel with many members of

1 Jackson's entourage. While Gavin and his family were in Miami "Living with Michael  
2 Jackson" aired in the United States. Jackson forbade any of the people with him in his suite,  
3 including the Arvizo family, to watch the program.

4 There was no press conference. Two days later the Arvizo family flew to Santa  
5 Barbara and drove to Neverland Ranch.

6 Mrs. Arvizo was informed by one of Jackson's employees that she and her children  
7 had to go to Brazil for their own safety. From the time of their return to Neverland on  
8 February 7, 2003 to the time of their ultimate escape from the ranch on March 10th, the Arvizo  
9 children stayed exclusively at Neverland, except for a couple of days in Los Angeles and a few  
10 days in Calabasas in the company of Jackson's employees, preparing for the Arvizos'  
11 departure to Brazil. Jackson took them to "Toys-R-Us" in Santa Maria and treated them to a  
12 shopping spree. While in Calabasas they all purchased new clothes, presumably for their trip  
13 to Brazil. When Jackson was present at the ranch the boys stayed with him in his bedroom.  
14 Otherwise they stayed in the guest cottage. Davellin and her mother always stayed in one of  
15 the ranch's guest cottages. Increasingly, Janet lost contact with her sons. She stayed in the  
16 guest cottage most of the day and had little interaction with the boys. Even Davellin started to  
17 lose contact with them. She did not go in Jackson's bedroom and felt her connection with her  
18 brothers weakening.

19 The boys did not attend school, had no homework to do, and were given no  
20 responsibilities. They spent their days enjoying the many games, rides and race cars at  
21 Neverland. At night they retired to Jackson's room. Jackson had nicknames for the boys, like  
22 "Rubba," "Doodoohead" or "Applehead." When Jackson was there he drank heavily and  
23 encouraged the boys to do so as well. On one occasion he presented himself to the boys naked  
24 and assured them it was a natural thing. He asked them about masturbation and whether they  
25 did it. He simulated a sex act with a mannequin of a female child he had in his room. He told  
26 them a story of how a boy once had sex with a dog because he did not masturbate. He told  
27 them he had to do it or he would go crazy. When Gavin told him he did not do it, Jackson  
28 became offended, told him he was lying and that Gavin did not trust him. Jackson offered to

1 teach him how to do it.

2           Although Gavin was drinking regularly when Jackson was there, he has a clear  
3 recollection of at least two incidents of being in Jackson's bed and Jackson masturbating him  
4 with one hand inserted in his underwear while masturbating himself with his other hand.  
5 Gavin said there may have been other events but he was too intoxicated to be certain. Gavin's  
6 brother Star witnessed two separate acts of Jackson molesting Gavin, which caused Star to stop  
7 sleeping in Jackson's bedroom. On both occasions Star came into Jackson's bedroom late in  
8 the evening to go to sleep. Jackson's bed was located in the upstairs portion of his bedroom  
9 suite. To get there, Star had to open the door affording access to the downstairs portion of the  
10 bedroom suite by entering the combination on the keypad for the door's lock. Star could then  
11 walk up the stairs to the bedroom itself. As he was climbing the stairs and neared the top, Star  
12 reached the level where he could see Jackson's bed through the railing that separated the  
13 stairwell from the bedroom area. He saw his brother Gavin and Jackson in the bed, lying side  
14 by side. On both occasions it appeared to Star that Gavin was asleep or unconscious and that  
15 Jackson was masturbating Gavin and himself.

16           On each occasion, Star turned before reaching the top of the stairs, left and went to  
17 the guest cottage to sleep. Star did not sleep in Jackson's bedroom thereafter.

18           Janet had to use subterfuge to finally get her children away from Neverland. She  
19 had her parents call and tell the kids they (the children's grandparents) were ill and wanted to  
20 see them. Janet negotiated with one of Jackson's men for a day visit by the children with their  
21 grandparents, and the kids were delivered to her parents' home in El Monte. The children did  
22 not want to leave Neverland. Gavin, in particular, was upset at learning he would not be  
23 allowed to return.

24           After leaving Neverland on March 11, 2003, Janet and her parents in El Monte  
25 received numerous phone calls from Jackson's employees encouraging Janet and the children  
26 to return to Neverland. They did not do so. Jackson's employees had emptied her apartment  
27 and moved all of the family's possessions into storage and refused to tell Janet where. Janet  
28 contacted a lawyer in an attempt to get her property returned. Janet also asked attorney Bill

1 Dickerman to attempt to stop the airing of "Living with Michael Jackson," because she had  
2 been given no prior knowledge of her son's involvement in the production of the documentary,  
3 and because the airing of the program was exposing her children to public ridicule. She knew  
4 nothing of her child being molested at the time.

5 Dickerman referred them to Attorney Larry Feldman who previously had sued  
6 Michael Jackson for molesting another 13-year-old boy, Jordan Chandler, ten years earlier.  
7 Attorney Feldman immediately referred the boys to psychologist Stan Katz. It was to Dr. Katz  
8 that the boys first disclosed the sexual abuse. That commenced a lengthy and extensive  
9 investigation resulting in the indictment of Michael Jackson.

### 10 **C. Argument**

#### 11 **EXPERT TESTIMONY ADDRESSING ISSUES OF** 12 **"CHILD ABUSE TRAUMA"<sup>1</sup> IS PROPERLY ADMISSIBLE** 13 **AT TRIAL DURING THE PEOPLE'S CASE-IN-CHIEF**

14 As in cases involving Rape Trauma Syndrome evidence, "Child Abuse Trauma"  
15 and "Child Sexual Abuse Accommodation Syndrome" experts are widely used to disabuse  
16 jurors of common myths and misconceptions in child sexual assault cases. Because the court-

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17 <sup>1</sup> A word about terminology: CALJIC 10.64 and the relevant decisional law refer to the  
18 "child sexual abuse accommodation syndrome," or "CSAAS." Some experts in the field limit  
19 application of the term CSAAS to discussions of victims of "intrafamilial" child sexual abuse –  
20 i.e., sexual abuse of a child by a family member, a close relative or one who is treated as a  
21 member of child's immediate family. Those experts use the more encompassing term "Child  
22 Abuse Trauma" to describe the complex of symptoms demonstrated by a child sexually abused  
23 by a person in whom trust may have been reposed but whose connection to a victim's  
24 immediate family was not necessarily that of a live-in relative. The distinction apparently is  
25 without a legal difference: a number of the reported decisions have approved the admission of  
26 "CSAAS" evidence in cases where the defendant's relationship to the victim was merely a  
27 trusting acquaintanceship, if that. (See, e.g., *People v. Bowker* (1988) 203 Cal.App.3d 385  
28 [victim a neighbor's child]; *Seering v. Dept. Soc. Svcs.* (1987) 194 Cal.App.3d 298 [day-care  
provider]; *People v. Patino* (1994) 26 Cal.4th 1737 [near neighbor]; *People v. McAlpin* (1991)  
53 Cal.3d 1289 [dating relationship with victim's mother]; *People v. Harlan* (1990) 222  
Cal.App.3d 439 [baby-sitter pervert]; *People v. Yovanov* (1999) 69 Cal.App.4th 392 [boyfriend  
of victim's mother]; *People v. Stoll* (1989) 49 Cal.App.3d 1136 [inter alia, boyfriend of  
victim's mother].)

1 approved guidelines and accompanying jury instructions would ensure that the jurors would  
2 properly apply any Child Abuse Trauma testimony, such testimony is admissible to dispel any  
3 misconceptions involved in the instant case.

4 Expert testimony is admissible at trial as long as the testimony will be of assistance  
5 to the trier of fact and is reliable. (Evid. Code, § 801; *People v. Bowker* (1988) 203  
6 Cal.App.3d 385, 390.) In California, the *Kelly-Frye* analysis is commonly used to determine  
7 the admissibility of new scientific methods of proof. (*People v. Bowker, supra*, 203  
8 Cal.App.3d at 390, citing *People v. Kelly* (1976) 17 Cal.3d 24 and *Frye v. United States* (D.C.  
9 Cir.1923) 293 Fed. 1013.) In the early 1980's prosecutors began presenting evidence of "Rape  
10 Trauma Syndrome" to show that the fact that a victim suffered from the syndrome proved that  
11 she must have been raped. In 1984 the California Supreme Court held that "[u]nlike  
12 fingerprints, blood tests, lie detector tests, voiceprints or the battered child syndrome, rape  
13 trauma syndrome was not devised to determine the 'truth' or 'accuracy' of a particular past  
14 event – i.e., whether, in fact, a rape in the legal sense occurred – but rather was developed by  
15 professional rape counselors as a therapeutic tool . . . ." (*People v. Bledsoe* (1984) 36 Cal.3d  
16 236, 249-250.) In part because it is an "umbrella concept" designed for a different purpose  
17 than the battered child syndrome, Rape Trauma Syndrome does not satisfy the *Kelly-Frye*  
18 requirements and is not admissible in trial to prove that a witness was raped. (*Id.* at pp. 250-  
19 251.) But the Supreme Court "hasten[ed] to add that nothing in this opinion is intended to  
20 imply that evidence of the emotional psychological trauma that a complaining witness suffers  
21 after an alleged rape is inadmissible in a rape prosecution." (*Id.*, p. 251.) Though evidence of  
22 Rape Trauma Syndrome cannot be used to prove that a rape occurred, it may be used "to rebut  
23 misconceptions about the presumed behavior of rape victims." (*People v. Bledsoe, supra*, 36  
24 Cal.3d at p. 248; *People v. Bowker, supra*, 203 Cal.App.3d 385 at p. 391, citing *Bledsoe.*)

25 Decisional law concerning admissibility of Child Sexual Assault Accommodation  
26 Syndrome evidence built on the decisions concerning the admission of Rape Trauma Syndrome  
27 evidence. Like Rape Trauma Syndrome, CSAAS was developed as a therapeutic tool. (*People*  
28 *v. Bowker, supra*, 203 Cal.App.3d at p. 390.) Because CSAAS evidence, like Rape Trauma



1 Syndrome evidence, does not satisfy the *Kelly-Frye* standard, the law precludes an expert from  
2 testifying that, based on CSAAS, a particular victim's report is credible and he or she has in  
3 fact been molested. *Id.* But, as long as the CSAAS testimony is directed to dispel common  
4 myths or misconceptions surrounding a child's sexual assault, it is admissible. (*Id.* at 393-94;  
5 see also *People v. Patino* (1994) 26 Cal.App.4th 1737 [holding that the introduction of CSAAS  
6 testimony to disabuse a jury of "misconceptions it might hold about how a child reacts to a  
7 molestation" violates neither the confrontation clause nor a defendant's due process rights; *id.*,  
8 at p. 1744].)

9 Over the years the courts have developed guidelines to insure that child abuse  
10 trauma evidence is used appropriately. CSAAS testimony must be addressed to a specific myth  
11 or misconception presented by the evidence. (*People v. Housley* (1992) 6 Cal.App.4th 947,  
12 955; *People v. Patino, supra*, 26 Cal.App.4th at 1745.) "Such expert testimony is needed to  
13 disabuse jurors of commonly held misconceptions about child sexual abuse, and to explain the  
14 emotional antecedents of abused children's seemingly self-impeaching behavior. The great  
15 majority of courts approve such expert rebuttal testimony." (Myers et al., *Expert Testimony in*  
16 *Child Sexual Abuse Litigation* (1989) 68 Neb. L.Rev. 1, 89, cited and quoted in *People v.*  
17 *McAlpin, supra*, 53 Cal.3d 1289, 1301.)

18 Identifying a myth or misconception does not require the prosecution to expressly  
19 state on the record the evidence that is inconsistent with molestation. (*People v. Patino, supra*,  
20 26 Cal.App.4th at 1744.) "It is sufficient if the victim's credibility is placed in issue due to  
21 paradoxical behavior, including a delay in reporting a molestation." (*Id.* at pp.1744-45.)  
22 CSAAS testimony may be introduced to show why the victim acted as she did and explain her  
23 state of mind. (*Id.* at p.1746.) Because it would be natural for a jury to wonder why a  
24 molestation was not immediately reported or why a victim returned to an assailant's home after  
25 an initial molest, the People may introduce CSAAS evidence during their case in chief, "if an  
26 issue has been raised as to the victim's credibility." (*Id.* at 1745.)

27 In *People v. McAlpin, supra*, 53 Cal.3d. 1289, the prosecution sought to introduce  
28 expert testimony to explain the behavior of the victim's mother in not disclosing knowledge

1 she had of her child's molestation. The California Supreme Court upheld the admission of that  
2 evidence.

3 The governing rules are well settled. First, the decision of a trial court  
4 to admit expert testimony "will not be disturbed on appeal unless a  
5 manifest abuse of discretion is shown." (*People v. Kelly* (1976) 17  
6 Cal.3d 24, 39, and cases cited.) Second, "the admissibility of expert  
7 opinion is a question of degree. The jury need not be wholly ignorant of  
8 the subject matter of the opinion in order to justify its admission; if that  
9 were the test, little expert opinion testimony would ever be heard.  
10 Instead, the statute declares that even if the jury has some knowledge of  
11 the matter, expert opinion may be admitted whenever it would 'assist'  
12 the jury. It will be excluded only when it would add nothing at all to the  
13 jury's common fund of information, i.e., when 'the subject of inquiry is  
14 one of such common knowledge that men of ordinary education could  
15 reach a conclusion as intelligently as the witness'" (*People v. McDonald*  
16 (1984) 37 Cal.3d 351, 357).

17 (*People v. McAlpin, supra*, 53 Cal. 3d 1289 at pp. 1299-1300.)

18 *McAlpin* approvingly noted that the People drew "a helpful analogy to expert  
19 testimony on common stress reactions of rape victims ('rape trauma syndrome') which may  
20 include a failure to report, or a delay in reporting, the sexual assault."

21 An even more direct analogy may be drawn to expert testimony on  
22 common stress reactions of children who have been sexually molested  
23 ("child sexual abuse accommodation syndrome"), which also may  
24 include a failure to report, or a delay in reporting, the sexual assault. In a  
25 series of decisions the Courts of Appeal have extended to this context  
26 both the rule and the exception of *People v. Bledsoe, supra*, 36 Cal.3d  
27 236: i.e., expert testimony on the common reactions of child molestation  
28 victims is not admissible to prove that the complaining witness has in  
fact been sexually abused; it is admissible to rehabilitate such witness's  
credibility when the defendant suggests that the child's conduct after the  
incident - e.g., a delay in reporting - is inconsistent with his or her  
testimony claiming molestation.. (*People v. Bowker* (1988) 203  
Cal.App.3d 385-390-394; *People v. Gray* (1986) 187 Cal.App.3d 213,  
217-220; *People v. Roscoe* (1985) 168 Cal.App.3d 1093-1097-1100.)

1 "Such expert testimony is needed to disabuse jurors of commonly held  
2 misconceptions about child sexual abuse, and to explain the emotional  
3 antecedents of abused children's seemingly self-impeaching behavior.  
4 [¶] The great majority of courts approve such expert rebuttal testimony."  
5 (Myers et al., *Expert Testimony in Child Sexual Abuse Litigation* (1989)  
6 68 Neb. L. Rev. 1, 89, fn. omitted . . . .)

7 (*People v. McAlpin, supra* at pp. 1300-1301.)

8 When child abuse trauma testimony is admitted, the court must sua sponte instruct  
9 the jury that "(1) such evidence is admissible solely for the purpose of showing the victim's  
10 reactions, as demonstrated by the evidence are not inconsistent with having been molested; and  
11 (2) the expert's testimony is not intended and should not be used to determine whether the  
12 victim's molestation claim is true." (*People v. Housley, supra*, 6 Cal.App.4th 947, at p. 959.)

13 Although CALJIC 10.64 provides an appropriate instruction, even when courts  
14 have failed to adequately instruct the jury regarding the proper use of CSAAS testimony, that  
15 error has been held harmless. (*Ibid.*)

16 The evidence of Child Abuse Trauma is necessary in this case to explain Gavin  
17 Arvizo's behavior after the molestation. Gavin did not report the molestation immediately. He  
18 did not disclose to his mother or any other family member, or any other adult, or friend of any  
19 age. When he did disclose to a therapist his disclosure was abbreviated, a less detailed  
20 disclosure than what was given to detectives.

21 Gavin was very upset at leaving Neverland. His grandmother testified before the  
22 grand jury that he was angry and upset at having to leave Neverland and wanted to return  
23 immediately. It will be difficult for the jury to understand why a thirteen-year-old boy would  
24 want to return to the home of his molester or that he would have feelings of affection and even  
25 love for the man who molested him.

26 An expert in Child Abuse Trauma will be able to explain how the grooming process  
27 allows a child to be victimized with his own cooperation. The compliant victim is the  
28 offender's creation. It is the result of considerable effort to gain the child's trust, cooperation,  
confidence and belief that the offender's behavior is normal, acceptable and even enjoyable.

1 That process involved the use of gifts, pornography, alcoholic beverages, separation from his  
2 mother, and the creation of an entirely artificial environment filled with one indulgence and  
3 pleasure after another. That Gavin Arvizo did not initial disclose his victimization, or  
4 disclosed only in part is more easily understood with the assistance of an expert knowledgeable  
5 in why abused children behave in such manner.

6 Although the People are not legally required to place the specific myths and  
7 misconceptions the CSAAS testimony would be designed to address on the record (*People v.*  
8 *Patino, supra*, 26 Cal.App.4th 1737, at p. 1744), the factual scenario of this case leaves open a  
9 variety of opportunities for defense counsel to exploit juror's misconceptions to their  
10 advantage. Ranging from the myths that assailants are strangers to the notion that genuine  
11 victims must report immediately, consistently, and without any loss of memory, the jury must  
12 be educated as to the true mental states through which molest victims suffer.

### 13 CONCLUSION

14 The instant case involves a thirteen-year-old-boy who reported to a therapist that he  
15 had been molested by an international superstar, one he had been close to. His disclosures  
16 were given in stages and subject to the kind of confusion to be expected from any child. The  
17 testimony of an expert in Child Abuse Trauma is needed to assure that jurors are disabused of  
18 the kinds of myths commonly associated with this type of child victim behavior.

19 DATED: January 10, 2004

20 Respectfully submitted,

21  
22 THOMAS W. SNEDDON, JR., DISTRICT ATTORNEY  
County of Santa Barbara

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24 By: Ronald J. Zonen by Gerald M.C. Franklin  
Ronald J. Zonen, Senior Deputy

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26 Attorneys for Plaintiff  
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