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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

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SUPERIOR COURT, STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA BARBARA

THE PEOPLE OF THE STATE OF
CALIFORNIA,

Plaintiff,
vs.

MICHAEL JOE JACKSON,
Defendant.

Case No.: 1133603

**REPLY TO MR. JACKSON'S OPPOSITION
TO MOTION FOR CLARIFICATION THAT
"GAG ORDER" DOES NOT APPLY TO
JAY LENO**

Date: March 11, 2005
Time: 8:30 am
Place: Department SM-8,
Judge Rodney S. Melville

[VIA FACSIMILE]

I.

ARGUMENT

Without citing any caselaw, or even the First Amendment itself, Mr. Jackson's opposition suggests that the Court's January 16, 2004 Protective Order ("Gag Order") should apply to Mr. Leno and that it should prevent Mr. Leno even from talking about this trial on The Tonight Show.

See Opp'n at 2 & n.1. Mr. Jackson attempts to support this position by opining that Mr. Leno's commentary about this case is "hardly crucial . . . on important political or social topics." *Id.* at 2.

But the First Amendment prohibits public figures from asking the courts to silence speech based upon their subjective opinion of its importance or because they do not like its content.

Indeed, it is simply false that Mr. Leno's use of humor to engage in social commentary is somehow less valuable and worthy of First Amendment protection than other forms of speech.

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1 See *Hustler Magazine v. Falwell*, 485 U.S. 46, 55 (1988) (holding that the First Amendment
2 precluded a damage award arising from a cartoon parody depicting Jerry Falwell and noting that,
3 although political cartoons can be “slashing and one-sided,” “[f]rom the viewpoint of history it is
4 clear that our political discourse would have been considerably poorer without them.”); *see also*
5 *Freedlander v. Edens Broad., Inc.*, 734 F. Supp. 221, 228 (E.D. Va. 1990) (“Humor is a protected
6 form of free speech, to be protected as much, under appropriate circumstances, as political speech,
7 journalistic exposes, or religious tracts.”).

8 Moreover, while Mr. Jackson complains about the content of Mr. Leno’s commentary, that is
9 precisely the point: Mr. Jackson is, as he is quick to point out, a very famous public figure and he
10 cannot, consistent with the First Amendment, ask the courts to silence discussion about him.

11 *See Hustler Magazine*, 485 U.S. at 51 (1988) (noting that the First Amendment protects all forms of
12 speech, including humor that subjects “public figures as well as public officials . . . to vehement,
13 caustic, and sometimes unpleasantly sharp attacks”) (internal quotations omitted); *see also id.* at 56
14 (“It is firmly settled that . . . the public expression of ideas may not be prohibited merely because the
15 ideas are themselves offensive to some of their hearers.”) (quoting *Street v. New York*, 394 U.S. 576,
16 592 (1969)).¹

17 II.

18 CONCLUSION


19 There is no basis for applying a prior restraint on Mr. Leno’s speech and the Court should
20 clarify that its Gag Order does not apply to Mr. Leno. In the event the Court does apply the
21 Gag Order to Mr. Leno, the Court should clarify that it only limits Mr. Leno’s ability to disclose
22 evidence of which he may have direct, first-hand knowledge, assuming only for the sake of argument
23 that any such evidence exists.

24
25 ¹ Mr. Jackson’s assertion that a broad restriction on Mr. Leno’s speech is necessary to protect
26 Mr. Jackson’s right to a fair trial is specious. Mr. Jackson does not, and cannot, explain why such
27 a restriction would be justified given that the jury now has been seated and instructed to avoid
28 discussions in the media about the trial, Mr. Leno was not even arguably subject to the Gag Order
until February 17, 2005, and the rest of the world’s entertainers, including other late-night
television hosts, remain free to discuss the case at will.

DATED: March 9, 2005

Respectfully submitted,

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

By: 
Theodore J. Boutros, Jr.

Attorneys for JAY LENO

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CERTIFICATE OF SERVICE

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I, Jess Fernandez, 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 Michael H. Dore, a member of the bar of this Court, and at his direction, on March 9, 2005, I served the following:

REPLY TO MR. JACKSON'S OPPOSITION TO MOTION FOR CLARIFICATION THAT "GAG ORDER" DOES NOT APPLY TO JAY LENO

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.

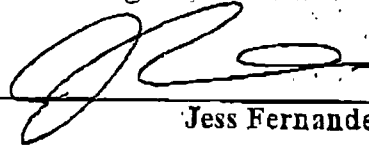
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I am employed in the office of Theodore J. Boutrous, Jr., a member of the bar of this court, and that the foregoing document(s) was(were) printed on recycled paper.

(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.

1 I certify under penalty of perjury that the foregoing is true and correct, that the foregoing
2 document(s), and all copies made from same, were printed on recycled paper, and that this Certificate
3 of Service was executed by me on March 9, 2005, at Los Angeles, California.

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Jess Fernandez

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