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Attorney for Defendant

SUPERIOR COURT OF CALIFORNIA, COUNTY OF

THE PEOPLE OF THE STATE OF	)	Case No.
CALIFORNIA,	)	
	)	MOTION IN LIMINE:
Plaintiff,	)	EXCLUDING USE OF
	)	SUBTERFUGE AROUND <u>BLED SOE</u>
vs.	)	AND LIMITING EVIDENCE OF
	)	MYTHS & CHILD ACCOMMODATION
	)	SYNDROME
	)	
Defendant.	)	Date:
	)	Time:
_____	)	Dept:

The defense moves for a protective order that:

1. The prosecution not be allowed to introduce the equivalent of a profile of a child molester or victim of a molest under the subterfuge of dispelling numerous myths about child molesters or victims of molest.

2. If the prosecution intends on introducing expert testimony to dispel alleged myths, that:

a. There be a hearing outside the presence of the jury for the prosecution to specify the alleged myth and a contested hearing as to whether or not it is actually a myth.

b. The testimony be narrowly limited to only those items found by the court to actually be myths.

c. That the testimony to dispel a myth be limited to victims as a class.

## I

The defense incorporates herein by reference the following related in limine motions also on file: **Insert applicable names such as Motion to Exclude Expert Witness Opinion That The Child Is A Victim of Sexual Molest, Motion to Exclude Evidence of Anatomical Dolls, and Motion to Exclude Evidence of Profiles of Child Molesters.**

## II

### USE OF EXPERT TESTIMONY TO DISPEL MYTHS

In **People vs. Bledsoe** (1984) 36 Cal.3d 236, 249, the California Supreme Court held that rape trauma syndrome was inadmissible to show a rape had actually occurred, but could be admissible to "disabus[e] the jury of some widely held misconceptions about rape and rape trauma victims so that it may evaluate the evidence free of the constraints of popular myths." Subsequently, reviewing courts have held valid the use of expert testimony to dispel myths about child molest victims. However, the testimony is limited to victims as a class and not a particular alleged victim. **People vs. Roscoe** (1985) 168 Cal.App.3d 1093, 1098-1100; **People vs. Gray** (1986) 187 Cal.App.3d 213, 218; **People vs. Coleman** (1989) 48 Cal.3d 112, 144; and **People vs. Stark** (1989) 213 Cal.App.3d 107, 116-117. In addition, testimony not properly

limited is excludable pursuant to Evidence Code section 352.

(*Roscoe*, supra, at p. 1100.)

### III

#### LIMITS ON EVIDENCE TO DISPEL MYTHS

In *People vs. Bowker* (1988) 203 Cal.App.3d 385, 394, 249 Cal. Rptr. 886, 891, the court considered whether or not the testimony of a child abuse accommodation syndrome expert fell within the **Bledsoe** exception permitting such testimony for the narrow purpose "of disabusing the jury of misconceptions as to how child victims react to abuse." (*Id.*, at p. 392.) The court reaffirmed that "**Bledsoe** must be read to reject the use of CSAAS evidence as a predictor of child abuse," and found the expert's testimony had exceeded the **Bledsoe** exception holding that "at a minimum the evidence must be targeted to a specific 'myth' or 'misconception' suggested by the evidence." (*Id.*, at pp. 393-394.) The court further held:

"In the typical criminal case, however, it is the People's burden to identify the myth or misconception the evidence is designed to rebut. Where there is no danger of jury confusion, there is simply no need for the expert testimony." (*Id.*, at p. 394.)

In determining that the expert's testimony erroneously exceeded the permissible limits of the **Bledsoe** exception, the **Bowker** court found that the expert's testimony was tailored to fit the children in that particular case, asked for sympathy, asked

that children be believed and by describing each aspect of CSAAS theory provided a scientific framework the jury could use to predict a molest occurred. The court ruled that this evidence should have been excluded. (Id., at pp. 394-395.)

#### IV

#### JURY INSTRUCTION

When testimony is introduced to dispel a myth the jury must be instructed not to use that evidence to predict a molest has been committed.

"Beyond the tailoring of the evidence itself, the jury must be instructed simply and directly that the expert's testimony is not intended and should not be used to determine whether the victim's molestation claims is true. The jurors must understand that CSAAS research approaches the issue from a perspective opposite to that of the jury. CSAAS assumes a molestation has occurred and seeks to describe and explain common reactions of children to the experience. (See *In re Sara M.*, supra, 194 Cal.App.3d at p. 593, 239 Cal.Rptr. 605.) The evidence is admissible solely for the purpose of showing that the victim's reactions as demonstrated by the evidence are not inconsistent with having been molested." (**Bowker**, supra, at p. 394; **People vs. Housley** (1992) 6 Cal.App.4th 947, 958-959 [such instruction required sua sponte].)

#### CONCLUSION

In sum, the prosecution cannot circumvent the limits placed on expert testimony in child molest cases by claiming each element of a profile of a child molester or child molest victim is a myth and under this subterfuge introduce expert opinion that the jury could use to predict that a molest had occurred.

Dated:

Respectfully submitted,

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Attorney for Defendant