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10 Attorneys for Defendant  
11 **MICHAEL JOSEPH JACKSON**

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION**

14  
15 **THE PEOPLE OF THE STATE OF**  
16 **CALIFORNIA,**

17 Plaintiffs,

18 vs.

19 **MICHAEL JOSEPH JACKSON,**

20 Defendant.

) Case No. 1133603

) **OPPOSITION TO DISTRICT**  
) **ATTORNEY'S MOTION FOR ADMISSION**  
) **OF MARTIN BASHIR'S**  
) **"DOCUMENTARY" "LIVING WITH**  
) **MICHAEL JACKSON"**

) ~~UNDER SEAL~~

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

21  
22  
23  
24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 **INTRODUCTION**

26 The prosecution asks this Court to allow the prosecution to introduce a copy of the Martin

27  
28 **OPPOSITION TO DISTRICT ATTORNEY'S MOTION FOR ADMISSION OF MARTIN BASHIR'S**  
**"DOCUMENTARY" "LIVING WITH MICHAEL JACKSON"**

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

JAN 21 2005

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

1 Bashir "documentary" "Living with Michael Jackson" (hereinafter Bashir tape) into evidence.  
2 Mr. Jackson objects to the admission of a tape of the Bashir tape on the grounds that: (1) the tape  
3 contains hearsay; (2) the tape is not relevant evidence because it is heavily edited in the most  
4 sensational fashion possible; (3) the tape contains commentary of celebrity "journalists" opining  
5 on issues like Mr. Jackson's guilt; (4) the tape contains highly inflammatory and irrelevant  
6 material regarding matters such as Mr. Jackson's care of his own children, plastic surgery, Mr.  
7 Jackson's financial affairs, and other prejudicial matters. The admission of the Bashir tape  
8 threatens to deprive Mr. Jackson of his federal and state constitutional rights to a fair trial, due  
9 process of law, and right to a reliable verdict and sentence pursuant to the Fifth, Sixth, Eighth,  
10 and Fourteenth Amendments to the United States Constitution and Article 1, Sections 7, 15, 17  
11 and 24 of the California Constitution.

12 **ARGUMENT**

13 **I.**

14 **MR. JACKSON OBJECTS TO THE ADMISSION OF THE BASHIR TAPE BECAUSE**  
15 **IT CONTAINS HEARSAY AND IS IRRELEVANT**

16 The Bashir tape contains much more than statements of a party. The tape presents Mr.  
17 Jackson in a sensational fashion that is designed to attract television viewers by exploiting Mr.  
18 Jackson. Both Martin Bashir and Barbara Walters make unflattering comments about Mr.  
19 Jackson throughout the tape. These comments touch upon issues such as his care for his  
20 children, plastic surgery, his finances, and allegations of the sexual abuse of children. All of  
21 these statements constitute hearsay.

22 The tape is theatrical and includes elements such as dubbed in music, that becomes more  
23 frenetic and more ominous as the program progresses. It is heavily edited to portray Mr. Jackson  
24 in a light that is designed to attract viewers, not to present truth. Hollywood techniques were  
25 used to make the video more dramatic. Scenes are juxtaposed. The pace of the program is edited  
26 to build drama. It is not the kind of reliable evidence that should be presented to a jury.

27  
28 **OPPOSITION TO DISTRICT ATTORNEY'S MOTION FOR ADMISSION OF MARTIN BASHIR'S  
"DOCUMENTARY" "LIVING WITH MICHAEL JACKSON"**

1 The prosecution's proposed jury instructions are woefully inadequate in terms of  
2 unringing the bell. Playing a slickly produced Hollywood hit piece for the jurors, and then asking  
3 them to consider the tape for the "limited purpose of providing evidence of the alleged context of  
4 any action the defendant and the alleged co-conspirators may allegedly have taken" is ridiculous.

5 The prosecution's argument is essentially that the more prejudicial the tape is, in terms of  
6 damaging the viewer's impression of Michael Jackson, the more relevant it is to the alleged  
7 conspiracy charges. This argument is nothing more than an attempt to put inflammatory and  
8 irrelevant evidence in front of the jury under the guise of showing motive.

9 To allow the video at all would be unfair if we were not allowed to play portions that  
10 were deleted. Portions that were deleted were not made available to the defense because Granada  
11 Television has refused to turn them over.

12 II.

13 CONCLUSION

14 For the above stated reasons, Mr. Jackson objects to the introduction of the Bashir tape.

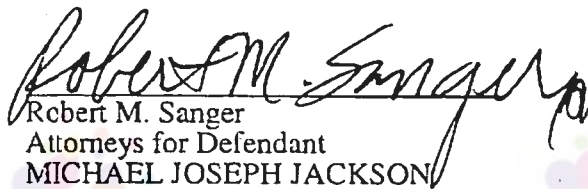
15 Dated: January 21, 2005

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

19 SANGER & SWYSEN  
20 Robert M. Sanger

21 OXMAN & JAROSCAK  
22 Brian Oxman

23 By:

24   
25 Robert M. Sanger  
26 Attorneys for Defendant  
27 MICHAEL JOSEPH JACKSON

28 OPPOSITION TO DISTRICT ATTORNEY'S MOTION FOR ADMISSION OF MARTIN BASHIR'S  
"DOCUMENTARY" "LIVING WITH MICHAEL 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 21, 2005, I served the foregoing documents on the interested parties in this action by depositing a true copy thereof as follows: EXPARTE APPLICATION FOR AN ORDER THAT NOTICE OF MOTION FOR AN ORDER THAT OPPOSITION TO DA MOTION FOR ADMISSION OF MARTIN BASHIRS DOCUMENTARY and on OPPOSITION TO DA MOTION FOR ADMISSION OF MARTIN BASHIRS DOCUMENTARY and REDACTED VERSION on the interested parties in this action by depositing a true copy thereof as follows:

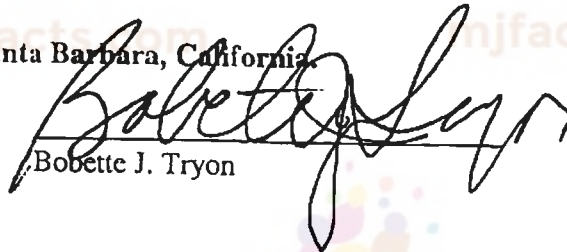
Tom Sneddon  
Gerald Franklin  
Ron Zonen  
Gordon Auchincloss  
District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
805-568-2398

       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.

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

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

Executed January 21, 2005, at Santa Barbara, California

  
Bobette J. Tryon