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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

APR - 7 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 v.

15 MICHAEL JOE JACKSON,

16 Defendant.
17

No. 1133603

PLAINTIFF'S MEMORANDUM
RE: THE ADMISSIBILITY OF
CERTAIN TESTIMONY OF
SEVERAL OF DEFENDANT'S
PROPOSED WITNESSES

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

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20 A. Introduction:

21 Defendant has provided plaintiff with the declarations of 24 individuals he proposes
22 to call as witnesses on his behalf. Ten of them presently are employees of Neverland Ranch or
23 (in the case of one) work on the premises on a regular basis. Fourteen are former employees.

24 All of the declarations have two averments in common: the declarant (1) never saw
25 Defendant Jackson molest a child, and (2) never saw a child who appeared to be under the
26 influence of drugs or alcohol on the ranch.

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1 B. The Admissibility of "Negative Evidence"

2 The general rule is that "negative evidence lacking in probative value is properly
3 excluded as too speculative in nature." (*People v. Mehafeey* (1948) 32 Cal.2d 535, 555-556
4 [trial court properly excluded evidence that no one "driving down the highway" had observed
5 the body of a murder victim over several months, on the ground that such evidence "doesn't
6 prove it wasn't there" because the body was located some distance from the highway and
7 partially concealed by bushes].)

8 "The acceptance or rejection of . . . 'negative evidence' is largely within the
9 discretion of the trial court." (*People v. Heredia* (1968) 257 Cal.App.2d 862, 866-867
10 [evidence of fact that no drugs were found in defendant's home upon post-arrest search was not
11 probative evidence he was not involved in conspiracy to distribute amphetamine sulfate tablets
12 and so was properly excluded].)

13 To be sure, negative evidence may have its rightful place in establishing the
14 existence of a disputed fact. If a given event likely would have been observed and reported had
15 it occurred, the fact that no such event was reported is circumstantial evidence that it did not
16 occur. (See *Sambrano v. City of San Diego* (2001) 94 Cal.App.4th 225 [suit for personal
17 injuries after minor child climbed into a fire ring containing sand-covered hot coals at a public
18 beach; summary judgment for defendant City affirmed: "As a further consideration, it appears
19 that the evidence of 'safety history' offered by the City (the lack of prior accidents over five
20 years' use of the park) was proper. '[W]here the period of safe use is long or the experience is
21 otherwise extensive, the trend is to admit this kind of negative evidence. . . .' (1 Witkin,
22 Evidence [(4th ed. 2000)], Circumstantial Evidence, § 106, p. 454.)"] *Id.*, at p. 237.)

23 Conan Doyle famously illustrated the utility of "negative evidence" in *Silver Blaze*,
24 in which his fictional detective Sherlock Holmes deduced, from the "curious" fact that the
25 stable's dog did *not* bark when a race-horse was taken from its stall around midnight, that the

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1 horse must have been led from the stable by its trainer, "whom the dog know well," rather than
2 a stranger.¹

3 C. "Negative Evidence" Of "No Public Molestation"

4 Assume the truthfulness of each and every declaration. Testimony by even one
5 witness (never mind 24 witnesses) that the witness didn't see Michael Jackson molest a boy –
6 an act that, by definition, would not knowingly be committed in the presence of others – would
7 prove nothing of relevance.

8 Since (as Sherlock Holmes would put it) there is nothing "curious" about the fact
9 that Michael Jackson was not regularly observed to molest young boys in the presence of his
10 employees, the testimony of any one or more of them to that "negative" evidence would be
11 irrelevant.

12 D. "Negative Evidence" Of "No Drunk Kids At Neverland"

13 The evidence proffered by plaintiff to the effect that defendant provided alcoholic
14 beverages to his "special friends" does not permit the reasonable inference that those
15 youngsters were then generally allowed to stagger about Neverland Ranch in an intoxicated
16 state in the view of the ranch's employees. The evidence presented thus far of children
17 drinking at Neverland indicates that defendant provided certain children with alcohol privately
18 and at night, when very few employees would be present on the ranch property.

19 In the circumstances, and in light of the authorities cited above, it would not appear
20 that the testimony of defendant's selected witnesses, to the effect that none of them observed
21 defendant to provide alcoholic beverages or drugs to young boys, or to observing those boys
22 manifest the effects of intoxication, would be relevant.

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25 ¹ Straker, the trainer, led Silver Blaze outside in order to nick a tendon with a small knife he had
26 equipped himself with and thereby render the horse lame before the upcoming Wessex Cup race, in
27 which Straker was wagering on a competing entry. Silver Blaze kicked the perfidious Straker in the
28 head for his pains, killing him, and then ran off to a neighboring stable. Straker's death was attributed
to a murderous assault upon him until Holmes deduced the truth from a variety of clues, the "dog that
didn't bark" among them.

1 CONCLUSION

2 The proposed testimony from one or more of 24 witnesses is irrelevant. If
3 defendant calls any of them² to give their evidence in this case, plaintiff respectfully requests
4 that the Court direct defense counsel not to inquire of them whether the witness had seen (or
5 had not seen) Michael Jackson molest any child, at Neverland Ranch or elsewhere, or had seen
6 (or had not seen) him give drugs or alcohol to youngsters, or had seen (or had not seen) drug-
7 or alcohol-intoxicated youngsters on the property.

8 DATED: April 7, 2005

9 THOMAS W. SNEDDON, JR.
10 District Attorney

11 By: 
12 Gerald McC. Franklin Senior Deputy District Attorney

13 Attorneys for Plaintiff
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25 ²The individuals whose declarations were furnished to the prosecution by defense counsel are: Brian
26 Baron, Luz Berumen, Steve Boyd, Rafael Camacho, Modesto Camarena, Hector Elenes, Tammy
27 Gewehr, Curtis Gordon, Chris Hernandez, Ryan Hester, Anthony Hudley, Charley Kirchhoff, Anna
28 Maria Lira, Julio Magana, Kristy Mann, Samuel Morcno, Jennifer Pamu, Manorma Pamu, Jonathan
Bruce Richards, Josie Rivera, Jose Ruiz, Jose Ramiro Garcia Ruvalcaba,, Brian Salce, and James
Silva

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3 **PROOF OF SERVICE**

4 STATE OF CALIFORNIA
5 }
6 COUNTY OF SANTA BARBARA } SS

7 I am a citizen of the United States and a resident of the County aforesaid; I am over
8 the age of eighteen years and I am not a party to the within-entitled action. My business
9 address is: District Attorney's Office; Courthouse; 1112 Santa Barbara Street, Santa Barbara,
10 California 93101.

11 On April 7, 2005, I served the within PLAINTIFF'S MEMORANDUM RE: THE
12 ADMISSIBILITY OF CERTAIN TESTIMONY OF SEVERAL OF DEFENDANT'S
13 PROPOSED WITNESSES on Defendant, by THOMAS A. MESEREAU, JR., ROBERT
14 SANGER and BRIAN OXMAN, by personally delivering a true copy thereof Mr. Sanger's
15 office in Santa Barbara and by transmitting a true copy thereof to Mr. Mesereau using the
16 confidential fax number of his temporary office in Santa Maria.

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

18 Executed at Santa Barbara, California on this 7th day of April, 2005.

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21 GERALD McC. FRANKLIN

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