

1 GIBSON, DUNN & CRUTCHER LLP
 2 THEODORE J. BOUTROUS, JR., SBN 132099
 3 MICHAEL H. DORE, SBN 227442
 333 South Grand Avenue,
 4 Los Angeles, CA 90071-3197
 Telephone: (213) 229-7804
 Facsimile: (213) 229-6804

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SANTA BARBARA

FEB 24 2005

GARY M. BLAIR, Executive Officer
Carrie L. Wagner
 CARRIE L. WAGNER, Deputy Clerk

5 Attorneys for MARTIN BASHIR

6
 7 SUPERIOR COURT, STATE OF CALIFORNIA
 8 FOR THE COUNTY OF SANTA BARBARA
 9

10 THE PEOPLE OF THE STATE OF
 11 CALIFORNIA,

12 Plaintiff,

13 vs.

14 MICHAEL JOE JACKSON,

15 Defendant.
 16
 17
 18
 19

Case No.: 1133603

**NOTICE OF MOTION AND MOTION FOR
 ORDER REQUIRING THAT ALL
 MOTIONS, APPLICATIONS AND OTHER
 FILINGS RELATING TO MARTIN BASHIR
 BE SERVED ON MARTIN BASHIR'S
 COUNSEL IN THIS MATTER;
 MEMORANDUM OF POINTS AND
 AUTHORITIES; [PROPOSED] ORDER**

Date: TBD
 Time: TBD
 Place: Department SM-8,
 Judge Rodney S. Melville

[VIA FACSIMILE]

20 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

21 PLEASE TAKE NOTICE that Martin Bashir, a news correspondent for ABC News will, and
 22 hereby does, move the Court for an order requiring that all motions, applications and other filings
 23 related to Mr. Bashir be served on his counsel in this matter.

24 This Motion is made on the ground that the parties are aware that the undersigned counsel
 25 represent Mr. Bashir and that any refusal to serve Mr. Bashir's counsel with motions, applications
 26 and other filings that relate to Mr. Bashir is wholly improper, unwarranted and a violation of
 27 Mr. Bashir's due process rights.
 28

**NOTICE OF MOTION AND MOTION FOR ORDER REQUIRING THAT ALL MOTIONS, APPLICATIONS AND OTHER
 FILINGS RELATING TO MARTIN BASHIR BE SERVED ON MARTIN BASHIR'S COUNSEL IN THIS MATTER;
 [PROPOSED] ORDER**

1 On February 15, 2005, counsel for Michael Jackson filed an application with this Court for an
2 order to show cause why Mr. Bashir should not be subject to contempt. In conjunction with this
3 application, Mr. Jackson's counsel filed a motion to have the application filed under seal, which also
4 asked the Court to subject Mr. Bashir's counsel to the Court's January 16, 2004 Protective Order (the
5 "Gag Order"). Mr. Jackson improperly and unjustifiably failed to serve either of these documents on
6 Mr. Bashir or his counsel, and it was not until three days later, when this Court posted its orders
7 denying these respective requests, that Mr. Bashir was even aware of these applications.
8 Accordingly, this Court should order that all motions, applications and other filings related to
9 Mr. Bashir must be served on his counsel in this matter.

10 This Motion is based on this Notice of Motion and Motion, the attached Memorandum of
11 Points and Authorities, the complete files and records in this action, and on such argument and
12 evidence as may be presented to the Court at the hearing on this Motion.

13
14 DATED: February 24, 2005

15 GIBSON, DUNN & CRUTCHER LLP
16 Theodore J. Boutros, Jr.
17 Michael H. Dore

18 By: 
19 Theodore J. Boutros, Jr.

20 Attorneys for MARTIN BASHIR
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

1
2 1. On February 15, 2005, Mr. Jackson's lawyers filed an application for an order to show
3 cause why Martin Bashir should not be held in contempt and an application to file that request under
4 seal. In doing so, they made serious, but baseless, allegations about both Mr. Bashir and his counsel.
5 These allegations made clear that Mr. Jackson is well aware that the undersigned represents Mr.
6 Bashir as his counsel. See, e.g., Jackson's Application for an Order to Show Cause Re Contempt,
7 Sanger Decl., ¶ 8. Yet Mr. Jackson's lawyers chose to file their applications under seal, and
8 intentionally refused to serve Mr. Bashir's counsel. See Jackson's Ex Parte Application for Order to
9 File Under Seal, Proof of Service. Mr. Bashir thus was denied the notice to which he is
10 constitutionally entitled. See *In re Cowan*, 230 Cal. App. 3d 281, 1288-89 (1991) ("In cases of
11 indirect contempt the affidavit required by statutory declaration is the means by which the accused is
12 given notice of the nature of the charge against which he must defend. . . . If there is no such
13 document, however, the accused has been deprived of the notice which he is statutorily and
14 constitutionally entitled."). This disregard for the governing rules, professional courtesy and Mr.
15 Bashir's due process rights is totally unjustifiable, and it must not continue.

16 2. Mr. Jackson's counsel claimed they did not serve the undersigned out of some fear
17 that Mr. Bashir's counsel would "hold press conferences or disseminate any of the materials, sealed
18 or otherwise, relating to this witness." Jackson's Ex Parte Application for Order to File Under Seal,
19 Sanger Decl., ¶ 4. But there was no basis for any such assertion. Indeed, Mr. Jackson's counsel do
20 not, and cannot, cite any examples of the undersigned violating the gag and sealing orders as they
21 apply in connection with his representation of Mr. Bashir, even though he objects to them.¹

22 In fact, there was no basis for Mr. Jackson's counsel to seek to file under seal the application
23 for an order to show cause, which was rooted exclusively in information broadcast to the public by
24 ABC. The two exhibits attached to the application, for example, both are taken from ABC's publicly
25

26
27 ¹ The passing assertion by Mr. Jackson's counsel that the undersigned's representation of
28 Mr. Bashir poses a "conflict of interest" is both disingenuous and specious.

1 accessible website. There was thus nothing to support what was only one of a long line of
 2 Mr. Jackson's formulaic, and unjustified, motions to seal.²

3 3. The applications filed by Mr. Jackson's counsel sought to initiate criminal proceedings
 4 against Mr. Bashir, made inflammatory, and groundless, allegations that he "insulted" this Court by
 5 violating the Gag Order and inducing Cory Feldman to violate the Gag Order and also sought
 6 restrictions on Mr. Bashir's counsel. Jackson's Application for an Order to Show Cause Re
 7 Contempt, Sanger Decl., ¶ 8. The Court released these applications in their entirety when it posted
 8 them on the website, and thus demonstrated that the proffered reasons for refusing to serve
 9 Mr. Bashir and his counsel, and indeed to file under seal at all, were groundless. The United States
 10 Constitution and California law dictate that Mr. Jackson's lawyers be ordered to serve Mr. Bashir's
 11 counsel with any further motions, applications or other filings that relate to Mr. Bashir. *See*
 12 *McDonald v. Severy*, 6 Cal. 2d 629, 631 (1936) ("The general rule is that notice of motion must be
 13 given whenever the order sought may affect the rights of an adverse party.").


22 ² It also should be noted that there was no basis for refusing to serve and file on the public record
 23 Mr. Jackson's application for an order to file under seal. Cal. R. Ct. 243.2(b)(2), (b)(5) (requiring
 24 that a copy of the motion to seal "must be served on all parties who have appeared in the case"
 25 and at least "filed in a public redacted version"). Perhaps Mr. Sanger's declaration attached to the
 26 application to file under seal was meant to provide the justification for refusing to serve *both* that
 27 application and the application regarding contempt. *See* Jackson's Ex Parte Application for Order
 28 to File Under Seal, Sanger Decl., ¶ 3 ("Furthermore, this Application for Order to Show Cause
 and Order to Show Cause must [sic] be served upon counsel of record for Martin Bashir,
 Theodore Boutros."). If that is the case, however, Mr. Jackson's counsel have failed to comply
 with Rule 379 of the California Rules of Court, which govern ex parte applications. In any event,
 Mr. Bashir hereby requests that the Court require service going forward.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED: February 24, 2005

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP
Theodore J. Boutros, Jr.
Michael H. Dore

By: 
Theodore J. Boutros, Jr.

Attorneys for MARTIN BASHIR

FEB 24 '05 01:36PM GIBSON, DUNN, CRUTCHER

P.9

CERTIFICATE OF SERVICE**BY FAX****I, Barbara Cruz, hereby certify as follows:**

I am employed in the County of Los Angeles, State of California; I am over the age of eighteen years and am not a party to this action; my business address is Gibson, Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, California 90071, in said County and State; I am employed in the office of Theodore J. Boutros, Jr., a member of the bar of this Court, and at his direction, on February 24, 2005, I served the following:

NOTICE OF MOTION AND MOTION FOR ORDER REQUIRING THAT ALL MOTIONS, APPLICATIONS AND OTHER FILINGS RELATING TO MARTIN BASHIR BE SERVED ON MARTIN BASHIR'S COUNSEL IN THIS MATTER; MEMORANDUM OF POINTS AND AUTHORITIES; [PROPOSED] ORDER

on the interested parties in this action, by the following means of service:

BY FACSIMILE: From facsimile number (213) 229-7520, I caused each such document to be transmitted by facsimile machine, to the parties and numbers indicated below. No error was reported by the machine.

Thomas W. Sneddon District Attorney Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101-2007 Attorneys for Plaintiffs	Tel.: (805) 568-2300 Fax: (805) 568-2398
Thomas A. Mesereau, Jr. Collins, Mesereau, Reddock & Yu LLP 1875 Century Park East, 7th Floor Los Angeles, CA 90067 Attorneys for Defendant Michael Jackson	Tel.: (310) 284-3120 Fax:
Robert Sanger Sanger & Swysen, Lawyers 233 E. Carrillo Street, Suite C Santa Barbara, CA 93101 Co-Counsel for Defendant Michael Jackson	Tel.: (805) 962-4887 Fax: (805) 963-7311

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

BY MAIL: I placed a true copy in a sealed envelope addressed as indicated below, on the above-mentioned date. I am familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Thomas W. Sneddon District Attorney Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101-2007 Attorneys for Plaintiffs	Tel.: (805) 568-2300 Fax: (805) 568-2398
Thomas A. Mescreau, Jr. Collins, Mescreau, Reddock & Yu.LLP 1875 Century Park East, 7th Floor Los Angeles, CA 90067 Attorneys for Defendant Michael Jackson	Tel.: (310) 284-3120 Fax:
Robert Sanger Sanger & Swysen, Lawyers 233 E. Carrillo Street, Suite C Santa Barbara, CA 93101 Co-Counsel for Defendant Michael Jackson	Tel.: (805) 962-4887 Fax: (805) 963-7311

I am employed in the office of Theodore J. Boutros, Jr., a member of the bar of this court, and that the foregoing document(s) was(were) printed on recycled paper.

(STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(FEDERAL) I declare under penalty of perjury that the foregoing is true and correct.

I certify under penalty of perjury that the foregoing is true and correct, that the foregoing document(s), and all copies made from same, were printed on recycled paper, and that this Certificate of Service was executed by me on February 24, 2005, at Los Angeles, California.


Barbara Cruz