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10 Attorneys for Defendant
11 MICHAEL JOE JACKSON

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

MAR - 9 2005

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

** Unsealed pursuant
to 6/16/05 court
order*

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 FOR THE COUNTY OF SANTA BARBARA, SANTA MARIA DIVISION

14 THE PEOPLE OF THE STATE OF) CASE NO. 1133603
15 CALIFORNIA,)
16 Plaintiff,)
17 vs.) **REPLY TO OPPOSITION TO MOTION TO**
18 MICHAEL JOE JACKSON) **ADMIT EVIDENCE OF GAVIN ARVIZO**
19 Defendant.) **AND STAR ARVIZO'S SEXUAL CONDUCT**
20) HEARING:
21) DATE: MARCH 11, 2005
22) TIME: 8:30 A.M.
23) Place: Dept. SM-2
24) FILED UNDER SEAL
(Pursuant to Evidence Code Section 782)

25 Michael Jackson ("Mr. Jackson") respectfully submits the following Reply to the
26 Prosecution's Opposition to Motion to Admit Evidence of Gavin and Star Arvizo's sexual
27 Conduct.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 ARGUMENT

4 The Opposition is utterly lacking in merit at least for the following four reasons.

5 First, the Prosecution references Exhibit A to the Motion and incorrectly says that
6 the Motion “does not specify the relevant dates” in which Gavin and Star Arvizo were
7 masturbating in a guest unit at Neverland. (Opposition, 1:25-28.)

8 To the contrary, the referenced Exhibit A, which contains Rio and Simone’s
9 interview statements, demonstrates that the Arvizo boys were caught masturbating in one
10 of the guest units at Neverland in the February/March 2003 time period, as follows:

11 (1) Rio states that he witnessed the Arvizo boys masturbate in one of the guest
12 units “after his birthday,” but before Christmas 2003. (Motion, Exhibit A,
13 Defense discovery number MJ037981.) Rio’s birthday is October 6, 1992.
14 The phrase “after his birthday” obviously refers to Rio’s birthday in 2002
15 because another interview statement of Rio Jackson bearing Defense
16 Discovery Bates number MJ029456 (also part of Exhibit A) states that “Rio
17 visited Neverland Ranch on three occasions in 2003 *when the Arvizo children*
18 *and their mother were also guests.*” (Emphasis added.) Rio also reportedly
19 states on MJ029457 (also part of Exhibit A) that he witnessed the Arvizo boys
20 masturbate in a guest unit in “February or March 2003.”

21 (2) Moreover, on page 2 of Exhibit A (i.e., MJ037982), Simone reportedly states
22 that she believes “she first met the Arvizos in February 2003 at the ranch.”

23 By ignoring these “relevant dates,” the Prosecution has unwittingly acknowledged
24 that its Opposition is unmeritorious.

25 Second, remarkably, the Prosecution says it does not understand the relevance of
26 the Arvizo boys’ self-masturbation at Neverland in late February and early March 2003.
27 (Opposition, 2:14-17.)

1 TESTIMONY The proffered evidence is obviously relevant because at issue is whether the Arvizo
2 boys are telling the truth when they say Mr. Jackson masturbated Gavin. Mr. Jackson is
3 falsely accused of the horrible crimes he did not commit. The Defense contends that the
4 Arvizo boys masturbated by themselves while at Neverland and are now falsely accusing
5 Mr. Jackson of the act they themselves were engaged in.

6 The proffered evidence is crucial to Mr. Jackson's defense because it has a tendency
7 in reason to prove that the Arvizo boys are not the innocent little lambs they unfortunately
8 have deceived the Prosecution to believe, but rather sexually promiscuous boys who knew
9 how to, and did in fact, masturbate by themselves.

10 It will be up to the jury to determine whether -- based on the testimony of the Arvizo
11 boys' and other witnesses (including Rio and Simone) at trial -- the Arvizo boys are falsely
12 accusing Mr. Jackson for the very act they themselves committed. The Motion must be
13 granted.

14 Third, the Prosecution incorrectly states that Gavin did not testify at the Grand Jury
15 that Mr. Jackson taught them how to masturbate (Opposition, 3:2-3). True facts are that
16 Gavin did, in fact, testify before the Grand Jury that Mr. Jackson taught him how to
17 masturbate:

18 Q: All right what happened next?

19 A: He told me that he wanted to teach me.

20 Q: Say that again?

21 A: He told me that he wanted to teach me.

22 Q: All right. Tell us what happened?

23 A: So we were laying in bed, and then he started rubbing me.

24 Q: Rubbing you how?

25 A: He put his hand down my pants and he started rubbing me.

26 (Motion, Exhibit D; GJT 410:16-25.)

27 Gavin also told Dr. Stanley Katz and the Santa Barbara Sheriff's Office that Mr.

1 Jackson taught him how to masturbate. (Relevant pages of the police reports are attached
2 to the Yu Declaration as Exhibit 1 (Police Report re interview of Dr. Katz, Prosecution
3 Discovery number 29) and Exhibit 2 (Police Report re interview of Gavin, Prosecution
4 Discovery number 91).

5 Fourth, the Prosecution says that the proffered evidence is unduly prejudicial to its
6 case under Evidence Code § 352 (Opposition, 3:24) because the “subject of self-
7 masturbation with a teen-age boy would, of course, be embarrassing.”

8 This argument is problematic because it does not in any way demonstrate that the
9 probative value of the proffered evidence is outweighed by the risk of unduly prejudicing
10 the Prosecution’s case (i.e., embarrassing the Arvizo boys).

11 Significantly, the Arvizo boys have accused Mr. Jackson in graphic detail about how
12 Mr. Jackson masturbated Gavin. They in no way were embarrassed about advancing such
13 false accusations.

14 More importantly, and as mentioned in the moving papers, prejudice cannot be
15 considered as justified if evidence is only "prejudicial" to the prosecution. People v Filson,
16 22 CA4th 1841, 1851, 28 Cal.Rptr.2d 335 (1994), overruled on other grounds in People v
17 Martinez, 11 C4th 434, 452, 45 Cal.Rptr.2d 905 (1995).

18 The jury will be instructed to weigh the evidence, not for the fact that the Arvizo
19 boys engaged in sexual conduct, but to determine whether they are telling the truth when
20 they say that Mr. Jackson masturbated or inappropriately touched them.

21 The testimony of Rio Jackson that the Arvizo brothers viewed a sexually explicit
22 film outside the presence of Mr. Jackson will help the jury evaluate the credibility of the
23 Arvizo brothers’ testimony that they did not and would not have been looking at this type
24 of material on their own.

25 Star Arvizo has testified that he did not view sexually explicit materials at
26 Neverland outside the presence of Mr. Jackson. He specifically denied being caught
27 looking at adult magazines. It is anticipated that Gavin Arvizo, too, will provide similar
28 testimony.

1 Mr. Sneddon said, in his opening statement, that the fingerprints of the Arvizo
2 brothers were found on adult magazines. Apparently, the prosecution's theory is that Mr.
3 Jackson showed these magazines to the Arvizo brothers in an effort to "groom" them and
4 that the alleged fingerprints supposedly validate this theory.

5 Testimony from percipient witnesses such as Rio Jackson will show that the Arvizo
6 brothers were interested in these types of materials and that they sought after and viewed
7 them on their own, in Mr. Jackson's absence.¹

8 It is up to the jury to determine whether the Arvizo brothers are falsely accusing Mr.
9 Jackson. The Motion should be granted.

10 II.

11 CONCLUSION

12 For all of the foregoing reasons, Mr. Jackson respectfully requests that the Court
13 grant this Motion.

14 DATED: March 9, 2005

Respectfully submitted,

15 Thomas A. Mesereau, Jr.

Susan C. Yu

16 COLLINS, MESEREAU, REDDOCK & YU

17 Robert M. Sanger

SANGER & SWYSEN

18 Brian Oxman

19 OXMAN & JAROSCAK

20
21 By: 

Susan C. Yu

22 Attorneys for Mr. MICHAEL J. JACKSON

23
24
25
26 ¹ The testimony of Rio Jackson will also corroborate the anticipated testimony of Neverland
27 Ranch employees, who will say that they caught Gavin and Star Arvizo in possession of adult
28 materials.

1 DECLARATION OF SUSAN C. YU

2 I, Susan C. Yu, declare as follows:

3 1. I am an attorney at law duly licensed to practice law in the courts of the State
4 of California, a partner in the law firm of Collins, Mesereau, Reddock & Yu, and co-counsel
5 for Mr. Michael Jackson in this criminal proceeding. I have personal knowledge of the
6 facts set forth herein and, if called and sworn as a witness, I could and would competently
7 testify thereto under oath. I submit this declaration in support of Mr. Jackson's Reply to
8 Prosecution's Opposition to Motion to Admit Gavin and Star Arvizo's Sexual Conduct.

9 2. A true and correct copy of the relevant page of the police report regarding
10 interview of Dr. Stanley Katz , bearing Prosecution's discovery number 29 is attached
11 hereto as Exhibit 1.)

12 3. A true and correct copy of the relevant page of the police report regarding
13 interview of Gavin Arvizo, bearing Prosecution's discovery number 91 is attached hereto as
14 Exhibit 2.)

15 I declare under penalty of perjury under the laws of the State of California that the
16 foregoing is true and correct and that this declaration was executed on this 9th day of
17 March 2005, at Santa Maria, California.

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1 **PROOF OF SERVICE**

2 I, the undersigned, declare:

3 I am a citizen of the United States of America, am over the age of eighteen (18)
4 years, and not a party to the within action. I am employed at 1875 Century Park East, 7th
5 Floor, Los Angeles, CA 90067. On March 10, 2005, I served the following document:

6 **REPLY TO OPPOSITION TO MOTION TO ADMIT EVIDENCE OF GAVIN ARVIZO AND
7 STAR ARVIZO'S SEXUAL CONDUCT**

8 on the interested parties addressed as follows:

9 Thomas Sneddon, Esq., District Attorney
10 Gerald Franklin, Esq.
11 Ronald Zonen, Esq.
12 Gordon Auchincloss, Esq.
13 District Attorney's Office
14 1105 Santa Barbara Street
15 Santa Barbara, CA 93108
16 **FAX: (805) 568-2398**

17 BY MAIL: I placed each envelope, containing the foregoing document, with postage
18 fully prepaid, in the United States mail at Los Angeles, California. I am readily familiar
19 with the business practice for collection and processing of mail in this office; that in the
20 ordinary course of business said document would be deposited with the US Postal Service
21 in Los Angeles on that same day.

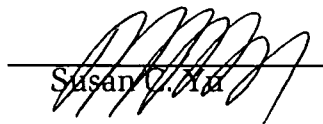
22 BY FACSIMILE: I served a copy of the within document on the above-interested
23 parties, by way of a facsimile, at the facsimile numbers listed above.

24 BY PERSONAL DELIVERY: I personally served the within document on the above
25 interested parties.

26 (State) I declare under penalty of perjury under the laws of the State of California
27 that the foregoing is true and correct.

28 (Federal) I declare that I am employed in the office of a member of the bar of this
court at whose direction the service was made.

Executed on March 10, 2005, at Los Angeles, California.

22 
23 Susan C. [unclear]

6/17/2005

PAGE 6	SHERIFF'S DEPARTMENT	Case Number 03-5670
	Santa Barbara County	
	CONTINUATION SHEET	
(A) LIST CONTINUATION. (B) DESCRIBE: PHYSICAL EVIDENCE, LOCATION FOUND & DISPOSITION. (C) NARRATIVE. (D) DISPOSITION.		

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Gavin disclosed to Dr. Katz that he drank alcohol every night and got buzzed. Gavin said he told Michael that he was not supposed to drink, but Michael said he would be just fine. Gavin was given wine in Diet Coke cans and reported that his head would hurt afterward. Michael would tell Gavin he was stressed out and told him to keep drinking.

Dr. Katz said Gavin told him of an airplane flight back from Miami where Michael gave him a very expensive watch and told him not to tell anybody about the drinking. Michael told him that the watch was worth \$75,000. The alcohol also included whiskey, vodka and Bacardi. Gavin added that Michael would have Star drink too.

Dr. Katz said Gavin explained that Michael had given him a laptop computer. During a visit to Neverland Ranch, they connected the laptop to AOL and Michael started looking for naked women. Gavin was shown pictures of naked women on the computer screen. Michael told them not to tell anyone and to say they were watching the Simpson's.

Dr. Katz reported that Gavin said Michael would hug him frequently, would stroke him, touch him, kiss his head and kiss his cheek over and over again. Gavin said he saw Michael naked one time. He explained that they (Star and Gavin) were watching TV and Michael just stood there naked for a moment.

Gavin told Dr. Katz that Michael talked to them a lot about masturbation. Michael would tell them that he had to masturbate or he'd go crazy. Michael would ask if Gavin touched himself and if white stuff came out of his penis. Michael told Gavin that he would tell him how to masturbate. Dr. Katz told me that he then asked Gavin if Michael ever demonstrated it (masturbation), and Gavin started crying and didn't want to talk about it.

During the phone conversation, Dr. Katz told me his opinion is that the kids are credible. He said that the 17 year old sister, Davellin doesn't know very much.

Davellin told him that she was always excluded and they didn't want her along. She did tell him that one time she went into the room and Michael was pouring wine in a cup and he gave her some wine. She also mentioned seeing Michael kissing Gavin on the cheek, hugging, always rubbing him, and always readjusting his shirt.

PAGE 5	SHERIFF'S DEPARTMENT	Case Number 03-5670
	Santa Barbara County	
	CONTINUATION SHEET	
(A) LIST CONTINUATION. (B) DESCRIBE: PHYSICAL EVIDENCE, LOCATION FOUND & DISPOSITION. (C) NARRATIVE. (D) DISPOSITION.		

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2 Sgt. S. Robel asked Victim One if Michael Jackson had ever touched him
3 inappropriately. I observed Victim One's demeanor change at this point. Victim
4 One sighed, became quiet, lowered his head and took some time to answer.
5 Victim One was reassured that he was doing the right thing.
6

7 Victim One said the following incident took place during the last days of visiting
8 Neverland Ranch directly after Miami.
9

10 Victim One said Michael had him drink (alcohol) and he felt "kinda drunk". Michael
11 told him that boys have to masturbate or they go crazy. He said Michael told him a
12 story of a boy who had sex with a dog. He said Michael told him that he wanted to
13 show (V1) how to masturbate. Victim One said he told Michael "no", but Michael
14 said "I'll do it for you" and "I'll show you". He said Michael grabbed him in his
15 private area. Victim One described both he and Michael wearing pajamas and lying
16 on Michael's bed. He said Michael placed his hand down the front of his (V1)
17 pajamas and started masturbating him. Victim One said he told Michael he didn't
18 want to do it, but Michael kept masturbating him. He said Michael told him "it's
19 okay" and "it's natural". He said Michael did not stop masturbating him for a long
20 time. Victim One added that Michael asked him "If you masturbate, does white stuff
21 come out?" Victim One could not recall if he ejaculated.
22

23 Victim One told us that Michael masturbated him every night that Victim Two wasn't
24 sleeping in Michael's bedroom. When asked, he said this occurred less than five
25 times. Victim One said he was not made to masturbate Michael and never saw
26 Michael's penis during these incidents. He did say that Michael once made him
27 touch Michael's "private part" over the clothes.
28

29 Victim One said Michael showed him a black suitcase that contained magazines and
30 comics of naked women. He said the magazines included Hustler and Playboy.
31

32 Victim One told us he saw Michael pretend to have sex with a child female
33 mannequin. He said Michael was fully dressed and had the mannequin on his bed.
34 He described Michael "humping" the mannequin as if he was having sex with it.
35
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37
38 Victim One did not disclose any other inappropriate touching by Michael. He did
39 say that Michael hugged him a lot and would kiss him on the head a lot. Victim One
40 said that all of the inappropriate touching happened at Neverland after the visit in
41 Miami. He said after Miami, he slept in Michael's bed every night.
42