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

FEB 23 2005

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

FILED  
 FEB 23 11 00 AM  
 2005

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

CASE NO. 1133603

DECLARATION OF BRIAN OXMAN IN  
 SUPPORT OF MOTION TO DISMISS  
 AND MOTION TO PERMIT  
 BROADCAST RESPONSE

TIME: 8:30 a.m.  
 DATE: ~~March 7, 2005~~  
 PLACE: Department SM-2

~~FILED UNDER SEAL~~

**DECLARATION OF BRIAN OXMAN**

I, Brian Oxman, declare:

1. I am an attorney at law admitted into practice before all of the courts of the State of California and I am the attorney of record for the defendant, Michael Jackson. I submit this declaration in support of Mr. Jackson's Motion to Dismiss and Motion to Permit Broadcast Response in the above-entitled matter.

2. Plaintiff filed this action on December 18, 2003, charging Mr. Jackson with seven (7) counts of Lewd Acts Upon a Child in violation of Penal Code section 288a and two (2) counts of administering an intoxicant to a minor in violation of Penal Code section 222. The Complaint was based on interviews from three (3) complaining witnesses: Janet Arvizo, then age 35, who is the mother of the two (2) minor complaining witnesses, Gavin Arvizo, then age 14, and Star Arvizo, then age 13. The charges alleged Mr. Jackson manually masturbated Gavin Arvizo while he was unconscious and unable to recall any of the events from alcohol consumption, and he improperly touched Star Arvizo's leg over his clothes.

3. Mr. Jackson voluntarily surrendered to the Santa Barbara Sheriff's Office on November 20, 2003, and was arraigned on the original charges on January 16, 2004. On January 23, 2004, because of the enormous amount of public attention the proceedings generated, the court entered a Protective Order designed to limit out of court statements from parties and witnesses. The Order provided that no party or any attorney, "nor any person subpoenaed or expected to testify in this matter," shall engaged in any of the following acts:

"1. Release or authorize the release for public dissemination or any purported extrajudicial statement of either the defendant or witnesses relating to this case;

"2. Release or authorize the release of any documents, exhibits, photographs, or any evidence, the admissibility of which may have to be determined by the Court;

"3. Make any statement for public dissemination as to the existence or possible existence of any document, exhibit, photograph or any other evidence, the admissibility of which may have to be determined by the Court;

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

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

4 "6. Issue any statement as to the identity of any prospective witness, or the witness's  
 5 probable testimony, or the effect thereof;

6 "7. Make any out-of-court statement as to the nature, source, or effect of any purported  
 7 evidence alleged to have been accumulated as a result of the investigation of this matter." (Exhibit  
 8 "A").

9 4. On January 28, 2005, Witness Martin Bashir filed a Motion for Protective Order Precluding  
 10 Martin Bashir from Being Required to Testify and for Clarification that "Gag" Order Does not Apply to  
 11 Martin Bashir. Witness Bashir was the broadcast journalist who had fraudulently induced Mr. Jackson to  
 12 make a television program with him entitled "Living with Michael Jackson" which was broadcast in  
 13 England on February 3, 2003, and the U.S. on February 7, 2003, and resulted in an international commotion  
 14 over the commentary and manner in which he edited the material in the program to defame Mr. Jackson.  
 15 That program formed the basis for the prosecution of this case because plaintiff claims the broadcast  
 16 motivated the crimes in question. Witness Bashir, who was subpoenaed by the prosecution on January 28,  
 17 2005, requested the Court exempt him from the "gag order" so that he could broadcast comments about  
 18 Mr. Jackson similar to his prior broadcast that ignited the international controversy.

19 5. On February 8, 2005, the Court entered a Minute Order dated January 28, 2005, (Exhibit "B,")  
 20 which modified the January 23, 2004, Protective Order for Witness Bashir, and only for Witness Bashir.  
 21 Without making any findings, the Court stated:

22 "Attorneys Boutrous, Sneddon and Mescreau addressed the Court re: Motion for Protective  
 23 Order Precluding Martin Bashir from Being Required to Testify and for Clarification that "Gag"  
 24 Order Does Not apply to Martin Bashir. The Court denied the requested protective order re: the  
 25 Bashir subpoena. The Court further ordered that the intent of the "Gag" Order is that Mr. Bashir,  
 26 along with other witnesses, would not identify the minors involved and would not disclose through  
 27 the media evidence of the charges known to him by personal observation; that so long as the order  
 28 remains in effect Mr. Bashir will be bound by these restrictions, but he is not prevented from

1 reporting or giving commentary to the same extent that a non-witness journalist could." (Minute  
2 Order, p. 5, par. 7)(emphasis added).

3 6. The exemption permitting Witness Bashir to make comments as a non-witness on the case  
4 created a discrimination against Mr. Jackson that violated his fundamental rights to a fair trial. The court  
5 permitted Witness Bashir, above any other witness, including other witness journalists such as Larry King,  
6 Rita Cosby, and Ed Bradley, to be exempt from the court's Protective Order and to engage in a unprovoked,  
7 nationally broadcast attack against Mr. Jackson the same as if he were a non-witness. The result was a  
8 vicious and fraudulent attack on Mr. Jackson two (2) network television broadcasts from Witness Bashir  
9 that have destroyed Mr. Jackson's right to a fair trial while Mr. Jackson is helpless to respond under the

10 7. The invidious discrimination created by permitting Witness Bashir to attack Mr. Jackson in  
11 public, but simultaneously preventing Mr. Jackson from exercising his First Amendment rights to respond,  
12 has so violated Mr. Jackson's personal liberties that the damage is irreparable. The Court approved assault  
13 on Mr. Jackson was unlike any prior incident in the history of American law or journalism. No court has  
14 ever permitted, by modifying a "gag order," a witness to engage in such a vicious and vindictive nationwide  
15 broadcast against a party to a proceeding before it, and the appearance of impropriety created by the Court's  
16 modification of the "gag order" to permit Witness Bashir's attack will live in infamy.

17 8. On February 11, 2005, and again on February 17, 2005, Witness Bashir engaged in more than  
18 two and one-half (2 1/2) hours of major network programming where witness were paid to attack Michael  
19 Jackson. (The 2-11-05 ABC 20/20 program transcript is attached as Exhibit "C" and the 2-17-05 ABC  
20 Primetime transcript is Exhibit ""D"). Witness Bashir said that Michael Jackson was a pedophile, that he  
21 groomed little boys for seduction, that he masturbated over the telephone with little boys, that he supplied  
22 little boys with alcohol before he masturbated them, and that he orally copulated little boys. There was no  
23 evidence whatsoever to support any of Witness Bashir's bought and paid for claims, and all of this was  
24 done with the permission of the Court pursuant to a special modification of the "gag order" so that Witness  
25 Bashir could now act like a non-witness.

26 9. To the public, and especially to Mr. Jackson, it appeared the Court approved of what Witness  
27 Bashir did because he could not have done it without the Court's help. The damage here is irreversible, and  
28 Mr. Jackson sits before this Court helpless to respond, restrained by a "gag order" because he is a witness,

1 while Witness Bashir is permitted to act "to the same extent that a non-witness journalist could." The  
2 Court has violated Mr. Jackson's most fundamental rights to freedom of speech and a fair trial, while the  
3 Court has granted an exemption for a journalist bent on fraudulently destroying Mr. Jackson.

4 10. The devastating impact of the Court permitting and sanctioning Witness Bashir to try this case  
5 in the press cannot be overstated. Sheppard v. Maxwell, 384 U.S. 333, 358 & n. 11 (1966). There was no  
6 excuse nor justification to permit a witness in the case to comment on the case as a non-witness, and the  
7 Court's modification of the "gag order" has irreversibly destroyed Mr. Jackson's rights to a fair trial.

8 11. The Court confirmed the modification and emboldened Witness Bashir when on February 14,  
9 2005, Mr. Jackson submitted a request that an Order to Show Cause re: Contempt be issued against  
10 Witness Bashir for his broadcast of February 11, 2005 (Exhibit "E"). In that broadcast Witness Bashir  
11 claimed Mr. Jackson had engaged in grooming a subpoenaed witness, Corey Feldman, for molestation, and  
12 Witness Bashir's comments unquestionably violated the January 23, 2004, Protective Order. However, the  
13 Court denied Mr. Jackson's request and refused to issue the Order to Show Cause (Exhibit "F"), and it was  
14 now unambiguous that Witness Bashir was exempt from the prohibitions of the "gag order," so he  
15 proceeded to broadcast on February 17, 2005, a nationwide diatribe of false accusations through paid  
16 witnesses, some of whom were under subpoena to this Court and have been served with the "gag order" in  
17 this case, commenting on this case, and accusing Mr. Jackson of conduct related to this case.

18 12. Plaintiff has come before this Court making the claim that the first time Witness Bashir  
19 engaged in a defamatory and false documentary against Mr. Jackson on February 3 and 6, 2003, it so  
20 threatened Mr. Jackson's livelihood, well-being, and career with an adverse public reaction that he had to  
21 engage in child molestation and a vast conspiracy to abduct, falsely imprison, and extort a family. In fact,  
22 this claim comprises the entire foundation of plaintiff's case against Mr. Jackson. While the logic of the  
23 claim is absurd and the truth is contrary, there is no denying the fact that Witness Bashir has made it his  
24 sole pursuit in life to perpetrate false and salacious reports against Mr. Jackson that create a public furor,  
25 and the Court permitted him to do it.

26 13. Mr. Jackson requests the Court dismiss the charges. He cannot get a fair trial in view of the  
27 Court authorizing a witness to make two (2) nationwide television broadcasts accusing Mr. Jackson of vile  
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1 acts of molestation. There is no other remedy to the damage inflicted, and the prejudice can never be  
2 repaired.

3 14. Mr. Jackson requests the right to respond in-kind with two and one-half (2 1/2) hours of  
4 nationwide broadcast time to refute point-by-point each of the absurd claims Witness Bashir made against  
5 Mr. Jackson. The thought that this Court would permit a witness to try the case in public, while at the same  
6 time precluding Mr. Jackson from responding, violates fundamental fairness. The Court should permit Mr.  
7 Jackson the right to respond under the identical terms and conditions granted to Witness Bashir which was:

8 "that the intent of the 'Gag' Order is that [Mr. Jackson], along with other witnesses, would not  
9 identify the minors involved and would not disclose through the media evidence on the charges  
10 known to him by personal observation; that as long as the order remains in effect, [Mr. Jackson] will  
11 be bound by these restrictions, but he is not prevented from reporting or giving commentary to the  
12 same extent that a non-witness journalist could."

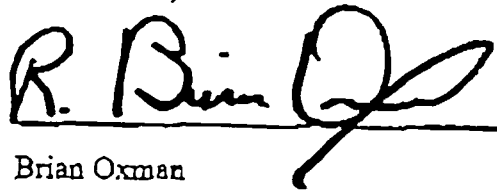
13 15. Mr. Jackson has received significant offers from television networks to produce and appear in  
14 television programs that respond to Witness Bashir. Mr. Jackson has a right to earn a living, engage in his  
15 chosen profession, and to respond to the attacks against him. Mr. Jackson needs to generate income  
16 because of the enormous costs placed upon him by this prosecution, and unless he is permitted to generate  
17 income from a televised response to Witness Bashir, the court will deprive Mr. Jackson of his right to earn  
18 a living, along with his ability to defend himself in this case.

19 16. The Court's modification of the January 23, 2004, Protective Order to permit Witness Martin  
20 Bashir to engage in an irrational and fraudulent attack on Mr. Jackson in several nationally broadcast  
21 television programs constituted an invidious discrimination against and destruction of Mr. Jackson's right  
22 to a fair trial. Mr. Jackson sustained irreparable injury because the Court sanctioned and approved through  
23 the modification of its "gag order" a witness to attack Mr. Jackson while Mr. Jackson was forced to sit  
24 silent and "gaged" thereby creating the appearance of impropriety, favoritism, and a violation of civil rights  
25 that cannot be erased by any remedial efforts. The case against Mr. Jackson should be dismissed because  
26 the Court's modification of the Protective Order violated Mr. Jackson's rights to a fair trial, and Mr.  
27 Jackson should be permitted to respond in a national broadcast with equal time and under the same terms.  
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct

Executed this 23rd day of February, 2005, at Santa Maria, California.

  
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Brian Oxman