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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SANTA BARBARA
16 SANTA MARIA DIVISION
17

18 THE PEOPLE OF THE STATE OF CALIFORNIA,)
19 Plaintiff,)
20 vs.)
21 MICHAEL JOSEPH JACKSON)
22 Defendant.)
23

CASE NO. 1133603

MR. JACKSON'S REPLY TO
OPPOSITION TO MOTION TO DISMISS
AND MOTION TO PERMIT
BROADCAST RESPONSE

TIME: 8:30 a.m.
DATE: March 11, 2005
PLACE: Department SM-2

24
25 Mr. Michael Jackson submits this Reply to the Opposition to his Motion for Order to Show Cause
26 re: Contempt. Mr. Jackson's motion is based on the following grounds:

27 (1) An exception to the January 23, 2004, Protective Order was made, specifically for and only for

28 Witness Bashir;

MR. JACKSON'S REPLY TO OPPOSITION TO MOT TO DISMISS AND MOT TO PERMIT BROADCAST RESPONSE

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

MAR - 9 2005

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

1 (2) If there was no exemption for Witness Bashir, then an Order to Show Cause should have been
2 issued by this court;

3 (3) If the Court will not issue an Order to Show Cause re: Contempt, Mr. Jackson must be entitled
4 to respond in kind,

5 (4) The prosecution's opposition is pure speculation and conclusion, which should prompt this
6 court to issue an Order to Show Cause to take evidence and make a determination on this issue.

7 **A. The Court Made an Exception to the Gag Order for Witness Bashir.**

8 **1. The Protective Order.**

9 The prosecution argues that Mr. Jackson does not understand what transpired with Witness Bashir's
10 motion to quash the subpoena for his attendance as a witness at trial and exempting him from the
11 restrictions of the "Gag Order" imposed on all other witnesses. It points out that the court denied Bashir's
12 motion for a protective order, but "he is not prevented from reporting or giving commentary to the same
13 extent that a non-witness journalist could." (Minute Order, p.5, Exhibit "B" to the Motion). However, it is
14 the prosecution who chooses to blind itself from the court's ruling on Witness Bashir's motion and the
15 practical effects of the ruling.

16 The fact is the court effectively modified the January 23, 2004, "Gag Order" when it felt the need to
17 explain, condone, and justify any conduct Bashir might engage in. The prosecution acknowledges the
18 modification when it states "...the Court quite properly deemed it appropriate to state what a practicing
19 television journalist who is also under subpoena as a witness may say and not say in the course of his
20 employment..." (Opp. to Motion to Dismiss, p.5, lns. 9-11). The January 23, 2004, Protective Order is
21 quite explicit as to who and what subject matter it covers and any order which expands, or otherwise
22 changes the plain meaning of the order, is by definition, a modification.

23 **2. Witness Bashier's Violation of the Order.**

24 Witness Bashir has taken the court's Minute Order and has run away with it. He has flaunted it in
25 everyone's face by his interview and appearances on ABC 20/20 and ABC Primetime which were
26 conveniently timed to immediately precede his testimony as the first witness in this case. What better way
27 to attract attention to himself and the prosecution's case than to appear on two (2) highly advertised
28 television specials and discuss the piece of evidence he was to be asked to authenticate.

1 The prosecution failed to read the transcript of the programs where Witness Bashir discusses the
2 case, the witnesses, the allegations of the indictment, the supplying of alcohol, exposures to allegedly
3 pornographic materials, and his own creation of the video Living with Michael Jackson which was
4 introduced into evidence and testified to by Witness Bashir. Witness Bashir interviews others who are on
5 the witness list in this case. Witness Bashir's conduct is intentional, flagrant, and this court should be
6 troubled by such conduct.

7 **B. Mr. Jackson's Application for Order to Show Cause re: Contempt.**

8 **1. Denial of First Application for Order to Show Cause without Prejudice.**

9 On February 14, 2005, Mr. Jackson filed an Application for Order to Show Cause re: Contempt
10 against Witness Bashir. The application was filed following the airing of ABC's program 20/20 on
11 February 11, 2005, and prior to ABC's program Primetime on February 17, 2005. On February 17, 2005,
12 the court denied the application for order to Show Cause without prejudice, allowing Mr. Jackson the
13 opportunity to refile.

14 The January 23, 2004, Protective order specifically provides that:

15 "It is the Order of this Court that no attorney connected with this case as Prosecutor or Defense
16 Counsel, ..., nor the defendant, Michael Jackson, ..., nor any other persons subpoenaed or expected to
17 testify in this matter, shall do any of the following:

18 ...
19 4. Express outside of court an opinion or make any comment for public dissemination as to
20 the weight, value, or effect of any evidence as tending to establish guilt or innocence;

21 5. Make any statement outside of court as to the content, nature, substance, or effect of any
22 statements or testimony that have been given, is expected to be given, in any proceeding in
23 or relating to this matter;

24 ...
25 7. Make any out of court statement as to the nature, source, or effect of any purported
26 evidence alleged t have been accumulated as a result of the investigation of this matter.

27 ..." (Emphasis added).
28

1 **D. The Prosecution's Response is Non-Responsive.**

2 The prosecution's opposition to Mr. Jackson's Motion to Dismiss and Motion to Permit Broadcast
3 Response is non-responsive at best. The pleading is full of summary conclusions, "The Defendant does not
4 appear to understand," (p.5, Opposition), "Virtually everything about Defendant's Motion is wrong," (p. 4,
5 Opposition, and "the court properly deemed it appropriate" (p. 5, Opposition). But conclusions are not
6 argument nor are conclusions persuasive nor do conclusions undo the protections afford Mr. Jackson by the
7 United States Constitution..

8 The prosecution fails to cite one case in its stance that Witness Bashir's pursuit of "investigation"
9 justifies his blatant violation of the Protective Order. This court was obviously disturbed by Witness
10 Bashir's continuing conduct when on March 1, 2005, it ordered Witness Bashir to respond to defense
11 counsel, Thomas Mesereau's, cross-examination about the making and circumstances surrounding the
12 video "Living with Michael Jackson" which was admitted into evidence. For Witness Bashir to refuse to
13 be cross-examined, to claim a First Amendment privilege, on materials which he testified to for the
14 prosecution and which he produced television specials to air prior to his trial appearance, is outrageous, and
15 cannot continue to be countenanced by this court.

16 **E. Conclusion.**

17 For the foregoing reasons, Mr. Jackson requests his Motion to Dismiss and Motion to Permit
18 Broadcast Response be granted.

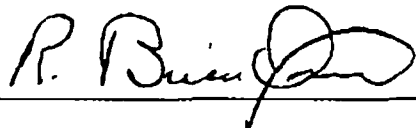
19 DATED: March 9, 2005

Respectfully submitted,

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27 By: 

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