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**FILED**  
 SUPERIOR COURT of CALIFORNIA  
 COUNTY of SANTA BARBARA

JAN 26 2005

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*\* Unsealed pursuant  
 to 1/16/05 Court  
 Order*

17 Attorneys for Defendant  
 18 **MICHAEL JOSEPH JACKSON**

19  
 20 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 21 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

22 THE PEOPLE OF THE STATE OF CALIFORNIA,

23 Plaintiffs,

24 vs.

25 MICHAEL JOSEPH JACKSON,

26 Defendant.

) Case No. 1133603

) MR. JACKSON'S OPPOSITION TO THE  
 ) MEDIA'S REQUEST THAT THE COURT  
 ) CLARIFY THAT MARTIN BASHIR IS  
 ) NOT SUBJECT TO THE GAG ORDER

) ~~UNDER SEAL~~

) Honorable Rodney S. Melville  
 ) Date: January 28, 2005  
 ) Time: 9:30 am  
 ) Dept: SM 8

SANTA BARBARA  
 05 JAN 26 PM 2:44

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 28 MR. JACKSON'S OPPOSITION TO THE MEDIA'S REQUEST THAT THE COURT CLARIFY THAT  
 MARTIN BASHIR IS NOT SUBJECT TO THE GAG ORDER

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 **THE MOTION FOR PROTECTIVE ORDER IS: 1) UNTIMELY; AND 2) FILED IN**  
4 **VIOLATION OF THE COURT'S PROVISIONAL SEALING ORDERS**

5 First, the witness, Martin Bashir, filed his Motion for Protective Order and served it on  
6 counsel by Fed-Ex so that it was received on Monday, January 24, 2005. That is not timely and  
7 makes it difficult to file an adequate Opposition sufficiently in advance so that the Court can  
8 properly consider it. The Court requires ten days notice for any motion.

9 Second, the Court specifically ordered the parties to file everything under conditional seal  
10 and to allow the Court to make the determination as to what should be sealed and/or redacted.  
11 This procedure was put in place for the benefit of Mr. Boutrous' other clients. Here, Mr.  
12 Boutrous simply determined unilaterally that his pleading was not subject to a sealing order on  
13 behalf of this client -- presumably because he represents other clients. However, neither Mr.  
14 Bashir nor Mr. Boutrous are entitled to special status and they, like all other witnesses  
15 approaching the court for relief, are required to follow the same procedures.

16 Mr. Boutrous should know better. He has been present at many hearings and has been  
17 granted status as a litigant in this case. He is copied on all pleadings and has a seat in front of the  
18 bar. Therefore, he has no excuse for not knowing the rules or for believing that he and Mr.  
19 Bashir are somehow not bound by them.

20 We are responding, as set forth below, the best we can on short notice. However, we  
21 would seek leave of the Court to continue the hearing or obtain other relief in light of the  
22 untimely and improper filing by movant.

23 II.

24 **MR. BASHIR IS A WITNESS SUBPOENAED BY THE PROSECUTION BUT HE HAS**  
25 **ALSO BEEN PLACED ON THE DEFENSE WITNESS LIST**

26 The fight over the scope of examination on direct examination during the people's case in  
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**MR. JACKSON'S OPPOSITION TO THE MEDIA'S REQUEST THAT THE COURT CLARIFY THAT  
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1 chief is that of the prosecution. In light of the untimely notice and since the Motion is directed to  
2 the prosecution's subpoena, we would respectfully maintain that the issues raised are to be  
3 litigated between the witness and the prosecution.

4 However, upon proper notice and an opportunity to be heard, if the witness seeks a  
5 protective order as to our cross-examination or our direct (in the event he is called by the  
6 defense), we would oppose such a motion. We cannot adequately respond on such short notice  
7 to the merits of his arguments, even, if by extension, they are intended to apply to the defense.

8 In this regard, the Court is aware that the defendant in a criminal case is entitled to  
9 confront and cross-examine witnesses called against him and to the compulsory attendance of  
10 witnesses on his own behalf under the Sixth and Fourteenth Amendments to the United States  
11 Constitution and Article 1, Section 15 of the California Constitution. To deny such access to a  
12 witness such as Mr. Bashir would also deprive Mr. Jackson of his right to a fair trial, due process  
13 of law and effective assistance of counsel under the Fifth, Sixth and Fourteenth Amendments to  
14 the United States Constitution and Article I, Sections 7 and 15 of the California Constitution.

15 Mr. Bashir may also overstate his credentials as a journalist. He is an entrepreneur. He  
16 produced a tabloid television program for money and sold it to the highest bidder. It was  
17 sensationalist entertainment not journalism.<sup>1</sup>

### 18 III.

#### 19 HOWEVER, MR. BASHIR IS SUBJECT TO THE "GAG" ORDER JUST LIKE ANY 20 OTHER WITNESS

21 Mr. Bashir does not now make his living reporting on the Michael Jackson case. He did a  
22 one-time salacious television program which he sold to the highest bidder in England, Granada  
23 Television. He then opened bidding in America for the distribution rights in this country. ABC  
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25 <sup>1</sup> Were the Court to determine how far from journalism the "Living with Michael  
26 Jackson" television program was, we respectfully request that the Court consider the videotapes  
27 lodged concurrently herewith, which represent the outtakes of Mr. Bashir's program and a Maury  
28 Povich program, respectively.

1 outbid NBC for the television show. He reportedly made over 5 million dollars on these  
2 transactions. Coincidentally (or not) he has obtained a job with ABC to be a television  
3 personality on 20/20 and has reportedly been paid over 2 million dollars for that. He presents  
4 pieces on air regarding other stories about other people on that television show.

5 While none of these facts makes him a journalist, neither do any of them suggest that he  
6 is actively reporting on the Michael Jackson case. Other than trading on his celebrity for having  
7 set up Mr. Jackson, his scripts have been on other subjects. Therefore, there is nothing of the  
8 urgency espoused by Mr. Boutrous in allowing real reporters to investigate and publish articles or  
9 television pieces on the real news.

10 However, all of that misses the point regarding the "gag" order. He is a witness. His  
11 television show, salacious and inaccurate as it may have been, is presented by the prosecution as  
12 key to their case. Both the prosecution and the defense indicate that they intend to call him as a  
13 witness. Therefore, Mr. Bashir, like any witness, is subject to the protective order. Celebrities  
14 are not exempt. He should be subject to the same rule which, in fact, Mr. Jackson is required to  
15 follow. The Court has made it clear that Mr. Jackson as an entertainer can comment and perform  
16 in the media regarding anything other than this case. So too Mr. Bashir, a celebrity of his own  
17 sort and making, can perform in public regarding anything else other than this case.

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28 MR. JACKSON'S OPPOSITION TO THE MEDIA'S REQUEST THAT THE COURT CLARIFY THAT  
MARTIN BASHIR IS NOT SUBJECT TO THE GAG ORDER

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IV.

CONCLUSION

Therefore, based on the reasons set forth above, Mr. Jackson respectfully requests that the Court clarify that Martin Bashir is subject to the Court's protective order.

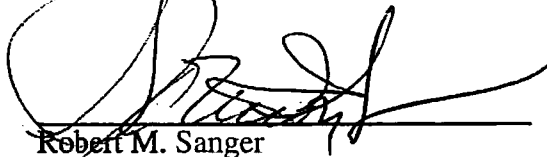
Dated: January 26, 2005

COLLINS, MESEREAU, REDDOCK & YU  
Thomas A. Mesereau, Jr.  
Susan C. Yu

SANGER & SWYSEN  
Robert M. Sanger

OXMAN & JAROSCAK  
Brian Oxman

By:



Robert M. Sanger  
Attorneys for Defendant  
MICHAEL JOSEPH JACKSON

## PROOF OF SERVICE

I, the undersigned declare:

I am over the age of 18 years and not a party to the within action. I am employed in the County of Santa Barbara. My business address is 233 East Carrillo Street, Suite C, Santa Barbara, California, 93101.

On January 26, 2005, I served the foregoing document entitled: **OPPOSITION TO THE MEDIAS REQUEST THAT THE COURT CLARIFY THAT MARTIN BASHIR IS NOT SUBJECT TO GAG ORDER BE FILED UNDER SEAL** On the interested parties in this action by depositing a true copy thereof as follows

Tom Sneddon  
Gerald Franklin  
Ron Zonen  
Gordon Auchincloss  
District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
805-568-2398

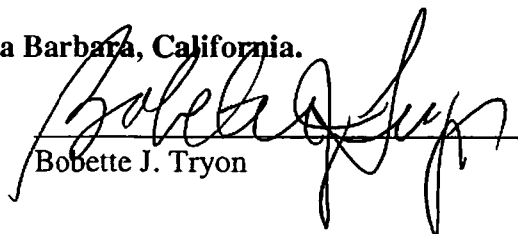
**BY U.S. MAIL** - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid and deposited during the ordinary course of business. Service made pursuant to this paragraph, upon motion of a party, shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit.

**BY FACSIMILE** - I caused the above-referenced document(s) to be transmitted via facsimile to the interested parties

**BY HAND** - I caused the document to be hand delivered to the interested parties at the address above.

**STATE** - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed January 26, 2005, Santa Barbara, California.

  
Bobette J. Tryon