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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

DEC 10 2004

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* Unsealed pursuant
to 6/16/05 Court
Order

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA BARBARA
10 SANTA MARIA DIVISION

SANTA MARIA DIVISION
04 DEC 10 PM 4:11
RECORDED

12 THE PEOPLE OF THE STATE OF CALIFORNIA,)

No. 1133603

13 Plaintiff,)

PLAINTIFF'S MOTION FOR
ADMISSION OF EVIDENCE
OF DEFENDANT'S PRIOR
SEXUAL OFFENSES;
MEMORANDUM OF POINTS
AND AUTHORITIES
(Evid. Code, §§ 1108, 1101(b))

14 v.)

16 MICHAEL JOE JACKSON,

17 Defendant.)

DATE: December 20, 2004
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 December 20, 2004, 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 evidence of defendant's prior sexual offenses and certain
27 related conduct pursuant to Evidence Code sections 1108, subdivision (a) ("1108(a)") and
28 1101, subdivision (b) ("1101(b)").

1 As will be discussed in greater detail below, Plaintiff will seek the admission of the
2 following evidence:

3 -- Defendant sexually molested **Jason Francia**, a minor child, three times in or
4 around 1990 (testimony of Jason Francia and Blanca Francia);

5 -- Defendant sexually molested **Jonathan Spence**, a minor child, in or around 1990
6 (Blanca Francia);

7 -- Defendant sexually molested **Wade Robeson**, a minor child, in or around
8 Mother's Day, 1990 (testimony of Charlie Michaels; Blanca Francia; Mariano "Mark"
9 Quindoy);

10 -- Defendant sexually molested **Brett Barnes** in 1993 (testimony of Adrian
11 McManus; Ralph Chacon);

12 -- Defendant sexually molested **Macaulay Culkin**, a minor child, in or around 1990
13 (Blanca Francia; Phillipe LeMarque; Adrian McManus);

14 -- Defendant sexually molested **Jimmy Safechuck**, a minor child, in or around
15 1991 (Blanca Francia; Charlie Michaels; Mariano "Mark" Quindoy);

16 -- Defendant sexually molested **Jordan Chandler**, a minor child, in or around 1993
17 (Adrian McManus; Ralph Chacon; June Chandler)¹

18 This motion will be based on the accompanying summaries of the anticipated
19 testimony of Jolie Levine, Orieta Murdock, Jason Francia, Mariano "Mark" Quindoy, Blanca
20 Francia, Ralph Chacon, June Chandler, Mary Coller, Charlie Michaels, Phillipe LeMarque,
21
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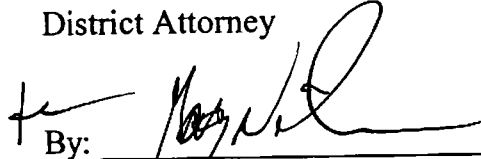
23 ¹There is additional evidence of defendant's prior sexual offenses against Jordan Chandler in
24 1993. Defendant is well aware of that evidence. Mr. Chandler was a child of 13 years at the
25 time. Now, as then, he has a statutory right to decline to testify in a proceeding such as this
26 against the person who molested him. As matters presently stand, the People are uncertain as
27 to whether Mr. Chandler will waive that statutory right. Mr. Chandler's name is on the witness
28 list to be provided the Court and the defense on December 6, 2004. The People have deferred
incorporating Mr. Chandler's proposed testimony into this motion because of the uncertainty
surrounding a waiver.

1 Adrian McManus, and Charmayne Sternberg, and upon the accompanying Memorandum of
2 Points and Authorities.

3
4 DATED: December 10, 2004

5 Respectfully submitted,

6 THOMAS W. SNEDDON, JR.
7 District Attorney

8 By: 
9 Gerald McC. Franklin, Senior Deputy

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1 But the section 1101, subdivision (a) rule of exclusion is qualified by subdivision
2 (b): “Nothing in [subdivision (a)] prohibits the admission of evidence that a person committed
3 a crime . . . when relevant to prove some fact (such as motive, opportunity, intent, preparation,
4 plan, knowledge, identity, [or] absence of mistake or accident . . . other than his or her
5 disposition to commit such an act. (Evid. Code, § 1101, subd. (b).) Thus, where evidence of
6 the defendant’s provable prior crimes tends to identify him as the one who committed the
7 charged crime by reason of their similarity, that evidence may be admissible. And “Nothing in
8 this section affects the admissibility of evidence offered to support . . . the credibility of a
9 witness.” (*Id.*, subd. (c).)

10 Since 1995, an exception to section 1101(b)’s prohibition of “propensity” evidence
11 has been provided by section 1108 in the prosecution of accused sexual offenders: “In a
12 criminal action in which the defendant is accused of a sexual offense, evidence of the
13 defendant’s commission of another sexual offense or offenses is not made inadmissible by
14 Section 1101, if the evidence is not inadmissible pursuant to Section 352.” (Evid. Code, §
15 1108, subd. (a).)

16 The enactment of section 1108 did more than merely remove the section 1101(b)
17 bar to the use of “other crimes” evidence to “prove [a person’s] disposition to commit” the
18 charged offense. As will be shown below, section 1108 obliges courts to presume that such
19 evidence is admissible, may well be necessary in the circumstances of a given case and that an
20 unduly restrictive view of the admissibility of prior sexual offenses is inappropriate.

21 Evidence Code section 352, of course, serves as an overall limitation on otherwise
22 relevant evidence in all lawsuits, criminal or civil. It provides: “The court, in its discretion,
23 may exclude evidence if its probative value is substantially outweighed by the probability that
24 its admission will (a) necessitate undue consumption of time or (b) create substantial danger of
25 undue prejudice, of confusing the issues, or of misleading the jury.” But its limitations are to
26 be applied to “propensity” evidence by a court mindful of the Legislature’s stated preference
27 for the admissibility of that evidence in the prosecution of accused sexual offenders,
28 particularly where credibility is an important issue.

1 In the case at bar, evidence will be offered to show that defendant sexually molested
2 a number of young boys between 1990 and 2003. It will further show that he selected his
3 intended victims and seduced each of them in much the same manner. That evidence is
4 admissible because it is relevant on the issue whether Michael Jackson sexually molested
5 Gavin Arvizo between February 20th and March 12, 2003. As will be discussed below, the
6 relevance of that evidence is that it demonstrates defendant's "disposition" (i.e., his
7 "propensity") to molest young boys (see § 1108; cf. § 1101, subd. (b)) and so will allow the
8 jury to infer that he molested Gavin Arvizo. It will demonstrate defendant's motive and intent
9 by the similarity of his methodical, seductive approach to Gavin and the youngsters before him.
10 It will demonstrate how defendant created the opportunities to achieve his goal of sexual
11 contact and interaction with the youngsters he seduced. (See § 1101(b).) And it will not only
12 support Gavin Arvizo's credibility in relating acts that took place in private, but also the
13 credibility of other members of his family in relating the circumstances leading up to those
14 private acts. (See § 1101, subd. (c).)

15 **B Statement Of The Current Case**

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

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

1 internet.

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

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

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

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

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

1 aware of the strife in the Arvizo family.

2 In Miami the family stayed at the Turnberry Resort hotel with many members of
3 Jackson's entourage. While Gavin and his family were in Miami "Living with Michael
4 Jackson" aired in the United States. Jackson forbade any of the people with him in his suite,
5 including the Arvizo family, to watch the program.

6 There was no press conference, and the Arvizo family returned to California and
7 to Neverland Ranch two days later.

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

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

1 them he had to do it or he would go crazy. When Gavin told him he did not do it, Jackson
2 became offended, told him he was lying and that Gavin did not trust him. Jackson offered to
3 teach him how to do it.

4 Although Gavin was drinking regularly when Jackson was there, he has a clear
5 recollection of at least two incidents of being in Jackson's bed and Jackson masturbating him
6 with one hand inserted in his underwear while masturbating himself with his other hand.
7 Gavin said there may have been other events but he was too intoxicated to be certain.

8 Gavin's brother Star witnessed two separate acts of Jackson molesting Gavin,
9 which caused Star to stop sleeping in Jackson's bedroom. On both occasions Star came into
10 Jackson's bedroom late in the evening to go to sleep. Jackson's bed was located in the upstairs
11 portion of his bedroom suite. To get there, Star had to open the door affording access to the
12 downstairs portion of the bedroom suite by entering the combination on the keypad for the
13 door's lock. Star could then walk up the stairs to the bedroom itself. As he was climbing the
14 stairs and neared the top, Star reached the level where he could see Jackson's bed through the
15 railing that separated the stairwell from the bedroom area. He saw his brother Gavin and
16 Jackson in the bed, lying side by side. On both occasions it appeared to Star that Gavin was
17 asleep or unconscious and that Jackson was masturbating Gavin and himself.

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

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

26 After leaving Neverland on March 11, 2003, Janet and her parents in El Monte
27 received numerous phone calls from Jackson's employees encouraging Janet and the children
28 to return to Neverland. They did not do so. Jackson's employees had emptied her apartment

1 and moved all of the family's possessions into storage and refused to tell Janet where. Janet
2 contacted a lawyer in an attempt to get her property returned. Janet also asked attorney Bill
3 Dickerman to attempt to stop the airing of "Living with Michael Jackson," because she had
4 been given no prior knowledge of her son's involvement in the production of the documentary,
5 and because the airing of the program was exposing her children to public ridicule. She knew
6 nothing of her child being molested at the time.

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

12 C. Summary Of Anticipated "Other Crimes" Evidence

13 Through this motion, the People seek to introduce evidence of uncharged acts
14 between about 1988 and 1993. Michael Jackson committed various sexual acts on at least
15 seven young boys, mostly between the ages of 10 and 13, which constitute violations of Penal
16 Code section 288, subdivision (a). These uncharged acts occurred at the Neverland Valley
17 Ranch residence.

18 The current pending criminal proceeding was initiated by a report that Michael
19 Jackson had sexually molested 13-year-old Gavin Arvizo, whom he first met in 2000 when
20 Gavin was recovering from a near-fatal battle with cancer.

21 The People seek to introduce testimony of less than a dozen individuals. Some are
22 former employees of the defendant; some, parents of victims; one, a young man who was
23 himself molested by defendant. They will give evidence concerning a pattern of sexual abuse
24 and defendant's method of "befriending" children, one after the other, who were selected by
25 him to become his "special friends."

26 The testimony of these witnesses will show how Michael Jackson cultivated
27 friendships with boys, often from broken homes. The relationships often began with frequent
28 and long telephone conversations, followed by visits to Neverland. Once at Neverland the

1 boys (always boys, never girls) were separated from their mothers – their fathers generally
2 were not around. The mothers stayed in the guest cottages while the boys stayed with Michael
3 Jackson in his room, usually in his bed. Apart from casual visitors, there was rarely more than
4 one boy at Neverland at a time as an invited guest.

5 Jackson's home at Neverland Valley Ranch is a veritable paradise. To children it
6 was a limitless wonderland of fun and entertainment. The boys selected as defendant's
7 "special friends" were encouraged to enjoy all that Neverland offers: A modern arcade with all
8 the newest video and high tech games imaginable; a theater with a vast collection of movies; a
9 zoo filled with animals, a train that travels around the 2800 acres that is Neverland Ranch; race
10 cars, golf carts, carnival rides, a swimming pool and Jacuzzi. An enormous staff of employees
11 was on hand to serve their every need. Whatever a boy wanted to eat or drink was available
12 for the asking. A boy who was a guest of Michael Jackson at Neverland had no
13 responsibilities to worry about, no school to attend and no homework that would come
14 between him and play. Neverland must have been as irresistibly attractive to an
15 impressionable boy of the '90s as "Pleasure Island" was to the wayward boys in Walt Disney's
16 1940 film, "Pinnochio."

17 In addition to Neverland's limitless attractions were Jackson's carefully designed
18 security precautions, created to assure Jackson and his "special friends" complete privacy in
19 their activities in his bedroom. The exterior doors were locked and the inside door to his
20 bedroom suite was also locked. An alarm system warned of the arrival of anyone entering the
21 bedroom suite. Anyone allowed in the inner sanctum of Jackson's bedroom suite was assured
22 of privacy.

23 Michael Jackson's "special friends" and their mothers were given expensive and
24 lavish gifts. They were encouraged to trust Michael and to consider him as a part of their
25 "family." In time – and it did not take long – a boy chosen as a "special friend" became
26 completely taken in with Michael Jackson and would spend every moment possible with him.

27 Most of the boys were fondled in similar ways. Jackson would touch or fondle their
28 genitals either through their clothing or under their clothing by reaching up through the open

1 leg of a pair of shorts or reaching down inside the waistband of the boy's pants, shorts or
2 underpants. Defendant showered nude with two of the boys. He performed oral sex on
3 another of the boys. He often kissed the boys, hugged and touched them in ways that many of
4 the witnesses described as the fondling and caressing of a lover.

5 A number of these acts were witnessed by one or another of the staff, usually
6 inadvertently; in the video arcade; in his room; in the Jacuzzi or in the shower. Many of the
7 witnesses will testify to a continuous succession of boys, all about the same age, similar in
8 appearance, rarely more than one at a time, occupying the position of Michael Jackson's
9 "special friend." The young male child was always at Jackson's side and always enjoyed
10 Jackson's complete attention.

11 The following are summaries of the proposed testimony of several witnesses,
12 offered as evidence of other sexual offenses pursuant to Evidence Code sections 1101,
13 subdivision (b) and 1108, subdivision (a).

14
15 BOB JONES

16 Bob Jones worked for Michael Jackson for 34 years as his public relations
17 advisor and played a significant role in managing Jackson's career as a pop star. His
18 termination by Jackson in early 2004 severed his business relationship with Jackson.

19 During those 34 years, Mr. Jones was intimately involved in Jackson's career.
20 He accompanied Jackson on his tours. He traveled with Jackson on business and musical
21 projects. He traveled with Jackson on vacations and was present when he entertained a
22 succession of young boys.

23 Over the years Jones observed a procession of young boys, who were described
24 by Jackson as his "little friends" or "special friends." The "special friends" status meant lavish
25 gifts to the young boys and their parents, trips with Jackson on tour, vacations, and sharing
26 Jackson's bedroom and eventually his bed. Mr. Jones was amazed at Jackson's ability to
27 determine a "woo-able" child and compliant parent(s). According to Jones, Jackson operated
28 with a great deal of finesse in his relationship with these young boys and the parents.

1 Jones was aware of one such young child with whom Jackson managed to carry
2 on a clandestine relationship for years. The boy and his parents traveled with him around the
3 world throughout 1988 and 1989 on the "Bad" tour. Jackson and the young boy spent virtually
4 all their time together. The boy would sleep in Jackson's room at night. In the afternoons
5 Jackson would send the parents shopping at his expense, clearing the way for him to spend
6 hours in the privacy of his bedroom with the young boys.

7 During the time of this tour, while in Paris, Jones told Jackson, "The press is
8 going to start asking questions about all these little white boys you keep around." Jones
9 described Jackson's angry retort, "Who cares what they think?"

10 Jones describes a trip in 1992 when he traveled to Africa, primarily to the
11 Republic of Gabon. Upon their departure from LAX for Africa, Jones was waived to
12 Jackson's limo, which was being swarmed by media. He looked inside and saw another of
13 Michael Jackson's "little friends" sitting on Jackson's lap. Michael Jackson had somehow
14 convinced the parents, who resided in Australia, to allow the child to travel with Jackson to
15 Africa without parental supervision. They hid the boy so Michael Jackson could get on the
16 plane and the press would not be aware of the child's presence. During the course of their stay
17 in the African countries of Gabon, Tanzania, Kenya and Morocco, Jones saw the boy go into
18 Michael Jackson's private bedroom and stay with Jackson for long, long periods of time.
19 Jones states that he is aware that the parents received expensive gifts from Jackson.

20 Jones described another of Jackson's "special friends" as another young child
21 from Australia. He remembered this boy's mom would often complain to Bill Bray. She
22 would be begging to see her child. She was asking Bill Bray to intercede with Michael
23 Jackson to see her own son.

24 Jones described how Michael Jackson usually lost interest in the boys once they
25 reached the approximate age of 13. Jones describes Jackson as devious, a manipulator and a
26 schemer. Jones believes that the entire Neverland Ranch environment is an enormous
27 expensive lure, the ultimate candy from a stranger by which Michael Jackson gains the
28 confidence and affection from young boys and creates the bond that gives them "special

1 friends” status. Jones saw young boys go into Michael Jackson’s room and not come out for
2 three or four days. Jones said Jackson had a terminology for women. He didn’t want any of
3 them around at all. Jones knew Jackson well enough to know that he had no desire for women
4 and that he had a preoccupation with young boys. According to Jones, Jackson had a saying
5 that went like this: No wenches, bitches, heifers, and hoes.”

6 Mr. Jones was present when Jackson traveled with the Chandler family. Jones
7 identified Jordan Chandler as another of Jackson’s “special friends.” Mr. Jones described an
8 occasion when Jackson had taken June and Jordan Chandler on a trip to Monaco. He observed
9 Jackson and Jordan hugging a lot. Jones stated that as they flew a plane from Monaco back to
10 the United States, he observed Jordan Chandler sitting next to Michael Jackson. Jordan had his
11 head on Jackson’s chest. That Jackson would lick the top of Jordan Chandler’s head. Jones
12 had almost forgotten about this incident until he heard various media accounts describing
13 Jackson’s almost exact behavior with Gavin Arvizo.

14
15 JOLIE LEVINE

16 Ms. Levine worked as an assistant to Michel Jackson during the 1986-87 production
17 of the “Bad” album. Jackson and Ms. Levine’s son Yoshi, then nine or 10 years old, had
18 become very good friends during the production of the “Bad” album. During the “Bad” tour to
19 promote the album, Jackson spent time with Yoshi. He bought Ms. Levine expensive presents,
20 which she did not accept, because she thought it was inappropriate because of the
21 employer/employee relationship.

22 After the album was completed, Michael Jackson asked Ms. Levine to continue to
23 work for him as his executive secretary. Ms Levine was reluctant at first, but Jackson, through
24 Yoshi, was able to convince her.

25 While she worked for Jackson, Ms. Levine maintained a telephone book for him. It
26 contained such names as Jonathan Spence, Jimmy Safechuck, Emanuel Lewis, Brett Barnes
27 and others whose names she cannot remember but who were described to her as special young
28 male friends.

1 Jackson instructed Ms. Levine to purchase gifts for Brett Barnes and other boys.
2 On some occasions, she even mailed gifts to wherever the boys were. On several occasions,
3 she mailed gifts to Brett Barnes in Australia.

4 Ms. Levine recalls that Jimmy Safechuck was very attached to Michael Jackson.
5 Jimmy was Jackson's traveling companion and they slept together in the same suite while
6 traveling. Ms. Levine noticed that Jackson had a pattern with respect to the young boys he
7 befriended. She observed that he shifted his attentions from a given boy to another, younger
8 boy, as the first boy grew older.

9
10 ORIETA MURDOCK

11 Orieta Murdock worked as an administrative assistant to Michael Jackson from
12 1989 through the beginning of 1991. Jackson's personal affairs were attended to by Bill Bray,
13 Executive Director, and by Norma Staikos, Executive Assistant. Jackson employed a
14 receptionist named Charmayne Gein, and a "runner" named Miko Brando (son of actor Marlon
15 Brando).

16 In her capacity as his administrative assistant, Ms. Murdock would often drive
17 Jackson from place to place and, though her usual place of employment was in the office, she
18 often found herself at one of his residences.

19 In the course of her employment, Ms. Murdock became aware that Jackson met the
20 Robson family as a result of Wade Robson winning a dance contest, which may have been
21 sponsored by the Disney Company. Part of the prize was the opportunity to meet Michael
22 Jackson. Robson met Jackson in Westlake, California. Jackson asked Mr. and Mrs. Robson if
23 he could spend the afternoon with the young Wade, and the parents consented. Jackson,
24 however, did not return the boy to his parents that afternoon. In fact, Jackson did not return the
25 child until the next night, and then only after being contacted by Disney security guards who
26 told Jackson that the parents had to catch a plane back to Australia, and were now running late.
27 Young Robson and Jackson stayed friendly, and Jackson assisted Wade in getting a job on an
28 "L.A. Gear" commercial. However, Wade did not have the permits required to work in the

1 United States at that time, so his paycheck was made payable to MJJ, who then made out a
2 check to his mother, which Ms Murdock characterized as a “gift.” Wade was also paid
3 considerably more for this appearance—over \$3,000—than the other children, who received
4 only \$500.

5 Ms. Murdock became aware that another of Jackson’s special friends was Jonathan
6 Spence. During Spence’s relationship with Jackson, Jackson took him on the “Bad” Tour.
7 Spence would often sleep in Jackson’s room. Jackson would often take Spence to toy stores
8 and buy him an inordinate number of gifts. Spence was allowed to shop for whatever he
9 wished, and send the bills to Jackson’s office for payment. Trips to the toy stores started to
10 turn into trips to jewelry stores as Spence grew older. Ms. Murdock noticed that as Spence
11 neared the age of 15, Jackson took up with another, younger boy.

12 During the time Ms. Murdock was working at MJJ, she remembers Robson’s
13 mother calling every day to inquire about the status of the green cards that Jackson had
14 promised to obtain for her and Wade. Eventually Jackson was able to assist Wade and his
15 mother, Joy Robson, in gaining entry into the country. Shortly thereafter, Jackson had Ms.
16 Murdoc, arrange for the Robsons to stay at the Holiday Inn on Wilshire Boulevard, which is
17 across from the building at Wilshire and Selby where Jackson had a condominium. Wade used
18 to spend every night with Jackson, not his mother. Ms. Murdock could see that this
19 relationship had begun to trouble Wade’s mother. Jackson handled this by getting the mother a
20 new car to appease her. Jackson assisted Wade and his mother in obtaining permanent
21 residence in the United States and got the mother on the payroll as an employee, even though
22 the mother apparently did not have a real job with Jackson.

23 During the time Ms. Murdock was employed at MJJ, Jimmy Safechuck became
24 another recipient of Jackson’s obsessive attentions, which included, as usual, numerous
25 extended telephone calls between the two.

26 Norma Staikos, Jackson’s administrative assistant, gave Ms. Murdock a tour of the
27 “Neverland” ranch about two weeks after Murdock was hired. Ms. Murdock noticed that
28 Jackson kept constant company with young boys who were all of similar age, stature and body

1 type.

2 Jackson would often pay for the privilege of entering businesses after they were
3 closed and play there with his juvenile friends. Some of the more common stops were “Tower
4 Records” on Sunset, “Off the Wall” on Melrose, and “The Sharper Image” in Little Santa
5 Monica.

6

7 JASON FRANCIA

8 Jason Francia is 24 years old. His mother is Blanca Francia. They live in Santa
9 Maria. Blanca worked as a personal maid to Michael Jackson for about five years. She was
10 one of the few people allowed to enter Michael Jackson’s bedroom and did so regularly to
11 clean. She was also responsible for cleaning his Havenhurst residence in the San Fernando
12 Valley and his “hideout,” a condominium in west Los Angeles. She often brought Jason with
13 her to Neverland. He was between the ages of seven and eleven when his mother Blanca
14 worked for Michael Jackson.

15 The defendant often played with Jason, gave him gifts and on some occasions
16 money. Jason remembers three separate incidents of sexual conduct by Michael Jackson with
17 him. The first incident occurred at the “hide-out” in west Los Angeles. Jason said that he and
18 Michael were in a red sleeping bag together and he recalls Jackson tickling him. During this
19 tickling, Jackson touched and tickled him in the area of his genitals. He does not recall if there
20 was skin-to-skin touching, but he recalls that his mother walked in on them, was very upset,
21 and told Jason to get out of the sleeping bag.

22 The second incident also occurred at the Beverly Hills hide-out. Jason was sitting
23 on Jackson’s lap, watching television, and Jackson began to tickle him. Jason remembered that
24 he was wearing a pair of shorts. He said that Jackson’s hand went down the shorts or up the
25 leg, and touched his testicles. Jason was squirming and laughing and found a \$100 bill in his
26 shorts later that day. Jason found this money while walking at the City Walk with his mother
27 and he recalled his mother getting very upset about the money.

28 The third incident occurred in the alcove/loft of the arcade at Neverland. Jason

1 recalled that there were video games, a pool table, and perhaps even a fireplace in this arcade.
2 He specifically remembered a "Street-Fighter" video game in this arcade. He said he was lying
3 on a couch in a "spooning" position with Jackson (i.e., Jason lying on his side in a curled-up
4 position, with Jackson lying right behind him in the same position) when Jackson began to
5 tickle him again. Jason was wearing a pair of baggy orange shorts, a sleeveless shirt and white
6 briefs. During the tickling, Jackson put his hand up Jason's shorts, under his briefs and tickled
7 his testicles. Jason said this lasted for more than 10 seconds and he does not remember how or
8 why it stopped.

9 Thereafter Blanca quit her job as Defendant's maid. When Jason was 13 years old
10 he was interviewed by detectives who were investigating allegations against defendant
11 involving another boy. No criminal charges were filed as a result of that interview. However,
12 Jason's lawyers settled a claim on his behalf against Michael Jackson for what he believes to
13 be about two million dollars. Today Jason works as a youth pastor with his church and lives in
14 Arroyo Grande.

15
16 MARIANO "MARK" QUINDOY

17 In 1989 Mariano and Ofelia Quindoy learned that Michael Jackson was looking for
18 an estate manager at Neverland Valley Ranch. At the time they were operating a picture frame
19 business in Glendale, California. They met with Mr. Jackson, and several days later they were
20 offered the job to work for Michael Jackson as estate managers. They commenced their
21 employment on May 25, 1989. The Quindoys' job duties included welcoming guests and
22 celebrities visiting the ranch, preparing the guest quarters, and responding to Jackson's needs
23 and those of his guests after-hours, when the day staff had gone home.

24 Immediately upon their employment, the Quindoys began to keep a personal diary
25 of significant events at the ranch. On their second day of employment they learned about
26 Jimmy Safechuck, a young boy who was a constant companion of Michael Jackson and who
27 was spending nights with Jackson in his bedroom.

28 During their employment, the Quindoys observed that young Safechuck would

1 spend weeks at Neverland Ranch. Sometimes the boy's mother would stay with him at the
2 ranch. On all of those occasions, the child slept in Jackson's bedroom while his mother slept
3 in the guest quarters.

4 Approximately one month after the Quindoys began their employment, Blanca
5 Francia, Michael Jackson's personal maid, went on a month-long vacation to El Salvador. She
6 was the only person allowed in Jackson's private quarters, and in her absence, the Quindoys
7 were assigned to clean the area.

8 Michael Jackson told the Quindoys that Jimmy Safechuck slept in the Shirley
9 Temple room, a bedroom located upstairs but within Jackson's private quarters. However the
10 Quindoys found this not to be true. During the month that Mark and Ofelia cleaned Jackson's
11 private quarters, cleaning the Shirley Temple room was part of their responsibilities. They
12 went there every day and observed that the bed was not slept in. On at least two occasions, and
13 possibly more, both Quindoys saw Jimmy Safechuck's underwear lying on the floor next to
14 Jackson's bed. (The two occasions noted in their diary are June 25, 1989 and May 5, 1990).
15 They knew the underwear belonged to Jimmy and not Jackson, because the underwear was
16 very small; smaller than Jackson's underwear, which they had seen and knew to be Jockey
17 brand and white. Also, no other young boy was on the ranch and sleeping with Jackson at the
18 time of these observations.

19 Mr. Quindoy would frequently take food to Mr. Jackson in the movie theater at
20 Neverland. On more than a dozen of those occasions, Mr. Quindoy saw Mr. Jackson and
21 Jimmy Safechuck lying together under a blanket on a bed in the theater.

22 On August 12, 1989, Michael Jackson told Mr. Quindoy that he "planned to go into
23 the spa [Jacuzzi]" area with Jimmy Safechuck." Quindoy said that "going to the spa" was
24 understood by him and Jackson's other employees as a coded order that they should not go
25 near the pool or barbecue area where the spa was situated. Mr. Quindoy noted in his diary that
26 the evening of the 12th he was on the second floor of the recreation room (the video arcade
27 building), across from the barbecue court near the pool. At approximately 9:00 p.m., Mr.
28 Quindoy looked out of the second-floor window and saw Michael Jackson and Jimmy

1 Safechuck standing in the knee-deep water of the Jacuzzi in their shorts. The recreation room
2 is adjacent to the swimming pool, and the Jacuzzi is on the far side of the pool. The Jacuzzi
3 area is well lit. Jackson and the young boy were hugging each other "like they were
4 newlyweds." Jackson was standing behind Jimmy Safechuck and Mr. Quindoy saw that he had
5 one hand down the front of Jimmy's underpants and was manipulating the boy's genitalia.

6 Mr. Quindoy described another incident that occurred on Saturday, February 3,
7 1990, involving Wade Robson. Mr. Quindoy said that Wade Robson came to visit Jackson at
8 the ranch. Wade Robson was accompanied by Joy Robson, his mother, Dennis Robson, his
9 father, Chantel, his sister, and his grandparents, Hughes and Jen Collin. The adult visitors
10 arrived in a limousine. Jackson, Wade and Chantel arrived in a separate vehicle. The Robsons
11 told Quindoy they met Jackson in Australia and Jackson invited them to the ranch. From the
12 first night on, young Wade stayed with Jackson in his bedroom and the other guests stayed in
13 the guest cottages. Wade and his family stayed at the ranch approximately a week. On another
14 occasion, the Quindoys stated that the same boy, who was about age nine, spent up to 19 days
15 at a time at Neverland, every night of which he slept in Jackson's bedroom. Mr. Quindoy said
16 the boy and Michael never left each other's side during the youngster's stay.

17 Shortly after 6:00 p.m., on February 9, 1990, Mr. Quindoy drove Jackson and Wade
18 Robson to Santa Barbara in what he described as Jackson's "Chevy 'Jimmy' Blazer." Jackson
19 and Wade Robson rode in the back seat while Quindoy drove. They arrived in Santa Barbara
20 at approximately 7:00 p.m. and went on a shopping spree at Circuit City and K-B Toy Store in
21 La Cumbre Plaza.

22 On the drive back to Neverland, Mr. Quindoy glanced in the rearview mirror and
23 was astonished to see Michael Jackson with his arms around young Robson, kissing him
24 passionately on his face and neck. Mr. Quindoy said it was just like a boy kisses a girl in the
25 backseat, except that in this case the other party was also a young male, and he was not
26 responding. Wade was wearing shorts and Jackson's hand was traveling up one thigh to the
27 other, around Wade Robson's genitalia area. During this time, Wade was playing with his toys
28 and was noticeably unresponsive to Jackson's fondling.

1 On many occasions Mr. and Mrs. Quindoy each observed Jackson to be hugging,
2 kissing and having physical contact with both Safechuck and Wade Robson, in a manner the
3 Quindoys felt was inappropriate. The Quindoys terminated their employment on August 30,
4 1990.

5 Mr. Quindoy will also testify concerning a number of events, evidence of which
6 does not constitute "evidence of another sexual offense" within the meaning of Evidence Code
7 section 1108. However, disclosure of this evidence is relevant and appropriate as it may
8 illuminate Michael Jackson's conduct and behavior with regard to children and the parents of
9 those children during their visits to Neverland Ranch. Mr. Quindoy will testify about
10 defendant's habit of buying gifts for both the parents and the child, and that he isolated parents
11 from their children, and devoted himself to occupying a child's attention and activity separate
12 from his parents for hours, and oftentimes days, outside the presence of the child's parents.
13 The Quindoys' observations during the time of their employment at Neverland Ranch led them
14 to conclude that the young boys they had observed in Michael Jackson's company were
15 sleeping with him in his bedroom for a number of days at a time, and in the same bed.

16
17 BLANCA FRANCIA

18 Blanca Francia is the mother of Jason Francia, who was a victim of three acts of
19 child molestation committed by defendant around 1990. Ms. Blanca is a single mother and
20 Jason is her only son. She was hired as defendant's personal housekeeper in 1985 while
21 defendant was still living with his family at the Havenhurst home in Encino, California. She
22 continued to work in this capacity for defendant after he moved to Neverland Ranch and she
23 quit working for defendant of her own accord in June of 1991.

24 As defendant's personal maid, Ms. Francia was one of the few people entrusted
25 with access to defendant's bedroom. Defendant would frequently give Ms. Francia large sums
26 of cash (up to \$1,000) as gifts and would often ask her to lie about defendant's activities with
27 young boys. During her employment, she observed that defendant would spend a great deal of
28 his time in his bedroom alone with different young boys. Frequently, he would spend the night

1 with them. Defendant would refer to these boys as his “special friends” and used the nickname
2 “Rubba” for each of them.

3 Specifically, Ms. Francia observed defendant to spend a great deal of time alone
4 with young boys named Jonathan Spence, Jimmy Safechuck, Wade Robeson and Macaulay
5 Culkin.

6 Jonathan Spence was a “special friend” of defendant’s for almost two years. Spence
7 would frequently spend the night alone with defendant. During this time, defendant had Spence
8 refer to him as “Daddy.” While at the Havenhurst home defendant would tell Ms. Blanca to lie
9 and conceal Spence’s presence there from defendant’s parents. Ms. Francia would clean
10 defendant’s bedroom and observe Spence’s underwear on the floor. She also observed that
11 defendant and Spence would take many Jacuzzis together.

12 Jimmy Safechuck was another “special friend” of the defendant. Safechuck was
13 also observed to spend the night alone with defendant. While at Neverland, she observed
14 defendant and Safechuck in a bed located in a special room at the Neverland theater. The
15 lower portions of their bodies were under the covers and Ms. Francia could see that their upper
16 portions were unclothed.

17 Wade Robeson was also a “special friend” of defendant who would frequently
18 spend the night alone with defendant. On at least one occasion, Ms. Blanca observed
19 Robeson’s underwear on the floor of defendant’s bedroom.

20 Ms. Francia also found Jackson and young Robson taking a shower together. As
21 Jackson’s personal maid, Ms. Francia, had access to Jackson’s bedroom at any time. She was
22 aware Jackson had installed an alarm bell in the outside hallway which would ring inside the
23 bedroom as someone approached the bedroom’s entrance. On this particular day she went to
24 the bedroom. She knocked on the door and received no response, so she entered the bedroom.
25 She heard the shower running and was aware Jackson had a habit of leaving the water running.

26 As she approached the bathroom, she realized Jackson had not heard the alarm and
27 she saw Jackson and young Robson nude together in the shower and Jackson was rubbing
28 against Wade’s body. The shower was steaming so she could not see everything, but she could

1 see Wade's head pressed against Jackson's stomach area. Jackson's and Wade's underwear
2 were on the floor next to the shower. She immediately left and was uncertain if Jackson even
3 saw her enter the bathroom.

4 Macaulay Culken was another "special friend" of defendant. Culken would also
5 spend the night alone with defendant and on at least one occasion, Ms. Francia saw them in the
6 same bed together. On another occasion while Culken was visiting, Ms. Francia observed
7 defendant's and Culken's underwear on the floor of defendant's bedroom.

8 During her employment, Ms. Francia would frequently bring her young son, Jason
9 Francia, to work with her, and he would spend time playing with defendant. On one occasion
10 Ms. Francia observed defendant and Jason in a dark room in the same sleeping bag. Ms.
11 Francia noticed that defendant would give Jason up to \$100 in cash at a time and feared her
12 son was becoming one of defendant's "special friends." After leaving defendant's employ,
13 Ms. Francia noticed there was something wrong with her son. He became very depressed and
14 angry. She obtained counseling for Jason and eventually learned he had been molested by
15 defendant.

16

17 RALPH CHACON

18 Ralph Chacon's employment at Neverland Valley Ranch began on August 11, 1991.
19 He was hired as a security officer. His general responsibilities included keeping intruders off
20 the property, doing motor patrols around the perimeter of the ranch and keeping and
21 maintaining security so that individuals could not get next to Jackson's main residence. He
22 was not armed. It was his first security guard job. He had been previously employed as an
23 auto repairman.

24 In connection with an investigation of the 1993 allegations by Jordan Chandler, Mr.
25 Chacon was subpoenaed to the Santa Barbara County Grand Jury and testified on May 10,
26 1994.

27 During most of 1992 and during the time of the incidents set forth in this offer of
28 proof, Mr. Chacon worked the graveyard shift from 10:00 p.m. to 6:00 a.m. at Neverland

1 Valley Ranch. He recalled an unusual incident in 1992, which he believes occurred in the
2 spring because the weather was nice. At the time, Chacon was engaged in putting away the
3 golf carts. He believes he started this project between 10:30 and 11:00 p.m.

4 Chacon heard the back door to the main residence slam. Chacon noticed Jackson
5 and another young boy coming out of the house in swimming trunks. They went to the Jacuzzi
6 located near the swimming pool. He was aware that there was another security officer in that
7 area, so he continued putting away the golf carts.

8 About the time Chacon finished securing the golf carts for the night, he heard
9 Michael Jackson yelling in a high-pitched voice, "Security, security." As he started in that
10 direction, he saw Sgt. Kassim Abdool in the area so he returned to finishing the cart project.
11 After a while he saw the cook, Bucky Black, coming out of the house carrying a tray. Later,
12 when Sgt. Abdool left the area to do some mobile patrolling, Chacon took up Abdool's post
13 near the barbecue area behind the house. He heard but could not see Michael Jackson and the
14 boy inside the Jacuzzi. After a while Jackson and the boy got out of the Jacuzzi and walked
15 towards the back bathrooms in the recreation room which is located near the video arcade.
16 There are two bathrooms, one for females and one for males. They entered the "males"
17 bathroom and closed the door. About this time Bucky Black exited the residence and left the
18 property.

19 About half an hour after Jackson and the boy entered the bathroom, Chacon became
20 curious. Chacon went to the left side of the recreation building where the tennis courts are
21 located. He walked down the sidewalk to the back of the bathrooms. The "males" bathroom
22 and the "females" bathroom each have a window. As he approached the area, he could hear
23 Jackson and the boy, and he could hear the shower. Looking inside through the window
24 Chacon saw only one shower. From the sound he could tell Jackson and the young boy were in
25 the shower together, but he could not see them because the curtain was pulled closed.

26 Chacon then started to return to his previous location, but about half way down the
27 path he decided to go back. He got to the window and inched closer. By this time Michael
28 Jackson and the young boy were out of the shower and had moved to a larger, open area near

1 the wash basins. They were now standing near the area where robes and towels are kept. They
2 were facing each other. Both were naked. Michael Jackson was fondling the boy. He could
3 see Michael Jackson bending over and kissing all over the boy's face and mouth. By
4 "fondling," Chacon described Michael Jackson's hands moving all over the child's body, as a
5 man would passionately caress a woman.

6 Michael Jackson was taller than the boy. Jackson was bending over and started to
7 go down in front of the boy, kissing the child all the way down to his stomach. Jackson then
8 took the boy's penis and put it into his mouth. Chacon actually saw Jackson put the child's
9 penis into his mouth and that's when he took off. Approximately ten to twenty seconds
10 elapsed from the time he first saw Michael Jackson kissing and fondling the child until the
11 time that he saw him place the child's penis in his mouth. The kissing was continuous until
12 Jackson put the child's penis in his mouth.

13 The bathroom area where Chacon saw Jackson and the boy was well lit. There are
14 lights in the bathroom area and additional lights where the towels were located, as well as over
15 by the wash basins. The showers have lighting as well. The outside lighting was very minimal.
16 There was only a small sidewalk light to help guide persons walking in the area.

17 After about an hour, Chacon heard the bathroom door open. Jackson and the boy
18 exited the room and the boy was mounted on Michael's shoulders. The boy had on a white
19 robe, but his legs were dangling around Michael's neck. Chacon could see the boy was naked
20 underneath. Jackson had a towel wrapped around his waist.

21 Chacon recognized the boy as a child who spent a lot of time at the ranch. He
22 described the child's height as coming up to approximately Jackson's chin. He had dark, long
23 and straight hair. His skin tone was tanned like Chacon's. The boy's parents were not at the
24 ranch at the time that this incident occurred. There were no other children at the ranch on this
25 occasion. He believes this child was a boy named "Jordy," but there was another kid from
26 Australia whose name was Brett Barnes. Barnes was the spitting image of Jordy and sometimes
27 it was hard for Chacon to tell who was Jordy and who was Brett, although Jordy was a little bit
28 taller than Brett.

1 In another incident, closely related in time, both the Barnes family from Australia
2 and Jordy were at the ranch. Two or more boys were in the video arcade playing games.
3 Chacon was by the pool walking around when he saw Michael Jackson come out of the house
4 and walk to the back door of the arcade, which is located between the bathrooms. While
5 standing by the slide in the pool area, Chacon had a really good view into the video room. It
6 was at night, but the arcade's interior was well lit. He could see everything going on inside.

7 Chacon saw Jordan Chandler sitting at one of the video games. The other boys
8 were upstairs playing on other video machines. Michael Jackson approached Jordan, bent
9 down as if to talk to him and then kissed him on the mouth. They both then got up, walked out
10 the back door, got into the Moon Rover cart and drove off. The Moon Rover is a black golf
11 cart which Michael drives around. About a half hour later they returned. Chacon was still in
12 the barbecue area and saw Sgt. Abdool in the breezeway area when Jackson and Jordan
13 Chandler returned. As Michael and the boy got out of the Moon Rover, they were standing in
14 front of the Peter Pan display. Sgt. Abdool said something to them and walked off. As soon as
15 Sgt. Abdool was out of sight, Jackson put his hands all over Jordan, smooching him on the
16 neck and then turned him around and kissed him on the mouth. It wasn't for a long period, but
17 Chacon described the kiss as passionate. During the kiss, he saw Jackson's hands go quickly
18 down into the child's private areas. This lasted for a short period before they went into the
19 house.

20 Chacon stated that Michael and Jordan would often disappear with the Moon Rover
21 and stay out on the property for long periods of time.

22 Chacon never mentioned these incidents to anyone other than to Sgt. Abdool.
23 Chacon stated he was afraid to discuss this with anybody because he didn't want to create any
24 waves and was concerned for his safety. He stated that he was probably wrong in not reporting
25 it, but he didn't think anyone was going to believe him.

26 Prior to his testimony, Chacon was twice contacted by Attorney Steve Cochran and
27 Eric Mason, a private investigator for Michael Jackson. They wanted to interview him prior to
28 the Grand Jury. He told them it was none of their business. He told them that after Grand Jury

1 they'll know what he knows. They asked him why and he told them, because they were not his
2 attorneys and he did not want them to be his attorneys.

3
4 JUNE CHANDLER

5 June Chandler is the mother of Jordan Chandler. Jordan's father is named Evan
6 Chandler. At the time that her son, Jordan Chandler, met Michael Jackson, she had divorced
7 Evan and had married but was separated from David Schwartz. David Schwartz runs a rental
8 car agency called Rent-A-Wreck. Evan Chandler had remarried and his then wife was Natalie
9 Chandler.

10 Michael Jackson first met Jordan and June Chandler in 1992 when his limousine
11 broke down in Malibu. Mr. Schwartz's business was nearby and he provided Jackson with a
12 car. Jordan was present and exchanged telephone numbers with Jackson. Between two to four
13 weeks later, in either August or September of 1992, Jackson called Jordan at Mrs. Chandler's
14 Lorenzo Street home in Santa Monica, California. Mrs. Chandler remembers the first
15 conversation as being fairly short and involving some discussions about video games. After a
16 series of telephone conversations, Michael Jackson and Jordan Chandler began to develop a
17 friendship that resulted in Jackson inviting Jordan and Mrs. Chandler to visit him at Neverland
18 Valley Ranch. The first visit occurred around February 12, 1993. It lasted two days. During
19 the second day, Jackson took Jordan and his sister Lily to a Toys-R-Us store. The visit
20 occurred after hours when the store was closed. The children were allowed to pick out
21 anything they wanted and Jackson paid for it. On Sunday afternoon around 1:00 p.m., they left
22 Neverland Ranch.

23 Two days later Jackson called again. They were invited to return to the ranch on
24 Friday, February 19, 1993. They were picked up in a limousine and spent the weekend at the
25 ranch. When they were picked up in the limo for the trip to the ranch on Friday the 19th. Also
26 in the limo were Brett Barnes and a friend of his, and Jackson and Jordan Chandler. They
27 spent the weekend at the ranch. On Sunday, when they were returning in the limo to Los
28 Angeles, instead of going to their Santa Monica home, they went to Disneyland. Brett Barnes

1 did not accompany them.

2 June and Jordan Chandler again visited the ranch in March. On several occasions
3 Jordan asked his mother if he could sleep in Michael Jackson's bedroom. Mrs. Chandler
4 steadfastly said no. She described Jordan as being very pushy about this on a number of
5 occasions. Jordan did, however, play up in Jackson's room until 2:00 a.m. before returning to
6 his guest room.

7 Between March 28 and April 1, 1993 Jordan, Lily and Mrs. Chandler were invited
8 to join Michael Jackson in Las Vegas. On either the first or second night in Las Vegas, Jordan
9 and Michael Jackson were going to a performance of the Cirque du Soleil. The performance
10 was to begin at 11:00 p.m. Shortly after 11:00 p.m. Mrs. Chandler received a call from the
11 president of Cirque du Soleil saying that they had two seats waiting for Michael Jackson and
12 that he had not arrived. He called back five minutes later stating they had still not arrived.

13 About that time there was a knock on the door, Mrs. Chandler opened the door and
14 observed Michael Jackson shaking and crying. Jordan walked in very quietly. She asked,
15 "What happened?" Michael Jackson responded, "I have to talk to you." Fearful someone was
16 injured, she asked what happened. Jackson responded, "June, is our relationship based on trust
17 and love?" When she responded "yes" he said, "Why don't you trust me?" Jackson told Mrs.
18 Chandler he believed that she did not trust him because she would not allow Jordan to spend
19 the night in his bedroom. Jackson said, "Don't you see at Neverland that the kids stay in my
20 bedroom, that everything's fine, that all we do is play and we crash and that's it and that's
21 where we sleep?" He chided her for putting restrictions on Jordan and not allowing Jordan to
22 sleep with him. He said these restrictions were an indication that she did not love him; did not
23 trust him; and did not treat him like family. Jackson reiterated that Mrs. Chandler was putting
24 restrictions on Michael's relationship with Jordan. He emphasized in a family there is trust,
25 love and honesty and no barriers. Jackson continued by saying everybody should be able to
26 sleep where everybody wants and Jordan can do what he wants and suggested they do it that
27 way.

28 Mrs. Chandler responded that she had two husbands whom she couldn't trust; she

1 didn't know where Jackson was coming from and she couldn't let her trust down. Jackson
2 responded, "June, you've got to trust, you've got to trust and believe me and it's all going to
3 work out. It's all wonderful. It's a wonderful relationship." Jackson emphasized that she
4 should not treat him like a stranger. He said he felt like others were using him and questioned
5 whether she would do this to a family member. When she responded "No," he said, "Well, I
6 am like family" and "You cannot make it where I can't sleep with Jordan".

7 Mrs. Chandler relented and allowed Jordan to sleep with Jackson under the
8 condition that he was free to leave whenever he wanted. That's how Jordan sleeping in
9 Michael Jackson's bedroom began. After her concession, Jackson reiterated that it's all about
10 "trust, love and honesty." Mrs. Chandler described how they all got very emotional. She
11 asked Jackson to "Promise you're not going to break this bond." Jackson responded, "It's
12 about love, it's not about what people think." For the remainder of the time in Las Vegas,
13 Jordan spent every night in the same room with Michael Jackson.

14 During the Las Vegas trip (Mrs. Chandler thinks a day or two after their arrival),
15 Jackson gave her a very expensive Cartier bracelet that she had admired several days before in
16 a store. Michael often gave gifts, and she regarded it as an endearing characteristic.

17 After Las Vegas, Jackson would spend a great deal of time at June Chandler's
18 residence with Jordan. He would often spend the night and sleep in Jordan's bed. During this
19 time, Mrs. Chandler could see that Michael Jackson and Jordan developed a very close
20 relationship, to the point that they would spend every waking moment together.

21 Subsequently Jordan would spend all of his time with Michael when they visited the
22 ranch. He would spend the time in the main house or doing things at the ranch with Michael.
23 She became increasingly isolated from her son and saw very little of him.

24 On April 22, 1993 they went for a two-day trip to Florida and visited Disney World.
25 At Disney World, Jordan continued to spend his nights in Jackson's bedroom. Then on May
26 8th, they traveled to France and visited Monte Carlo, Monaco, and Euro Disney. The trip took
27 about a week and Jordan Chandler was sleeping in Michael Jackson's bedroom and in Michael
28 Jackson's bed during the entire trip. The Monaco portion of the trip included several shopping

1 spreeds with Michael Jackson.

2 Mrs. Chandler described Michael's relationship with Jordan at this point as so tight
3 that she felt she was losing her son. She stated Michael and Jordan would go off together and
4 she would never see them. She was starting to feel very sad about the situation, but didn't
5 know what to do about it. On Father's Day of that year, Jordan even refused to call his father
6 because he was so involved with Michael Jackson. Mrs. Chandler indicated that before
7 meeting Michael Jackson, Jordan would make sure to call his dad once a day, but during the
8 time he was with Michael Jackson, he did not.

9 On one occasion, June Chandler met Joy Robson at the ranch. Joy Robson was
10 known to Mrs. Chandler as the mother of Wade Robson. They were from Australia, and Wade
11 had been a companion of Jackson's prior to the Chandlers' association with Michael Jackson.
12 Jordan and Michael decided that they wanted to go to Neverland Ranch and Joy was already
13 there. Before they left for the ranch, Michael said to June Chandler, "June, oh by the way, Joy
14 is going to be there. She's a little nose, so be careful what you say. She is jealous of the
15 situation."

16 When June Chandler arrived at the ranch, she did indeed meet Joy Robson. Robson
17 said to her, "You know, this is a very similar pattern that Michael does. He endears himself to
18 the family. If he likes the little boy, he gets family to adore him." She warned that Jordan
19 would get dumped just like her son Wade.

20 Joy Robson continued by telling Mrs. Chandler that she was in the United States to
21 get a record contract for her son and that she wanted Michael Jackson to sign Wade to a record
22 contract with his company.

23 Mrs. Chandler will also describe a second trip to New York that started on June 21,
24 1993, shortly after school finals. She and Jordan were going to New York because her brother
25 was getting married. Michael Jackson decided to accompany them and had all of the hotel
26 arrangements made by his secretary. They stayed at the Righa Royal Hotel. Jordan, Lily and
27 Mrs. Chandler left on Thursday and Michael did not arrive until Monday evening around
28 11:00-12:00 p.m. Prior to Mr. Jackson's arrival, Jordan, Lily and Mrs. Chandler had been

1 staying in a two-bedroom suite. Jackson rented a huge suite at the end of the hall and Jordan
2 moved all of his belongings in and stayed with Jackson on the evening that he arrived.

3 On Sunday evening before Jackson's arrival, Mrs. Chandler and her two brothers
4 had gone to dinner. She thought this was a good opportunity to talk to Jordan because Michael
5 was not there. She stated that she had had a very difficult time breaking Jordan away from
6 Michael and that even though Michael wasn't there that they would spend hours talking on the
7 phone, sometimes until 2:00 in the morning. Mrs. Chandler spoke to Jordan about spending
8 time with his New York cousins and complained about the fact that Michael was occupying all
9 of Jordan's time. She pointed out that these relatives would be with him for the rest of his life,
10 while his relationship with Michael Jackson may not last long.

11 On Monday evening, Mrs. Chandler went out to dinner but without Jordan and Lily.
12 When she returned to her room, Lily was asleep in the bedroom. Neither Jordan nor Jackson
13 were there. Jordan was supposed to be babysitting Lily. Mrs. Chandler was frightened. She
14 knocked on the door to Jackson's room, which was across the hallway. Jackson and Jordan
15 were together. Both said that they had been watching Lily and moving between the two rooms.
16 Michael Jackson then said he wanted to talk to Mrs. Chandler. Jackson began by saying that
17 Jordan was upset and had told him (Jackson) about the conversation Mrs. Chandler had with
18 Jordan the day before, about spending some time with his cousins and her concerns about the
19 overwhelming nature of his relationship with Michael. Mrs. Chandler told Jackson that she
20 had a perfect right to talk to her son about her concern that Jackson was pulling him away from
21 his family, and that Jackson had become his whole world. She expressed her concern that
22 Jordan was becoming selfish and just thinking about himself and not about his family and his
23 sister and others who are important to him. Jackson responded by telling June that in his
24 experience kids go through this. When they go to Neverland they leave their parents. They
25 leave whoever they're with and are just with him.

26 Mrs. Chandler accused Jackson of being a magnet, like a Peter Pan who everybody
27 wants to be around 24 hours a day. Jackson simply agreed, but said the excessiveness will die
28 down.

1 Mrs. Chandler then returned to her room and noticed that two of the lamps had been
2 broken. She subsequently learned from her daughter Lily that Michael had become mad when
3 he learned of Mrs. Chandler's concern about the excessive nature of Jackson's relationship
4 with Jordan and her concerns about the family. Jackson later denied breaking the lamps,
5 claiming it was only a karate kick and that he was not mad.

6 On June 23, 1993, the Chandlers and Jackson traveled from New York City to
7 Florida. They then flew to Santa Barbara on a private plane. When they arrived at the ranch
8 Jordan went straight to Michael's bedroom.

9 Toward the latter part of June, 1993, Evan Chandler began to express some
10 concerns to Mrs. Chandler about the Jackson-Jordan relationship. It began on June 9th when
11 Jordan was with Jackson instead of going to his stepbrother, Nickie's, graduation. Jackson
12 also spent several days at Evan Chandler's house with Jordan. Evan's expression to Mrs.
13 Chandler of his concerns increased. Then came a series of family confrontations with Jordan,
14 eventually leading to Jordan's disclosure to Evan of the fact that Michael Jackson had been
15 sexually molesting him. In August 1993 the authorities were notified by the family's attorney.

16
17 MARY COLLER

18 Mary Coller was Michael Jackson's personal assistant from 1985 to September
19 1987 or 1988. Ms. Coller's office was located in the music studio at Jackson's Encino
20 residence on Hayvenhurst. She coordinated Jackson's daily schedule. During her
21 employment, Jackson completed the "Victory Tour," the "Thriller" video and began filming
22 the Pepsi commercials.

23 During her employment, Jackson befriended several young boys. Ms. Coller knew
24 it was not unusual for Jackson to have a young friend sleep overnight twice a week at his
25 Hayvenhurst condominium. Occasionally, Ms. Coller would call the children's parents to
26 arrange the sleepover, but usually it was Jackson himself who made the arrangements. The
27 children did not go to bed while she was there, but Ms. Coller believes the children would
28 sleep in Jackson's bedroom, because there were no other available rooms in the house, and

1 Jackson resided in a private section of the condominium from which he excluded other
2 members of his family.

3 Ms. Coller knew some of the boys who were Jackson's regular guests as Jonathan
4 Spence and Jimmy Safechuck. Spence would spend the night about twice a week, or Jackson
5 would stay overnight at Spence's house. Jimmy Safechuck was another regular at the Encino
6 home. Safechuck met Jackson during the filming of the Pepsi commercial. Safechuck traveled
7 with Jackson.

8 Ms. Coller observed that Jackson would let the young boys have whatever they
9 wanted. He would take them on trips to toy stores, or tell Coller to send them gifts.

10 Ms. Coller has described Michael Jackson as "very shrewd." He missed nothing
11 and was always in total control. He would often manipulate those around him. He had
12 "hands-on" control of his business, and kept special funds for his use.

13

14 CHARLIE MICHAELS

15 Ms. Charlie Michaels was employed as a uniformed security guard for Michael
16 Jackson at Neverland Valley Ranch in Los Olivos from March 21, 1990 through March 6,
17 1992. During her employment she frequently saw Michael Jackson in the company of young
18 boys. She specifically recalls that on one particular occasion, on Mother's Day 1990, Wade
19 Robson, a young male friend of Michael Jackson's, and Wade's mother, Joy, were staying with
20 Michael at the ranch. This was the first time she met Wade Robson and his mother, but it was
21 not the first time she had seen Wade or his mother present on the ranch.

22 On this particular occasion, Ms. Michaels found Joy Robeson, Wade's mother, in
23 the area of the main house crying and upset. Ms. Michaels approached her in an effort to
24 console her. Mrs. Robson told her she was very upset because she had been restricted from
25 being with her son when he was in Michael's company on the ranch. She stated that Wade and
26 Michael were in the theatre rehearsing a dance routine, and she could not understand why she
27 had been told she could not enter the theatre. She simply had been told that Michael and Wade
28 were dancing by themselves and she was not to interfere.

1 Ms. Michaels asked Mrs. Robson if she would like to visit the zoo located on the
2 ranch. They drove in a cart to the zoo and talked to Gary Davidson, the zookeeper. After they
3 left the zoo area, Ms. Michaels dropped Mrs. Robson off at the guest house.

4 Ms. Michaels then was called to the main house to pick up lunch for Michael
5 Jackson and Wade Robson and take it to them at the dance studio in the theatre. Around 2:00
6 to 2:30 p.m., while waiting in the main house to pick up the lunch, she saw Wade and Michael
7 at the rear of the house. She lost sight of Jackson and Wade Robson before the lunches were
8 ready, so she took the lunches and drove to the theatre. As Ms. Michaels entered the theatre,
9 she put the lunches on the snack bar in the theatre lobby. She then heard music coming from
10 the dance studio, which was located just to the left of the lobby, but she assumed that Michael
11 Jackson and Wade were still at the house. She approached the studio to open the studio's door
12 and turn off the music.

13 As Ms. Michaels opened the studio door, she saw the reflections of Michael
14 Jackson and Wade Robson in the huge mirror on the wall of the dance studio. She was
15 standing approximately five to seven feet away from the mirror. Wade was standing in front of
16 Michael with his back to Michael's front. They were so close to each other that Michael's
17 front was actually touching Wade's back. Both Michael and Wade had their hands on Wade's
18 genital area and they were doing fast step-dancing and Michael Jackson was doing his
19 "euoghy, euogh" scream. Both were screaming as Michael clutched Wade's genitals. Michael
20 was much taller than Wade. He was bent over Wade from behind him and had both his arms
21 draped around Wade's shoulders, with his hands on Wade's crotch. Ms. Michaels could not
22 exactly see where Wade's hands were, however they were well below his waist and in the area
23 of his crotch. Both Jackson and Robson were wearing similar all-black outfits.

24 Ms. Michaels immediately left the theatre to avoid detection by either Jackson or
25 Robson. She realized that Jackson's acts were inappropriate and that Jackson could have
26 shown Wade this particular dance move without standing over him and placing his hands on
27 Wade's genital area. However, she was concerned that she would lose her job if she shared her
28 observation with anyone in authority.

1 PHILLIPE LeMARQUE

2 Phillipe LeMarque and his wife Stella were employed at Neverland Valley Ranch
3 between January and July, 1991. During the time that they worked at Neverland Valley Ranch,
4 their responsibilities were as, respectively, butler and cook. At this time, Blanca Francia was
5 the maid who was in charge of Michael Jackson's personal room. During the same period,
6 both Macaulay Culkin and Jimmy Safechuck would visit the ranch. Phillipe and Stella each
7 described Jackson's excitement about the anticipated visit of one of his juvenile friends as
8 much like a young man's excitement at his lover's impending visit.

9 On one occasion during this time, Mr. LeMarque was awakened by Norma Staikos,
10 who managed affairs for Michael Jackson, instructing him to make some French fries for
11 Jackson. Phillipe got out of bed and drove to the kitchen. The LeMarques' living quarters
12 were on the ranch grounds but situated about two miles away from the main building. Phillipe
13 made the fries and called security on the house radio to get Jackson's present location.
14 Security advised him that Jackson was in the arcade room. Phillipe took the fries he had
15 prepared to that location. He estimates that it was about 3:00 a.m. in the morning. He entered
16 the arcade through an unlocked door. The room was fully lit. Music and noise blared. From a
17 distance of approximately 15 to 20 feet, Phillipe observed Jackson and Culkin playing a
18 videogame. Jackson and Culkin were facing the game. Jackson was standing close behind
19 Culkin, holding the boy up to the controls. Culkin was wearing short pants at the time and
20 Jackson's left hand was inside of Culkin's shorts and located in his groin area. Phillipe
21 realized that Jackson and Culkin were not aware of his presence, so he quickly exited the
22 arcade and re-entered from another door, loudly announcing himself this time.

23 Mr. LeMarque stated that he had never reported what he saw because he had
24 consulted with a friend of his who was a judge. His friend told him that barring a disclosure
25 from the victim, there really wasn't much that could be done.

26
27 ADRIAN McMANUS

28 Adrian McManus began her employment as a domestic at Neverland Valley Ranch

1 on August 29, 1990. For the first nine months of her employment, she was assigned general
2 housekeeping responsibilities, which did not include Michael Jackson's bedroom. During that
3 nine-month period, Blanca Francia was the person in charge of cleaning Michael Jackson's
4 private quarters.

5 Around April or May of 1991, Mrs. McManus was assigned responsibility for
6 cleaning Michael Jackson's private quarters. She continued in to work in that assignment until
7 1994. She worked directly for Michael Jackson and had exclusive control over the keys to his
8 room. The supervisor of the house during most of her employment was Gayle Goforth.

9 During her employment, Mrs. McManus observed three separate incidents of
10 Michael Jackson molesting children. Each involved a different child. The first incident
11 involved Macaulay Culkin. It occurred during the nine-month period after she was hired, but
12 before she was assigned the cleaning of Jackson's quarters. It was late one afternoon and she
13 was upstairs, cleaning a bathroom. A library is located near the bathroom. As she walked out
14 of the bathroom and by the library, she saw Jackson and Macaulay Culkin standing near the
15 fireplace in the library. Jackson and young Culkin were standing face-to-face, but sideways to
16 her. She saw Jackson kiss Culkin and place his hand on Culkin's buttock area. She observed
17 Jackson fondling the child's crotch area outside the boy's clothing.

18 On a later date, after she was assigned to clean Michael Jackson's room but before
19 his 1993 "Dangerous" tour, she saw another incident involving a young boy by the name of
20 Brett Barnes. She believes it was in 1993 and in the morning.

21 Mrs. McManus had been directed by Michael Jackson to go upstairs and pull out all
22 the videotapes in a certain room. Jackson and the Barnes boy came to the video room to see
23 how she was coming along with the chore. They left together and headed downstairs. She
24 decided it was too hot in the room, so she also decided to go downstairs. When she got to the
25 landing near the bottom of the stairway, she looked down the hallway leading to Jackson's
26 bedroom. Jackson and Barnes were side by side facing the door to the bedroom and Michael
27 Jackson was on the boy's right. She saw Michael Jackson kissing Brett Barnes and fondling
28 his buttock area. Jackson's left hand was over the boy's clothing and on the child's bottom.

1 Jackson was kissing the boy on the right side of the child's face, near his mouth. She panicked
2 and immediately retreated back to the videotapes project.

3 The third incident involved a boy named Jordan Chandler. It also occurred in 1993
4 and before the "Dangerous" tour. It was also before the public allegations of child molesting
5 were lodged against Michael Jackson. Mrs. McManus was inside Jackson's private quarters
6 upstairs, dusting in his bedroom. She heard the chimes go off, indicating someone was
7 entering into the private quarters area, and then she heard Jackson's voice.

8 A bathroom is located at the foot of the stairwell leading to the upstairs bedroom.
9 Mrs. McManus looked down the stairway and saw Jackson and Jordan Chandler. They
10 apparently had been in what she has described as the "fort area" (which may be in the vicinity
11 of the waterfalls between the two lakes on the property) because both were wet and their wet
12 clothing was lying on the floor. Both had on long pants, but no shirts. Michael Jackson was
13 kissing Jordan and fondling his crotch area. His hand was definitely down between the child's
14 legs. She also saw Jackson kissing Chandler on the mouth. Both were facing each other. She
15 stepped back and remained quiet, waited for them to leave and then left the bedroom without
16 being observed.

17 Mrs. McManus will also be called as a witness as to matters not coming within
18 Evidence Code section 1108, including, but not limited to, defendant's admission to her that he
19 eavesdropped from his room on telephone conversations of others on Neverland Ranch
20 telephones, and that she was present during one such eavesdropping on a telephone call by Lisa
21 Marie Presley. She will also testify that during her cleaning chores, she saw numerous books
22 on surveillance and recording. She also observed recording devices in defendant's private
23 quarters. Further, Mrs. McManus saw a book on masturbation and can also establish that
24 Michael Jackson drank alcohol, particularly wine.

25
26 CHARMAYNE STERNBERG

27 Charmayne Sternberg (also known as Charmayne Glen) was hired by MJJ
28 Productions after she answered a classified ad for an administrative assistant. Ms. Sternberg

1 was employed by MJJ Productions from January, 1989 to April, 1990. She has described
2 Jackson's association with children as "beyond ordinary." Ms. Sternberg divided Jackson's
3 friends into two categories, "children that had problems and children that were his friends."

4 She knows that Michael Jackson met young Brett Barnes on Jackson's Australian
5 tour. Jackson brought the Barnes family to America from Australia. Brett would spend the
6 night and some weekends with Jackson at his condominium on Wilshire Boulevard.

7 Ms. Sternberg recalls the following incident: During one weekend visit with a
8 child, Jackson arranged to return the child to his parents at his recording studio in Encino.
9 Jackson did not show up on time. The child's mother, concerned about the whereabouts of her
10 child, called Ms. Sternberg. Ms. Sternberg was unable to get in touch with Jackson. When
11 Jackson finally contacted Ms. Sternberg, he told her to cancel an appointment he had with
12 Michael Milken because he was ill. When Sternberg told Jackson that the child's parents were
13 concerned, Michael stated "Don't worry about it, I will take care of it." Sternberg thought the
14 incident was "odd."

15 Ms. Sternberg remembers two children, Jimmy Safechuck and Jonathan Spence as
16 Michael Jackson's "special friends" – a term she and other of Michael Jackson's employees
17 used to describe the succession of young boys who received defendant's doting attention.
18 Mail from young Safechuck and Spence was sent directly to Mr. Jackson. Whenever Jimmy
19 Safechuck called, his call would be transferred directly to Jackson. Ms. Sternberg remembered
20 that Jonathan Spence used to call often to request tickets for concerts. Spence always got
21 whatever he asked for.

22 ////

23 ////

24 ////

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28 ////

1 II

2 EVIDENCE OF DEFENDANT’S PRIOR ACTS OF MOLESTATION
3 ARE ADMISSIBLE AGAINST HIM IN HIS TRIAL PURSUANT TO
4 EVIDENCE CODE § 1101(b), BECAUSE THAT EVIDENCE IS BOTH
5 RELEVANT AND MATERIAL TO ESTABLISH DEFENDANT’S
6 MOTIVE, HIS METHOD AND PLAN, HIS INTENT, HIS
7 PREPARATION AND THE OPPORTUNITY HE CREATED FOR
8 HIMSELF TO MOLEST YOUNGSTERS IN PRIVATE. THE
9 EVIDENCE ALSO REBUTS DEFENDANT’S STATED DEFENSE
10 THAT THE CHARGED OFFENSES WERE FABRICATED BY
11 THE VICTIM AND HIS FAMILY FOR FINANCIAL GAIN

12 A. Evidence Of Prior Offenses Which Would Be Excluded
13 By § 1101(a) In A Non-Sexual Offense Prosecution May
14 Be Admissible In The Prosecution Of A Sexual Offense
15 Pursuant To §§ 1101(b) And 1108

16 As noted above, if there is relevant evidence that tends to prove a disputed issue in
17 this lawsuit, that evidence is admissible unless there is a rule of evidence that excludes it.
18 Evidence Code section 1101, subdivision (b) offers a non-exclusive list of “facts” (“such as
19 motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or
20 accident”), for the proof which, evidence of the defendant’s commission of another crime will
21 be relevant.

22 One “fact” that cannot be proved in most criminal cases by such “other crimes”
23 evidence is the defendant’s “disposition” to commit the charged crime. Section 1108
24 eliminates that rule of exclusion in the prosecution of sexual offenses.

25 B. Evidence of Defendant’s Prior Offenses Tends
26 To Prove Several Disputed (i.e., Material)
27 Issues In The Trial Of The Defendant

28 To be admissible at trial, given evidence must be relevant to prove a disputed issue.
In this case, the importantly disputed issue to which the “other crimes” evidence relates is
whether defendant sexually molested Gavin Arvizo as alleged in Counts Two through Eight of

1 the Indictment. The significance of defendant's public relationship with Gavin as evidence of
2 his scheme to seduce the boy will likewise be disputed. Relevant evidence on those material
3 issues is therefore admissible.

4 In the present case, defendant is charged with multiple counts of child molestation
5 against Gavin Arvizo. The People are requesting that the court admit evidence regarding
6 defendant's molestation of five other boys, together with the circumstances attending those
7 molestations. This evidence will be offered to prove the material, relevant issues of
8 defendant's **intent, motive, opportunity and common plan or scheme** to commit the charged
9 offenses. In addition, this evidence will be offered to **rebut defendant's stated defense that**
10 **the charged offenses were fabricated by the victim and his family for financial gain.**

11 "Other crimes" evidence is circumstantial evidence of one or more disputed issues
12 in the trial of new offenses. "[A]s with other types of circumstantial evidence, . . .
13 admissibility [of "other crimes" evidence] depends upon three principal factors: (1) the
14 *materiality* of the fact sought to be proved or disproved; (2) the *tendency* of the uncharged
15 crime to prove or disprove the material fact; and (3) the existence of any *rule* or *policy*
16 requiring the exclusion of relevant evidence.' [Citation.]" (*People v. Robbins* (1988) 45 Cal.
17 3d 867, 879; emphasis the court's.)

18 C. "Other Crimes" Evidence Is Evidence Of A Material Fact

19 "In order to satisfy the requirement of *materiality*, the fact sought to be proved may
20 be either an ultimate fact in the proceeding or an intermediate fact 'from which such ultimate
21 fact[] may be presumed or inferred. Further, the ultimate fact to be proved must be 'actually
22 in dispute.'" (*People v. Thompson* (1980) 27 Cal.3d 303, 315; emphasis the court's; fns.
23 omitted.²)

24
25 ² As noted by the Supreme Court in *People v. Rowland* (1992) 4 Cal.4th 238, *Thompson's*
26 further holding that a defendant's "not guilty" plea does not "place the elements of the crimes
27 charged against him in issue" (27 Cal.3d at p. 315) was "all but expressly disapproved" by the
28 court in *People v. Williams* (1988) 44 Cal.3d 883, 907, fn. 7, which held to the contrary. (4
Cal.4th at p. 260.)

1 “Motive, opportunity, plan, scheme, design and method of operation are examples
2 of intermediate facts” (*People v. Thompson, supra*, 23 Cal.3d 303, 315, n. 14.) Defendant’s
3 plea of not guilty places all of the elements of the charged offense in issue for the purpose of
4 deciding the admissibility of evidence of uncharged misconduct, unless the defendant has
5 taken some action to narrow the prosecution’s burden of proof. (*People v. Daniels* (1991) 52
6 Cal.3d 815, 857; *People v. Ewoldt* (7 Cal.4th 380, 400 fn. 4.) If the fact sought to be proved is
7 an element of the offense, it is an ultimate fact and is absolutely material. (*People v. Nible*
8 (1988) 200 Cal.App.3d 838, 847.)

9
10 **D. Evidence of Motive**

11 Motive is not an element of any crime, and as noted, it is therefore an intermediate
12 fact. But “because a motive is ordinarily the incentive for criminal behavior, its probative value
13 generally exceeds its prejudicial effect, and wide latitude is permitted in admitting evidence of
14 its existence.” (*People v. Lopez* (1969) 1 Cal.App.3d 78, 85. Accord, *People v. Pertsoni*
15 (1985) 172 Cal.App.3d 369, 375.) Evidence of motive is material if it “tends logically and
16 reasonably to prove an ultimate fact which is in dispute. (*People v. Thompson, supra*, 27
17 Cal.3d at p. 316, n. 14.)

18 Evidence of a defendant’s commission of an uncharged criminal act or acts is
19 admissible to establish his motive to commit a charged offense, his intent to do so and his state
20 of mind during the commission of that offense. (*People v. Thompson, supra*, 27 Cal.3d 303,
21 315, fns. 13, 14.)

22 There is no requirement that both the charged and uncharged acts be identical or
23 nearly identical to demonstrate defendant’s motive in the charged offense. (*People v.*
24 *Thompson, supra*, 27 Cal.3d at p. 319; *People v. Harvey* (1984) 163 Cal.App.3d 90, 104-105.)
25 Rather, only substantial similarity is necessary to provide the required “link” in the inference-
26 drawing process. (*People v. Thompson, supra*, at pp. 319-320, fn. 23; *People v. Nible, supra*,
27 200 Cal.App.3d 838, 848-850.)

28 The motive for both the charged and uncharged offenses is obvious: Defendant

1 achieves sexual gratification by seducing and molesting pre and post-pubescent young boys.
2 The intensity of his desire to experience that gratification, even at the risk of losing his
3 reputation and considerable fortune, brought him to his present sorry predicament.

4 E. Evidence of Intent

5 The defendant is charged in Counts Two through Six with violations or an
6 attempted violation of Penal Code section 288, subdivision (a) (lewd act upon a child). The
7 legislative history of this section makes it clear that this section prohibits all forms of sexually
8 motivated physical contact with underage children. The gist of the offense has always been the
9 defendant's intent to sexually exploit the child, not the particular nature of the offending act.
10 (*People v. McCurdy* (1923) 60 Cal.App. 499.) The lewd purpose of the touching is the
11 controlling factor and sexual gratification must be presently intended at the time the touching
12 occurs. (*People v. Martinez* (1995) 11 Cal.4th 434, 444-445.)

13 Hence, it has been held that evidence of prior criminal activities by an accused is
14 admissible if such evidence provides circumstantial proof of the actor's mental state at the time
15 of the charged offense. (*People v. Durham* (1969) 70 Cal.2d 172.)

16 As the court enunciated in the *Ewoldt* decision, admission of other acts evidence on
17 the issue of intent requires the least degree of similarity. Indeed, it only need be sufficiently
18 similar to support the inference that the defendant probably harbored the same intent in each
19 instance. (*People v. Ewoldt* (1994) 7 Cal.4th 380, 402.)

20 *People v. Lewis* (2001) 25 Cal.4th 610 is illustrative of this standard of similarity
21 where intent is the issue. In *Lewis*, a robbery conviction was upheld even though an uncharged
22 robbery demonstrated only a minimal similarity to the charged robbery. The similarity
23 amounted to a "good Samaritan ploy" to rob and attempt to kidnap stranded female motorists.
24 The court found that sole similarity sufficient to support the inference that the defendant
25 probably harbored a similar intent with regard to the victims in the charged and uncharged
26 offenses.

27 In *People v. Branch* (2001) 91 Cal.App.4th 274, the court explicitly upheld the
28 admission of evidence of other child-molesting incidents involving the defendant because they

1 were particularly probative to show that defendant's touching of his victim in the charged
2 offense was for sexual gratification. (*Id.*, at p. 281.)

3 A lewd and lascivious intent is an element of the charges in the present case. At
4 least two of the four counts were predicated upon observations made by the victim's brother,
5 Star Arvizo, as he came up the stairs and observed the victim and the defendant lying on
6 Jackson's bed. According to Star's testimony, he saw the defendant on two separate evenings
7 reach over and place his hand inside of his brother's underwear while the brother was passed
8 out on the bed.

9 The uncharged acts sought to be admitted against the defendant involve a number of
10 similar acts, committed with a number of other young boys. In many of those acts, defendant
11 was observed to insert his hand underneath the boy's clothing in the area of the child's
12 genitalia and to manipulate the child's genitalia. Evidence of those acts is highly probative and
13 relevant as to the defendant's intent at the time Star saw Michael Jackson touch Gavin.

14 *People v. Robbins, supra*, 45 Cal.3d 867 concerning the inferences a reasonable
15 person may draw from repetitive behavior, is instructive. Robbins was charged with the
16 murder of a six-year-old Santa Barbara child, whose badly decomposed body was found in a
17 lagoon area near the University of California at Santa Barbara approximately six months after
18 his murder. The prosecution sought to use evidence of Robbins' murder of another young
19 child in Dallas to establish that it was the defendant's intent to engage in lewd and lascivious
20 conduct with the victim in the Santa Barbara case, and that the homicide was intentional rather
21 than accidental. The Supreme Court upheld Robbins' conviction, noting that the similarity of
22 the circumstances of the earlier murder was a compelling probative fact on the issue of
23 Robbins' intent.

24 25 F. Evidence Of A Common Design Or Plan

26 "Evidence of a **common design or plan** is admissible to establish that the
27 defendant committed the *act* alleged." (*People v. Ewoldt, supra*, 7 Cal.4th 380, 394, fn. 2;
28 bold emphasis added; italics in original.) In *Ewoldt*, the Supreme Court "overrule[d] *People v.*

1 *Tassell* [(1984)] 36 Cal.3d 77 and *People v. Ogunmola* [(1985)] 39 Cal.3d 120 to the extent
2 they hold that evidence of a defendant's uncharged similar misconduct is admissible to
3 establish a common design or plan only where the charged and uncharged acts are part of a
4 single, continuing conception or plot. We hold instead that evidence of a defendant's
5 uncharged misconduct is relevant where the uncharged misconduct and the charged offense are
6 sufficiently similar to support the inference that they are manifestations of a common design or
7 plan." (7 Cal.4th 380, at p. 401; fn. omitted.)

8 If proved, such a plan permits the trier of fact to infer that defendant was working to
9 achieve a similar result, with a similar intent, in the case for which he is on trial. Evidence that
10 defendant has committed uncharged criminal acts that are similar to the charged offense are
11 relevant if these acts demonstrate circumstantially that defendant committed the charged
12 offense pursuant to the same design or plan he used in committing the uncharged acts. *People*
13 *v. Ewoldt*, *supra*, 7 Cal.4th 380, 402-404.

14 A good analysis of the necessary degree of similarity for admission of uncharged
15 acts of child molestation to show a common plan or scheme may be found in the case of
16 *People v. Dancer* (1996) 45 Cal. App.4th 1677. In *Dancer*, the court admitted evidence of a
17 child molestation involving a separate victim that occurred twelve years before the charged
18 offense. In finding that the prior incident was admissible as evidence of a common plan or
19 scheme the court noted the eight similarities:

- 20 1) Defendant resided near the victims
- 21 2) Defendant was acquainted with the victim's parents.
- 22 3) Defendant selected very young girls as victims.
- 23 4) Defendant had a history of unsupervised access to the victims and played or
- 24 babysat with them.
- 25 5) The victims knew and trusted defendant.
- 26 6) In committing the molestations, defendant selected locations out of public view
- 27 where mattresses were located.
- 28 7) The sexual conduct defendant had with each victim was similar in that in each

1 case defendant exposed his penis through his clothing, the victims had contact with
2 it, and he tried to have both orally copulate him.

3 8) When confronted by adults about the molestations defendant responded calmly.
4

5 In finding the uncharged conduct admissible the court noted: “[T]hese common
6 features reasonable supported an inference that that each incident was a manifestation of a
7 common design or plan rather than two unrelated spontaneous acts. Indeed, the inference, in
8 our view, is strong.” (45 Cal.App.4th 1677, at p. 1690.) The court was unimpressed with
9 differences between the two incidents and went on to find the uncharged act had strong
10 probative value and was admissible under Evidence Code Section 352. It is especially notable
11 that the six of the eight factors the court considered to be important similarities are shared by
12 the charged and uncharged acts in this case.

13 In the present case, the uncharged acts are not only “substantially similar” to one
14 another and to the charged offenses, they are substantially **identical** in nature. It is not only
15 probable that defendant had the same motive and followed a common plan in each of these
16 cases, it is patently obvious that he did.

17 In both the charged and uncharged offenses:

- 18 1) Each of the victims was invited to defendant’s home known as Neverland
- 19 a 2400-acre ranch facility specifically created by defendant with its own amusement
- 20 park, swimming pool, video arcade, zoo, movie theatre and numerous other
- 21 attractions, amenities and amusements specially appealing to children.
- 22 2) Each of the victims was allowed to use the facilities at Neverland.
- 23 3) Each of the victim’s was given gifts by defendant.
- 24 4) Each of the victim’s parents were given gifts by defendant.
- 25 5) Each of the victims was of similar age
- 26 6) Each of the victims was a boy
- 27 7) Each of the victims enjoyed a lengthy acquaintance with defendant in which
- 28 defendant spent considerable time alone with the victim playing with, talking to and

1 befriending him.

2 8) Each of the victims was molested by defendant while the victim was wearing
3 clothing or underwear.

4 9) Each of the victims was separated from his parent or parents by arrangements
5 made by defendant at the time of the molestation.

6 10) Each of the victims spent time alone with defendant in defendant's locked,
7 security-alarmed bedroom at Neverland

8 11) With the exception of Jason, each of the victims spent the night in defendant's
9 bedroom at Neverland.

10 12) Each of the victims was – in secret – invited by defendant into defendant's bed

11 13) Each of the victims was given the same nickname, "Rubba"

12 14) Each of the victims was told he was a member of a special club invented by
13 defendant known variously as the "Applehead Club " and the "Doodoohead Club."

14 15) Each of the victims came from a divorced or dysfunctional family.

15 16) Both the victim in the charged offense and the victim of the uncharged offense
16 #() referred to defendant, at defendant's request, as "Daddy."

17 17) Each of the offenses occurred in a home occupied by defendant where
18 defendant had a personal staff that obeyed and did defendant's bidding.

19
20 Numerous cases have found a critical similarity to be either the age, sex or
21 acquaintance with the victim. (See *People v. Catlin* (2001) 26 Cal.4th 81 [victim close female
22 relative of the defendant]; *People v. Soto* (1998) 64 Cal.App.4th 966 [victims all young female
23 relatives]; *People v. Bradford* (1997) 15 Cal.4th 1229 [young White females]; *People v. Kraft*
24 (2000) 23 Cal.4th 978 [all White males between the ages of 18-25]; *People v. Maury* (2003) 30
25 Cal.4th 342 [small, petite women acquainted with the defendant]; *People v. Branch, supra*, 91
26 Cal.App.4th 274 [two twelve-year-old children].)

27 The case at bench displays a significant number of these similarities and in larger
28 combination than the cases noted above. As in *Kraft*, the ages of both the charged and

1 uncharged boys are between the ages of 10 and 13. As in *Soto* and *Bradford*, they are all the
2 same sex and young. Of even more significance is the fact that evidence from numerous
3 witnesses will establish that the defendant has little or no interaction with young girls and none
4 of them have seen young females to be the recipient of the kind of attention, gifts and
5 excessive companionship defendant lavished on Gavin Arvizo and on many of the victims in
6 the uncharged offenses.

7 Also noteworthy is the similar methodology employed by Jackson in establishing
8 and nurturing his relationship with Gavin Arvizo, the victim in this case, and with the other
9 boys who were the victims in the uncharged offenses. Those relationships all began in a
10 strikingly similar manner. The initial, often casual contact was followed by lengthy telephone
11 calls. Telephone calls were followed by invitations to the boy and his family to visit Neverland
12 Valley Ranch. The first invitation to the ranch was followed by many more, extended to both
13 the boy and his parent or parents. Follow-up invitations were accompanied by shopping tours
14 and expensive gifts to the boy and his parents.

15 In all instances the boys were given free rein to the ranch. They were invited to
16 make liberal use of all the ranch's many attractions. These visits quickly led to the boys being
17 invited to stay in Michael Jackson's bedroom. Many of the boys had sisters who accompanied
18 them to Neverland, but in every case only the boys were invited to spend time in Jackson's
19 bedroom.

20 The invitations to spend time with Michael in his bedroom progressed to invitations
21 to sleep with him in his bed. It is the striking similarity of defendant's approach to each of the
22 boys: first enticing them to the ranch, then overwhelming them with the ranch's attractions and
23 pleasures, then obsessively associating with the children while at the ranch and elsewhere, all
24 leading to the inevitable invitation to stay in Jackson's room and, ultimately, his bed. The
25 familiarity, friendship and bond of trust that Jackson developed with each of the young boys
26 led inevitably to his molestation of them. As it was with Jason Francia, Jonathan Spence,
27 Wade Robeson, Brett Barnes, Macaulay Culkin, Jimmy Safechuck and Jordan Chandler, so it
28 was with Gavin Arvizo.

1 Our Supreme Court in *People v. Robbins, supra*, 45 Cal.3d 867 discussed “the
2 doctrine of chances” as it tended to negate the likelihood that the death of the Santa Barbara
3 child in that case was accidental applies equally to the issue in this case whether Michael
4 Jackson had more in mind for Gavin Arvizo than just being an attentive friend to him. The
5 Supreme Court noted:

6 We are also satisfied that the evidence in question was relevant to
7 those material intent issues. To be relevant, an uncharged offense must
8 tend logically, naturally and by reasonable inference to prove the
9 issue(s) on which it is offered. (*People v. Guerrero* (1976) 16 Cal.3d
10 719, 724, and cases cited; *Thompson* [(1980)], 27 Cal.3d [303] at p.
11 316.) **(We have long recognized “that if a person acts similarly in
12 similar situations, he probably harbors the same intent in each
13 instance”** (*Thompson, supra*, 27 Cal.3d at p. 319; *People v. Pendleton*
14 (1979) 25 Cal.3d 371, 376-378; *People v. Schader* (1959) 71 Cal.2d
15 761, 777; *Kelley* [(1967)] 66 Cal.2d 232, 242-243), and that such prior
16 conduct may be relevant circumstantial evidence of the actor's most
17 recent intent. The inference to be drawn is not that the actor is *disposed*
18 to commit such acts; instead, the inference to be drawn is that, in light of
19 the first event, the actor, at the time of the second event, must had the
20 intent attributed to him by the prosecution. (See *Schader, supra*, 71
21 Cal.2d 761, 777; Imwinkelried, *Uncharged Misconduct Evidence* (1984)
22 § 4:01.)

23 The reasoning underlying use of an actor's prior acts as
24 circumstantial evidence of that actor's later intent is well explained by
25 Wigmore. It is based on **“the doctrine of chances – the instinctive
26 recognition of that logical process which eliminates the element of
27 innocent intent by multiplying instances of the same result until it is
28 perceived that this element cannot explain them all.** Without
formulating any accurate test, and without attempting by numerous
instances to secure absolute certainty of inference, the mind applies this
rough and instinctive process of reasoning, namely, that an unusual and
abnormal element might perhaps be present in one instance, but that **the
oftener similar instances occur with similar results, the less likely is
the abnormal element likely to be the true explanation of them. [¶]**

1 . . . In short, similar results do not usually occur through abnormal
2 causes; and the recurrence of a similar result (here in the shape of an
3 unlawful act) tends (increasingly with each instance) to negative
4 accident or inadvertence or self-defense or good faith or other innocent
5 mental state, and tends to establish (provisionally, at least, though not
6 certainly) the presence of the normal, i.e., criminal, intent accompanying
7 such an act; and the force of each additional instance will vary in each
8 kind of offense according to the probability that the act could be
9 repeated, within a limited time and under given circumstances, with an
10 innocent intent.” (2 Wigmore, Evidence (Chadbourn rev. 1979) § 302, at
11 p. 241; see also Wydick, *Character Evidence: A Guided Tour of the
12 Grotesque Structure* (1987) 21 U.C. Davis L.Rev. 123, 166-169; Imwinkelried,
13 *supra*, § 4:01.)

14 Given the similarities of defendant’s approach to Gavin and to Jason Francia,
15 Jonathan Spence, Wade Robeson, Brett Barnes, Macaulay Culkin, Jimmy Safechuck and
16 Jordan Chandler, the fact of his molestation of Gavin cannot seriously be doubted. The
17 charged and uncharged instances of molestation are more than substantially similar, and no
18 policy considerations set forth in Evidence Code section 352 (see discussion, *infra*) would bar
19 the admission of the proposed evidence of the uncharged offenses.

20 OPPORTUNITY

21 A common denominator of Jackson’s approach to wooing young boys was his use
22 of the wonderland environment of Neverland Valley Ranch and its progressive isolation of the
23 children from parental supervision and the watchful eyes of third parties.

24 Through this method, Jackson was able to create the secretive, closed and
25 secured atmosphere that enabled him to eventually facilitate his victims’ seduction and
26 eventually their molestation. His use of this systematic approach in both the charged and
27 uncharged offenses, allows the trier of fact to infer that Jackson created this secure secretive
28 and closed atmosphere in both the uncharged offenses and the charged offense for the same
purpose. As such, the opportunity to commit both the charged and uncharged offenses was

1 created by the defendant's design.

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III

SECTION 1108 SPECIFICALLY PROVIDES FOR THE ADMISSION OF EVIDENCE OF AN ACCUSED SEX OFFENDER'S "DISPOSITION" TO COMMIT SUCH OFFENSES. SECTION 1108 IS CONSTITUTIONAL. IT SHOULD BE APPLIED CONSISTENTLY WITH THE LEGISLATURE'S INTENT THAT HIGHLY PROBATIVE EVIDENCE OF AN ACCUSED'S DISPOSITION TO COMMIT SEXUAL OFFENSES BE MADE AVAILABLE TO THE TRIER OF FACT ON THE ISSUES OF CREDIBILITY AND THE GUILT OR INNOCENCE OF THE ACCUSED

A. Evidence Code section 1108

Evidence Code Section 1108 governs the admissibility of evidence of the defendant's commission of other sexual offenses to demonstrate his *propensity* to commit such offenses.

That section provides as follows:

(a) In a criminal action in which the defendant is accused of a sexual offense, **evidence of the defendant's commission of another sexual offense** or offenses is not made inadmissible by Section 1101, if the evidence is not inadmissible pursuant to section 352.

(b) In an action in which evidence is to be offered under this section, the people shall disclose the evidence to the defendant, including statements of witnesses or a summary of the substance of any testimony that is expected to be offered in compliance with the provisions of Section 1054.7 of the Penal Code.

(c) This section shall not be construed to limit the admission or consideration of evidence under any other section of this code.

(d) As used in this section, the following definitions shall apply:

(1) "Sexual offense" means a crime under the law of a state or of the United States that involved any of the following:

(A) Any conduct proscribed by Section 243.4, 261, 261.5, 262, 264.1, 266(c), 269, 286, 288, 288a, 288.2, 288.5, or 289, or subdivision (b), (c), or (d) of Section 311.2 or Section 311.3, 311.4, 311.10, 311.11, 314, or 647.6 of the Penal Code.

1 (B) Any conduct proscribed by Section 220 of the Penal Code, except assault
with intent to commit mayhem.

2 (C) Contact, without consent, between any part of the defendant's body or an
3 object and the genitals or anus of another person.

4 (D) Contact, without consent, between the genitals or anus of the defendant and
5 any part of another person's body.

6 (E) Deriving sexual pleasure or gratification from the infliction of death, bodily
injury, or physical pain on another person.

7 (F) An attempt or conspiracy to engage in conduct described in this paragraph.

8 (2) "Consent" shall have the same meaning as provided in Section 261.6 of the
9 Penal Code, except that it does not include consent which is legally ineffective
10 because of the age, mental disorder, or developmental or physical disability of the
victim.

11 (Bold emphasis added.)

12 Please note that Evidence Code section 1101, subdivision (a) was amended to
13 exclude the special rules of Section 1108 from its general prohibition by the legislation that
14 added section 1108 to the Evidence Code.

15 B. Section 1108 Is Constitutional

16 Evidence Code section 1108 has been upheld against attack on the grounds that it
17 violates a defendant's constitutional rights to equal protection (*People v. Fitch* (1997) 55
18 Cal.App.4th 172, 186 (*Fitch*) and due process (*People v. Falsetta* (1999) 21 Cal.4th 903
19 (*Falsetta*), approving *Fitch*), and that it is an ex post facto provision. (*Fitch, supra*, at pp. 185-
20 186.)

21 C. The Legislature's Primary Purpose In Enacting Section
22 1108 – To Allow Admission Of Evidence Highly Probative
23 Of The Propensity Of A Defendant To Commit Acts Of
24 Molestation Of Trusting Young Victims In Private To
25 Support The Credibility Of Those Victims At Trial –
26 Is Manifest

27 *People v. Falsetta, supra*, 21 Cal.4th 903 discussed the legislative history of section
28 1108 at length:

1 Available legislative history indicates section 1108 was intended
2 in sex offense cases to relax the evidentiary restraints section 1101,
3 subdivision (a), imposed, to assure that the trier of fact would be made
4 aware of the defendant's other sex offenses in evaluating the victim's
5 and the defendant's credibility. In this regard, section 1108 implicitly
6 abrogates prior decisions of this court indicating that "propensity"
7 evidence is per se unduly prejudicial to the defense. (See, e.g., *People*
8 *v. Alcala* (1984) 36 Cal.3d 604, 630-631 (*Alcala*).

9 As the Court of Appeal stated in one earlier case, "Our elected
10 Legislature has determined that the policy considerations favoring the
11 exclusion of evidence of uncharged sexual offenses are outweighed in
12 criminal sexual offense cases by the policy considerations favoring the
13 admission of such evidence. The Legislature has determined the need
14 for this evidence is 'critical' given the serious and secretive nature of
15 sex crimes and the often resulting credibility contest at trial. (Lungren,
16 *Stopping Rapists and Child Molesters by Giving Juries All the Facts--*
17 *Reforms in Federal and California Law* (1995) 17 Prosecutor's Brief
18 13, 13-14, 23.)" (*People v. Fitch* (1997) 55 Cal. App. 4th 172, 181-
19 182, fn. omitted (*Fitch*); see also *People v. Soto* (1998) 64 Cal. App.
20 4th 966, 983-984 (*Soto*) [quoting from the legislative history of section
21 1108, 29B pt. 3 West's Ann. Evid. Code (1999 pocket supp.) foll. §
22 1108, pp. 40-41]; *Review of Selected 1995 Cal. Legislation* (1996) 27
23 Pacific L.J. 761, 762 [The Legislature "declared that the willingness to
24 commit a sexual offense is not common to most individuals; thus,
25 evidence of any prior sexual offenses is particularly probative and
26 necessary for determining the credibility of the witness."].)

27 As a letter by the author of the legislation, contained in the
28 Assembly Journal, states, section 1108 "permits courts to admit such
evidence on a common sense basis--without a precondition of finding
a "non-character" purpose for which it is relevant--and permits rational
assessment by juries of evidence so admitted. This includes
consideration of the other sexual offenses as evidence of the
defendant's disposition to commit such crimes, and for its bearing on
the probability or improbability that the defendant has been falsely or
mistakenly accused of such an offense." (Letter by Assemblyman
Rogan regarding Assem. Bill No. 882 (1995-1996 Reg. Sess.)
published in 2 Assem. J. (1995-1996 Reg. Sess.) p. 3278 (Assembly

1 Journal), reprinted at 29B pt. 3 West's Ann. Evid. Code, *supra*, foll. §
2 1108, at pp. 40-41.)

3 Section 1108 was modeled on rule 413 of the Federal Rules of
4 Evidence, (28 U.S.C.) adopted in 1994, which provides in pertinent
5 part that "(a) In a criminal case in which the defendant is accused of an
6 offense of sexual assault, evidence of the defendant's commission of
7 another offense or offenses of sexual assault is admissible, and may be
8 considered for its bearing on any matter to which it is relevant."

9 Federal rule 414 allows similar "propensity" evidence in child
10 molestation cases. (See *Soto, supra*, 64 Cal. App. 4th at pp. 980, 982;
11 see also 2 Assem. J., *supra*, at p. 3277, reprinted at 29B pt. 3 West's
12 Ann. Evid. Code, *supra*, foll. § 1108, at p. 40; *Review of Selected 1995*
13 *Cal. Legislation, supra*, 27 Pacific L.J. at p. 762; see generally, 23
14 Wright & Graham, Federal Practice and Procedure (1999 supp.) §
15 5411-5417A, pp. 287-374.) As we discuss below (*post*, p. 921), the
16 federal circuit courts have rejected constitutional challenges to these
17 new rules.

18 (*People v. Falsetta, supra*, 21 Cal.4th 903, at pp. 911-912; fn. omitted.)

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D. In Deciding Whether To Exercise Its Discretion To Exclude
Evidence Pursuant To Evidence Code Section 352, The
Court Should Be Mindful Of The Legislature's Purpose In
Enacting Section 1108

20 "The relevancy of evidence that may be offered upon an issue of fact depends upon
21 the nature of the issue to sustain which or against which it is offered, and a wide discretion is
22 left to the trial judge in determining whether it is admissible or not." (*People v. Hess* (1951)
23 104 Cal.App.642, 676.) "Where the evidence relates to a critical issue, directly supports an
24 inference relevant to that issue, and other evidence does not as directly support the same
25 inference, the testimony must be received over a section 352 objection absent highly unusual
26 circumstances." (*Kessler v. Gray* (1978) 77 Cal.App.3d 284, 291.)

27 "... [S]ection 1108 affects the practical operation of section 352
28 balancing "because admission and consideration of evidence of other

1 sexual offenses to show character or disposition would be no longer
2 treated as intrinsically prejudicial or impermissible. **Hence, evidence**
3 **offered under [section] 1108 could not be excluded on the basis of**
4 **[section] 352 unless ‘the probability that its admission will . . . create**
5 **substantial danger of undue prejudice’ . . . substantially outweighed**
6 **its probative value concerning the defendant's disposition to commit**
7 **the sexual offense or offenses with which he is charged and other**
8 **matters relevant to the determination of the charge.** As with other
9 forms of relevant evidence that are not subject to any exclusionary
10 principle, the presumption will be in favor of admission.” (Historical
11 Note, 29B pt. 3, West's Ann. Evid. Code, *supra*, foll. § 1108, p. 31.)
12 Section 1108 does not require “more exacting requirements of
13 similarity between the charged offense and the defendant's other
14 offenses” (*Ibid.*) Such a requirement was not added to the statute
15 because ‘doing so would tend to reintroduce the excessive requirements
16 of specific similarity under prior law which [section 1108] is designed to
17 overcome, . . . and could often prevent the admission and consideration
18 of evidence of other sexual offenses in circumstances where it is
19 rationally probative. Many sex offenders are not ‘specialists’, and
20 commit a variety of offenses which differ in specific character.” (*Id.* at
21 pp. 31-32.)”

22 (*People v. Callahan* (1999) 74 Cal.App.4th 356, 368, quoting *People v. Soto*, *supra*, 64
23 Cal.App.4th 966, 984; bold emphasis added.)

24 As noted, “The Legislature has determined the need for this evidence is ‘critical’
25 given the serious and secretive nature of sex crimes and the often resulting credibility contest
26 at trial.” (*Fitch*, *supra*, 55 Cal.4th at p.182.) Evidence regarding a defendant’s propensity to
27 commit a sex act may be used by the trier of fact to evaluate the victim’s and the defendant’s
28 credibility without violating Due Process. (*People v. Branch*, *supra*, 91 Cal.App.4th 274, 281,
citing *People v. Falsetta*, *supra*, 21 Cal.4th 903, 910-911, 922.)

The circumstances of the case at bar epitomize the need, in “non-stranger
molestation” cases like this, of probative evidence to support the credibility of the youngster

1 who complains about an act that took place in private at the hands of a trusted adult. The
2 defense has made it abundantly clear that it intends to pull out all the stops in its effort to
3 impeach Gavin, his siblings and his mother, virtually the only percipient witnesses to
4 defendant's conduct with Gavin. Evidence of defendant's history of seducing and molesting
5 young boys in a similar fashion is highly probative and critically important to undergird the
6 credibility of the complaining witness in this prosecution.

7 E. Specific Similarity Of The Other Offenses And
8 The Charged Offenses Is Not Required To
9 Prove "Propensity"

10 With respect to the similarity of the prior offenses to the charged offenses,

11 Section 1108 does not require "more exacting requirements of
12 similarity between the charged offense and the defendant's other
13 offenses" (*Ibid.*) Such a requirement was not added to the statute
14 because 'doing so would tend to reintroduce the excessive requirements
15 of specific similarity under prior law which [section 1108] is designed to
16 overcome, . . . and could often prevent the admission and consideration
17 of evidence of other sexual offenses in circumstances where it is
18 rationally probative. Many sex offenders are not 'specialists,' and
19 commit a variety of offenses which differ in specific character.'" (*Id.* at
20 pp. 31-32.)

21 (*People v. Soto, supra*, 64 Cal.App.4th 966, 984, quoting Hist. Note, West's Ann. Evid. Code,
22 § 1108, p. 31.)

23 Thus, for admissibility to show a "common plan or scheme," there is no
24 requirement under section 1108 for close similarity. (See also *People v. Frazier* (2001) 89
25 Cal.App.4th 30, 40-41 [uncharged offenses admissible under § 1108, in general, and need not
26 be sufficiently similar to be admissible under § 1101(b)].) That said, it is also true that the
27 similarity of all of defendant's offenses, past and present, is striking.
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IV

THE ADMISSIBILITY OF PRIOR ACTS OF MOLESTATION
PURSUANT TO EVIDENCE CODE § 1108 IS SUBJECT TO
THE LIMITATIONS OF § 352, WHICH MUST BE APPLIED
WITH A VIEW TO FURTHER AND NOT DEFEAT THE
LEGISLATIVE INTENT IN ENACTING SECTION 1108

“In *Harris*, the Third District applied [Evidence Code section 352’s] criteria to admission of evidence proffered under section 1108. (*Harris, supra*, 60 Cal.App.4th at pp. 737-741.) As cast by the *Harris* court, the probative value of the evidence must be balanced against four factors: (1) the inflammatory nature of the uncharged conduct; (2) the possibility of confusion of issues; (3) remoteness in time of the uncharged offenses; and (4) the amount of time involved in introducing and refuting the evidence of uncharged offenses. (*Ibid.*)” (*People v. Branch, supra*, 91 Cal.App.4th 274, 282.)

In *People v. Falsetta, supra*, 21 Cal.4th 903, our Supreme Court upheld Evidence Code section 1108 against challenge on constitutional grounds. The court noted the interrelation of Evidence Code sections 1108 and 352:

By reason of section 1108, trial courts may no longer deem “propensity” evidence unduly prejudicial per se, but must engage in a careful

weighing process under section 352. Rather than admit or exclude every sex offense a defendant commits, trial judges must consider such factors as its nature, relevance, and possible remoteness, the degree of certainty of its commission and the likelihood of confusing, misleading, or distracting the jurors from their main inquiry, its similarity to the charged offense, its likely prejudicial impact on the jurors, the burden on the defendant in defending against the uncharged offense, and the availability of less prejudicial alternatives to its outright admission, such as admitting some but not all of the defendant's other sex offenses, or excluding irrelevant though inflammatory details surrounding the offense. [Citations.]

(21 Cal.4th 903, at pp 916-017.)

1 Those considerations will be discussed next.

2 A. “Nature and Relevance of Prior Offenses”

3 The *Falsetta* court did not expand on what it meant by the “nature and relevance” of
4 the prior offenses, evidence of may be offered in a sexual molestation prosecution pursuant to
5 Evidence Code section 1108. Presumably, there was no need for discussion of the threshold
6 requirement that only relevant evidence is admissible in a criminal prosecution, and that only
7 prior sex offenses come within section 1108’s express limitations.

8 B. Possible Remoteness

9 “Remoteness,” in terms of the time that has elapsed between the earlier, uncharged
10 offenses and the charged offenses, is of greater concern where the earlier offenses are
11 dissimilar. But as the court noted in *People v. Waples* (2000) 79 Cal.App.4th 1389, involving
12 prior offenses committed more than 20 years earlier for which the defendant had never been
13 prosecuted, “the similarities between the prior and current acts, a matter which Waples does
14 not here dispute, balanced out the remoteness.” (*Id.*, at p. 1395.)

15 *Waples, supra*, was cited and discussed approvingly by the Court of Appeal in
16 *People v. Branch, supra*, 91 Cal.App.4th 274. In *Branch*, evidence of a prior offense
17 committed by Branch some 30 years earlier, for which he was never prosecuted, was admitted
18 against him pursuant to Evidence Code section 1008. His conviction was affirmed on appeal,
19 the Court of Appeal noting that while, “[c]ertainly, a 30-year gap between the offenses . . . is a
20 substantial one,” it is also true that “[n]o specific time limits have been established for
21 determining when an uncharged offense is so remote as to be inadmissible.” *Branch*
22 distinguished *People v. Harris* (1998) 60 Cal. App.4th 727 by noting that in *Harris*, “the prior
23 offense involved a brutal rape, in which Harris beat his victim and stabbed her,” whereas the
24 offenses for which he was tried and convicted – acts of sexual intercourse, while employed as a
25 mental health nurse, with two women who were “vulnerable due to their mental condition.”
26 (60 Cal.App.4th at pp. 730-732.) *Branch* noted that “[T]he *Harris* court noted the striking
27 dissimilarities between the 23-year-old prior offense and the charged offenses and concluded
28 that the prior offense had no significant probative value’ on any disputed issue. (*Id.* at pp. 740-

1 741.)” (*People v. Branch, supra*, 91 Cal.App.4th 274, at pp. 284-285.)

2 For other decisions holding that remoteness of the prior offense or offenses was not
3 an obstacle to their admissibility, see *People v. Frazier* (2001) 89 Cal.App.4th 30 (uncharged
4 sexual assaults on young children 15 to 16 years earlier) and *People v. Pierce* (2002) 104
5 Cal.App.4th 893 (priors over 23 years old).

6
7 C. Degree of Certainty of Defendant’s Commission
8 Of The Prior Offense

9 While it is true that a prior offense that resulted in a conviction and prison offense
10 presents fewer problems of proof in a later prosecution, it is also true that a prior conviction
11 has never been regarded as a necessary condition to the use of prior offenses where evidence of
12 those priors is relevant to establishing an element of the charged offense. The serial offenses
13 of sexual predators who prey on young children with whom they have developed a relationship
14 of trust are much less frequently reported in timely fashion. For that reason, among others,
15 those offenses are less frequently prosecuted. Reviewing courts regularly affirm convictions in
16 cases involving sexual offenders who were not strangers to their victims, in which evidence of
17 earlier uncharged offenses that were committed well beyond the statute of limitations was
18 admitted pursuant to Evidence Code section 1108. (See, e.g., *People v. Branch, supra*, 91
19 Cal.App.4th 274; *People v. Soto, supra*, 64 Cal.App.3d 966; and see *People v. Frazier, supra*,
20 89 Cal.App.4th 30 [conviction reversed for instructional error] [evidence of prior act of
21 sodomy and oral copulation 16 years earlier not inadmissible on that account]; *People v.*
22 *Ewoldt, supra*, 7 Cal.4th 380 [12-year lapse of time not remote under Section 1101 where
23 evidence of prior offense otherwise is admissible] .

24
25 D. The Similarity To The Charged Offense

26 As noted above in our discussion of “Common Plan or Design” evidence, the prior
27 offenses disclosed by the proposed evidence are quite similar to the offenses charged by the
28 indictment, both as to the offenses themselves and the care with which defendant established a

1 relationship of trust over a period of time so as to minimize the risk of overtly offending his
2 young subject and, thus, the risk that the boy would complain in timely fashion. Indeed, that
3 similarity is striking.

4
5 E. The Burden On Defendant Of Defending
6 Against The Uncharged Offenses

7 No doubt, in every child molestation prosecution in which the plaintiff proposes to
8 introduce evidence of prior uncharged sex offenses pursuant to Evidence Code section 1108,
9 the defendant complains that he will unfairly be subjected to a “trial within a trial” and that the
10 time necessarily consumed in rebutting those prior offenses will “unduly” prolong his trial on
11 the charged offenses. (Lead defense counsel in this case recently cautioned the District
12 Attorney that “This trial could last a year or more if the 1993 investigation becomes an issue in
13 this trial.”)

14 If the proceedings to date in this case make one thing clear, it is that defendant will
15 spare neither time nor effort to impeach the credibility of John Doe and every member of his
16 family. The Legislature made evidence of prior sexual offenses admissible primarily because
17 such evidence will tend to bolster the credibility of a serial offender’s most recent victims.
18 “The Legislature has determined the need for this evidence is “critical” given the serious and
19 secretive nature of sex crimes and the often resulting credibility contest at trial. [Citation.]’
20 (*People v. Fitch* (1997) 55 Cal. App. 4th 172, 181-182, fn. omitted . . .)” (*People v. Falsetta*,
21 *supra*, 21 Cal.4th 903, 911-912.) “The Legislature “declared that the willingness to commit a
22 sexual offense is not common to most individuals; thus, evidence of any prior sexual offenses
23 is particularly probative and necessary for determining the credibility of the witness.” (*Id.*, p.
24 912, citing and quoting *Review of Selected 1995 Cal. Legislation* (1996) 27 Pacific L.J. 761,
25 762.)

26
27 F. “The Availability Of Less Prejudicial Alternatives”

28 As noted, *Falsetta* requires trial courts to consider “the availability of less

1 prejudicial alternatives to . . . outright admission [of “propensity” evidence], such as admitting
2 some but not all of the defendant’s other sex offenses, or excluding irrelevant though
3 inflammatory details surrounding the offense. [Citations.]” (21 Cal.4th 903, at 917.)

4 The evidence of defendant’s prior offenses proposed for admission in this case does
5 not include irrelevant detail, nor is it any more “inflammatory” than is inherent in the nature of
6 the prior and charged acts. Where both the earlier and charged offenses are similar, the jury is
7 not likely to be prejudiced by the “inflammatory nature” of the offenses, even though the
8 offenses, such as child molestation, may be inherently inflammatory. (*People v. Branch*,
9 *supra*; *People v. Waples*, *supra*, 79 Cal.App.4th 1389, 1395; *People v. Callahan*, *supra*, 74
10 Cal.App.4th 356, 371; *People v. Yavanov*, *supra*, 69 Cal.App.4th 392, 406.) The fact the
11 uncharged crimes involve a wider variety of sexual offenses over a longer period of time does
12 not render them significantly more prejudicial where they are similar to the charged offense.
13 (*People v. Branch*, *supra*, 91 Cal.App.4th at pp. 283-284.)

14 In any event, “Prejudicial evidence [is evidence that] “uniquely tends to evoke an
15 emotional bias against . . . [one party] as an individual and . . . has very little effect on the
16 issues.” [Citation.]’ [Citation.]” (*People v. Harlan* (1990) 222 Cal.App.3d 439, 445.) In
17 contrast, uncharged sex offenses are “uniquely probative” in sex crimes prosecutions. (*People*
18 *v. Yavanov*, *supra*, 69 Cal.App.4th 392, 405.) ““The prejudice which exclusion of evidence
19 under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a
20 defense that naturally flows from relevant, highly probative evidence.’ [Citations.] ‘Rather,
21 the statute uses the word in its etymological sense of “prejudging” a person or cause on the
22 basis of extraneous factors. [Citation.]’ [Citation.]” (*People v. Zapfen* (1993) 4 Cal.4th 929,
23 958.)

24 25 G. Undue Consumption of Time

26 Evidence Code section 352 declares that “The court in its discretion may exclude
27 evidence if its probative value is substantially outweighed by the probability that its admission
28 will (a) necessitate undue consumption of time or (b) create substantial danger of undue

1 prejudice, of confusing the issues, or of misleading the jury.” (Emphasis added.)

2 It is conceivable that “a case could arise in which the time consumed trying the
3 uncharged offenses so dwarfed the trial on the current charge as to unfairly prejudice the
4 defendant.” (*People v. Frazier, supra*, 89 Cal.App.4th 30, 42.) However, no published
5 decision addressing the issue of whether § 1108 evidence should be admitted has found this to
6 be the case.

7 The People anticipate that with the exception of two of the proposed witnesses,
8 direct examination of each of the witnesses referred to above would consume an hour or less.
9 If the Court determines that evidence of defendant’s prior sex offenses is admissible, probative
10 and critical on the issue of the credibility of the prosecution’s witnesses, the time necessary to
11 present that evidence will not be “undue.”

12 V

13 THE PROFFERED EVIDENCE IN THIS CASE IS
14 MORE PROBATIVE THAN PREJUDICIAL AND
15 SHOULD NOT BE EXCLUDED UNDER
16 EVIDENCE CODE § 352

17 Evidence Code section 352 provides:

18 The court in its discretion may exclude evidence if its probative value is
19 **substantially** outweighed by the probability that its admission will (a) necessitate undue
20 consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or
21 of misleading the jury. (Emphasis added.)

22 There may be a temptation simply to use standard section 1101(b) analysis in
23 evaluating probative value and prejudicial effect of proposed section 1108 “propensity”
24 evidence pursuant to Evidence Code section 352. But Evidence Code section 1108 affords a
25 “much broader exception to the general rule of exclusion of “other crimes” evidence.” (*People*
26 *v. Soto, supra* 64 Cal.App.4th 966, 985-986, quoting *People v. Harris, supra*, 60 Cal.App.4th
27 727, at 737.) The greatest concern expressed in case law applying Section 1101, subdivision
28 (b) is that the jury will consider such character evidence to prove predisposition. But evidence

1 of a “predisposition” to commit sex offenses is precisely what is made admissible by section
2 1108. In assessing whether to admit 1108 evidence under section 352, it must be kept in mind
3 that “Our elected Legislature has determined that the policy considerations favoring the
4 exclusion of evidence of uncharged sexual offenses are outweighed in criminal sexual offense
5 cases by the policy considerations favoring the admission of such evidence.” (*People v.*
6 *Falsetta, supra*, 21 Cal.4th 903, 911, quoting *People v. Fitch, supra*, 55 Cal.App.4th at pp.
7 181-182.)

8 Given that a predisposition to commit sex offenses may now be proved in a sex-
9 offense prosecution, what traditionally would have been viewed as unfairly prejudicial is now
10 in fact probative as a matter of law. (*Falsetta, id.*, at pp. 916-917.) To the extent that evidence
11 of prior bad acts has any tendency in reason to prove that the defendant is a child molester it is
12 probative and should weigh in favor of admission, regardless of whether it bears sufficient
13 earmarks of similarity under any other traditional 1101(b) analysis. In this regard the more acts
14 of prior sexual assault the stronger the probative value; as a matter of logic, the best way to
15 prove that a man is a sex offender is to prove that he has sexually offended again and again.
16 (See the discussion of the “Doctrine of Chances” in *People v. Robbins, supra*, 45 Cal.3d 867,
17 879-889, cited in *People v. Erving* (1998) 63 Cal.App.4th 652, 661-663 and *People v. Burnett,*
18 *supra*, 110 Cal.App.4th 868, 880. That doctrine is set out above, in our discussion of the
19 admissibility of evidence of a “common plan” pursuant to Evidence Code section 1101,
20 subdivision (b).)

21 With the enactment of Evidence Code section 1108, the Legislature ““declared that the
22 willingness to commit a sexual offense is not common to most individual; thus, evidence of
23 any prior sexual offenses is particularly probative and necessary for determining the credibility
24 of the witness.”” (*People v. Falsetta, supra*, 21 Cal.4th 903, 912. [Citation omitted].) See also
25 *People v. Trujillo Garcia* (2001) 89 Cal.App.4th 1321, 1331; *People v. Callahan, supra*, 74
26 Cal.App.4th 356, 367; *People v. Soto, supra*, 64 Cal.App.4th 966, 983; *People v. Yavanov,*
27 *supra*, 69 Cal.App.4th 392, 405 [uncharged sexual offenses are “**uniquely probative**” in sex
28 crimes prosecutions; our emphasis]; *People v. Harris, supra*, 60 Cal.App.4th 727, 739 [“often

1 predisposition evidence is **extremely probative**"; our emphasis].

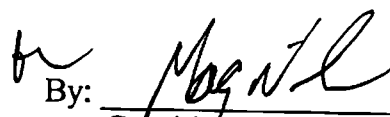
2 CONCLUSION

3 Upon the authorities discussed above, Plaintiff respectfully moves for an order of this
4 Court allowing Plaintiff to introduce evidence of Defendant Jackson's prior acts of sexual
5 molestation of young boys between 1990 and the present date, as outlined above.

6 DATED: December 10, 2004

7 Respectfully submitted,

8 THOMAS W. SNEDDON, JR.
9 District Attorney

10 
11 By: _____
12 Gerald McC. Franklin, Senior Deputy

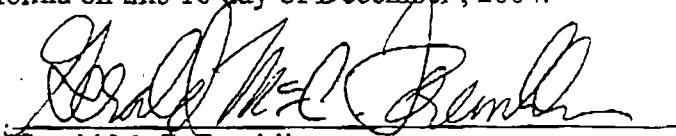
PROOF OF SERVICE

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 December 10, 2004, I served the within PLAINTIFF'S MOTION FOR ADMISSION OF EVIDENCE OF DEFENDANT'S PRIOR SEXUAL OFFENSES; MEMORANDUM OF POINTS AND AUTHORITIES (Evid. Code, § 1108) on Defendant, by THOMAS A. MESEREAU, JR., ROBERT SANGER, and BRIAN OXMAN by personally delivering a true copy thereof to Mr. Sanger's office in Santa Barbara, by transmitting a facsimile copy thereof to Attorney Mesereau, and by causing a true copy thereof to be mailed to Mr. Meserea, first class postage prepaid, at the addresses shown on the attached Service List.

I declare under penalty of perjury that the foregoing is true and correct.
Executed at Santa Barbara, California on this 10 day of December, 2004.


Gerald McC. Franklin

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SERVICE LIST

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