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7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF

8 THE PEOPLE OF THE STATE OF)	Case No.
CALIFORNIA,)	
)	MOTION IN LIMINE:
9 Plaintiff,)	EXCLUDING POST-MOLEST
10 vs.)	SYMPTOMS OF THE ALLEGED
)	VICTIM AS AN IMPROPER
)	"PREDICTIVE"
)	
12 Defendant.)	Date:
)	Time:
)	Dept:

14 The defendant moves for a protective order that the alleged
15 complainant's post-molest symptoms not be admissible in evidence.
16 These symptoms include but are not limited to: (insert symptoms
17 revealed by the facts of the case if known)

18 I

19
20 **THE PROSECUTION MAY NOT INTRODUCE THE VICTIM'S**
POST-MOLESTATION BEHAVIOR AND STATEMENTS TO PROVE
21 **AN ALLEGED MOLESTATION ACTUALLY OCCURRED.**

22 Opinion testimony on rape trauma syndrome and Child Abuse
23 Accommodation Syndrome is inadmissible to prove that an alleged
24 victim was sexually attacked but may, in keeping with certain
25 narrow parameters, be admitted to support the credibility of a
26 witness. (**People vs. Bledsoe** (1984) 36 Cal.3d 236, 203 Cal.Rptr.
27 450; **In re Sara M.** (1987) 194 Cal.App.3d 585. Thus, it is
28 improper to prove that a crime had occurred based on symptoms

1 that the alleged victim exhibited post-crime. These symptoms
2 include, but are not limited to:

3 1. **People vs. Bledsoe**, supra, 36 Cal.3d at p. 242-243:

- 4 a. Disorientation
- 5 b. Stress
- 6 c. Agitation
- 7 d. Fear
- 8 e. Anxiousness
- 9 f. Subdued
- 10 g. Controlled
- 11 h. Flashbacks
- 12 i. Denial
- 13 j. Relives incident
- 14 k. Insecurity
- 15 l. Nightmares
- 16 m. Trauma
- 17 n. Mistrust

18 2. **In re Sara M.**, 194 Cal.App.3d at p. 589:

- 19 a. Consistency of story
- 20 b. Denial
- 21 c. Unusual sexual knowledge
- 22 d. Feeling of loss of control
- 23 e. Anger
- 24 f. Depression
- 25 g. Behavioral problems
- 26 h. Sleep disturbances
- 27 i. Nightmares
- 28 j. Eating disorders

- 1 k. False sense of maturity
- 2 l. Trust too much
- 3 m. Trust too little
- 4 n. Fear
- 5 o. Details given over time

6 **People vs. Jeff** (1988) 204 Cal.App.3d 309, 251 Cal.Rptr. 135

7 is controlling. In that case the prosecution presented one
8 expert witness who described the alleged complainant's post-
9 molest symptoms, including nightmares, crying, depression, low
10 self esteem, and helplessness. The prosecution then presented a
11 second witness to explain these symptoms as evidence of child
12 molest. Neither witness was called for the purpose of
13 rehabilitating the complaining witness. (**Id.**, at p. 338.) The
14 defense objected to the first witness on the ground that it was
15 evidence of post-molest emotions used to prove that the molest
16 had occurred and objected to the second witness testimony as
17 improper opinion testimony under **People vs. Bledsoe**, supra and **In**
18 **re Sara M.**, supra. The trial court held each witnesses'
19 testimony was admissible with respect to the symptoms exhibited
20 by the complaining victim, but that neither witness would be
21 allowed to state her opinion regarding whether a molestation had
22 in fact occurred. The Court of Appeal found the admission of
23 such testimony and the trial court's attempt to limit its import
24 ran afoul of the proscriptions set forth in **Bledsoe**, supra, and
25 its progeny and reversed the defendant's conviction:

26 "It is not significant the prosecutor told the jury
27 Susan Holland would merely describe symptom she
28 observed and '[a]ny conclusion that is to be drawn
will be yours.' In effect and result, the prosecutor,
by what he apparently believed was a brilliant

1 subterfuge, engaged in the exact conduct, here
2 condoned by the trial court, that was proscribed in
3 Bledsoe, Gray and In re Sara M. The challenged
4 testimony was not offered to rehabilitate a wavering
5 or equivocal Gypsy. Rather, it told the jury that
6 they should accept gypsy's version of these events as
7 true, that she was a victim, molested over a three-
8 year period by defendant, because here is now typical child
9 molest victims act and Gypsy fits the mold perfectly."
10 (**People vs. Jeff**, supra, 204 Cal.App.3d at p. 340.)

11 That the testimony concerning a complaining witness's post
12 molest symptoms does not come from an expert does not make it
13 admissible. In **In re Christie D.** (1988) 206 Cal.App.3d 469, 253
14 Cal.Rptr. 619 the court held that the non-expert status of
15 witness opinion concerning the sex play with anatomical dolls did
16 not make the play admissible. (**Id.**, at pp. 478-480.) The play
17 with anatomical dolls was not relevant to establish a molest had
18 occurred since there was no study showing its reliability as a
19 predictor whether the opinions interpreting the play were formed
20 by the expert or the trier of fact. Therefore, since experts
21 cannot form opinion interpreting post-molest symptoms as a
22 predictor of molest, the non-expert status of the witness does
23 not cure
24 the problem.

21 II

22 EVIDENCE CODE SECTION 352 PRECLUDES TESTIMONY 23 OF POST-MOLEST SYMPTOMS.

24 Evidence Code section 352 permits the trial court in
25 its discretion to exclude evidence if its probative value is
26 substantially outweighed by its prejudicial impact, if it will
27 consume an undue amount of time, confuse the issues or mislead
28 the jury. "Prejudice" within the meaning of section 352 is
defined as follows:

1 stated in **Reeder**:

2 "Evidence Code Section 352 must bow to the due
3 process right of a defendant to a fair trial and
4 to his right to present all relevant evidence of
5 significant probative value to his defense. In
6 **Chambers vs. Mississippi** (1973) 410 U.S. 284, 93
7 S.Ct. 1038, 35 L.Ed.2d 297, it was held that the
8 exclusion of evidence, vital to a defendant's
9 defense, constituted a denial of a fair trial in
10 violation of constitutional due process requirements."
11 (**Reeder, supra**, at p. 553, emphasis added.)

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CONCLUSION

Based on the foregoing, the prosecution should be excluded from presenting evidence of the alleged complainant's post-molest symptoms as a predictor that a molest in fact occurred. If the court allows such evidence, it must allow the defense to admit evidence of alternative explanations for the existence of such symptoms.

Dated:

Respectfully submitted,

Attorney for Defendant