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18 Attorneys for Defendant
19 **MICHAEL JOSEPH JACKSON**

20 SUPERIOR COURT OF THE STATE OF CALIFORNIA
21 FOR THE COUNTY OF SANTA BARBARA, COOK DIVISION

22 THE PEOPLE OF THE STATE OF CALIFORNIA,

23 Plaintiffs,

24 vs.

25 MICHAEL JOSEPH JACKSON,

26 Defendant.

) Case No. 1133603

) EX PARTE APPLICATION FOR AN
) ORDER THAT MR. JACKSON'S
) OPPOSITION TO THE MEDIA'S
) REQUEST THAT THE COURT CLARIFY
) THAT MARTIN BASHIR IS NOT
) SUBJECT TO THE GAG ORDER BE
) FILED UNDER SEAL

) Honorable Rodney S. Melville

) Date: January 28, 2005

) Time: 9:30 a.m.

) Dept: SM 8

27 TO THE CLERK OF THE ABOVE ENTITLED COURT:

28 Defendant requests that the Court issue an order that Mr. Jackson's pleading entitled MR.

EX PARTE APPLICATION FOR AN ORDER THAT MR. JACKSON'S OPPOSITION TO THE MEDIA'S
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

JAN 26 2005

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

1 JACKSON'S OPPOSITION TO THE MEDIA'S REQUEST THAT THE COURT CLARIFY THAT
2 MARTIN BASHIR IS NOT SUBJECT TO THE GAG ORDER and accompanying documents be
3 filed under seal and for such other such further relief as the Court may deem just and proper. This
4 request is based on the overriding interests of Mr. Jackson's rights to due process and a fair trial
5 under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I,
6 Sections 1, 7, and 15 of the California Constitution.

7 Dated: January 26, 2005

8 Respectfully submitted,

9 COLLINS, MESEREAU, REDDOCK & YU
10 Thomas A. Mesereau, Jr.
Susan C. Yu

11 SANGER & SWYSEN
12 Robert M. Sanger

13 OXMAN & JAROSCAK
14 Brian Oxman

15 By: 

16 Robert M. Sanger
17 Attorneys for Defendant
MICHAEL JOSEPH JACKSON

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EX PARTE APPLICATION FOR AN ORDER THAT MR. JACKSON'S OPPOSITION TO THE MEDIA'S
REQUEST THAT THE COURT CLARIFY THAT MARTIN BASHIR IS NOT SUBJECT TO THE GAG ORDER
BE FILED UNDER SEAL

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 I.

3 **THE COURT HAS THE AUTHORITY TO ORDER THAT**
4 **A RECORD BE FILED UNDER SEAL**

5 Pursuant to California Rule of Court 243.1(d), the Court has the authority to order a
6 record be filed under seal if it expressly finds that:

- 7 1. There exists an overriding interest that overcomes the right of public access to the
8 record;
- 9 2. The overriding interest supports sealing the record;
- 10 3. A substantial probability exists that the overriding interest will be prejudiced if the
11 record is not sealed;
- 12 4. The proposed sealing is narrowly tailored; and
- 13 5. No less restrictive means exist to achieve the overriding interest.
14 (California Rule of Court 243.1(d).)

15 II.

16 **OVERRIDING INTERESTS EXIST THAT MEETS THE ABOVE CRITERIA FOR**
17 **SEALING A RECORD**

18 It is necessary to seal the record pursuant to California Rule of Court 243.1(d) based on
19 the overriding interests of Mr. Jackson's rights to due process and a fair trial under the Fifth,
20 Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 1, 7,
21 and 15 of the California Constitution.

22 An inspection of the exhibits will reveal that they disclose the testimony of witnesses or
23 potential witnesses and disclose possible evidence, the admissibility of which, is yet to be
24 determined.

25 The overriding interests of Mr. Jackson's rights to a fair trial and due process would be
26 compromised if the exhibits are not filed under seal. A person accused of a crime is entitled to

27
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1 due process and a fair trial under the Fifth, Sixth and Fourteenth Amendments to the United
2 States Constitution and Article I, Sections 1, 7, and 15 of the California Constitution. Material
3 contained the exhibits pertains to evidence and the testimony of witnesses that, if made public,
4 would compromise Mr. Jackson's these rights and would result in prejudice to Mr. Jackson. In
5 order to protect these overriding interests, it is necessary that the exhibits be filed under seal.

6 CONCLUSION

7 For the reasons stated above, Mr. Jackson requests that the Court issue an order that MR.
8 JACKSON'S OPPOSITION TO THE MEDIA'S REQUEST THAT THE COURT CLARIFY
9 THAT MARTIN BASHIR IS NOT SUBJECT TO THE GAG ORDER and accompanying
10 documents be filed under seal.

11 Dated: January 26, 2005

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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 26, 2005, I served the foregoing document entitled: **EX PARTE APPLICATION THAT OPPOSITION TO THE MEDIAS REQUEST THAT THE COURT CLARIFY THAT MARTIN BASHIR IS NOT SUBJECT TO GAG ORDER BE FILED UNDER SEAL** On the interested parties in this action by depositing a true copy thereof as follows

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Gerald Franklin
Ron Zonen
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District Attorney
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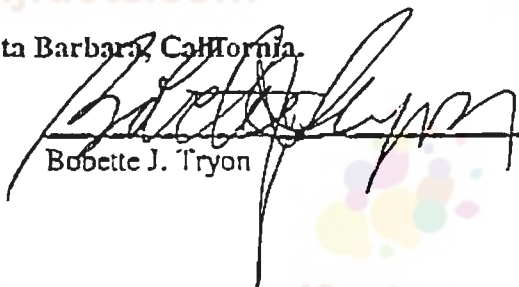
 BY U.S. MAIL - I am readily familiar with the firm's practice for collection of mail and processing of correspondence for mailing with the United States Postal Service. Such correspondence is deposited daily with the United States Postal Service in a sealed envelope with postage thereon fully prepaid 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

 BY HAND - I caused the document to be hand delivered to the interested parties at the address above.

 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 26, 2005, Santa Barbara, California.


Bobette J. Tryon