

FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

NOV 10 2004

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

1 LAW OFFICES OF C. MICHAEL ALDER, P.C.
2 C. Michael Alder, State Bar No. 170381
3 9308 Civic Center Drive
4 Beverly Hills, California 90210
5
6 TEL: 310/275-9131 Fax: 310/275-9132
7
8 Attorneys for C. Michael Alder

** unsealed pursuant to
6116105 court order*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA
SANTA MARIA DIVISION

LAW OFFICES OF C. MICHAEL ALDER, P.C.
9308 Civic Center Drive
Beverly Hills, California 90210

9 THE PEOPLE OF THE STATE OF CALIFORNIA,
10
11 Plaintiff,
12 vs.
13
14 MICHAEL JACKSON, et al.,
15 Defendants.

) CASE NUMBER: 1133603
) Assigned to Hon. Rodney s. Melville
)
) **C. MICHAEL ALDER'S MOTION TO**
) **QUASH SUBPOENA AND FOR A**
) **PROTECTIVE ORDER; DECLARATION**
) **OF C. MICHAEL ALDER, ESQ.**
)
) Date: November 22, 2004
) Time: 1:30 p.m.
) Dept.: SM-2
)
) **THIS MOTION SHALL BE FILED**
) **UNDER SEAL & THE HEARING**
) **HELD IN CAMERA**

18
19 TO DEFENDANT JACKSON AND TO HIS ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that on November 22, 2004, at 1:30 p.m. or as soon
21 thereafter as the matter may be heard in Department "SM 2" of the above-entitled court
22 located at 312 E. Cook Street, Santa Maria, California 93454, C. MICHAEL ALDER
23 (hereinafter "Alder") will appear to move the court for an order to quash and for a
24 protective order regarding the subpoenas served upon him by defendant JACKSON.
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This motion will be made pursuant to *Evidence Code* §§ 951-555, *Rules of Professional Conduct*, Rule 3-100, *Code of Civil Procedure* §1985.3 and *Business and Professions Code* §6068.

The motion will be made on the grounds that the subpoenas violate the attorney-client privilege and the attorney work-product privilege; and the subpoenas are overbroad and burdensome.

This motion will be based on this notice, the declaration of C. Michael Alder, the Memorandum of Points and Authorities, and on the pleadings, records, and files in this action.

Dated: November 10, 2004

LAW OFFICES OF C. MICHAEL ALDER, P.C.

By: 
C. Michael Alder, Esq.
Attorney for C. Michael Alder

LAW OFFICES OF C. MICHAEL ALDER, P.C.
9308 Civic Center Drive
Beverly Hills, California 90210

FROM

LAW OFFICES OF C. MICHAEL ALDER, P.C.
9309 Civic Center Drive
Beverly Hills, California 90210

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I.

STATEMENT OF FACTS

Defendant Michael Jackson (hereinafter "defendant") has subpoenaed the complete file of the Arvizo family in a civil case entitled Arvizo, et al. v. J.C. Penney Inc., et al. Los Angeles County Superior Court Case No.: KC027876. Feldman & Rothstein (hereinafter "F & R") and Law Offices of Michael Alder represented Mr. Arvizo, Ms. Arvizo, and their minor children Gavin and Star Arvizo in the case against J.C. Penney, et al. The case settled. Thomas D. Rothstein of F & R is in possession of the original file.

In the past year multiple parties have requested the civil file from F & R. The requesting parties have included defendant Jackson, District Attorney Tom Sneddon, Janet Arvizo and David Arvizo. Mr. Rothstein of F & R has refused to give the file to any of the aforementioned based on the attorney-client privilege and attorney work-product privilege. Since the file is so intertwined, it is practically impossible to separate the privileged documents solely belonging to Ms. Arvizo from those solely belonging to Mr. Arvizo. Consequently, F & R cannot release the file to anyone without the consent of both Mr. Arvizo and Ms. Arvizo or a court order.

In March of 2004, Mr. Arvizo subpoenaed the file for the purposes of a family law action in the matter of Janet Arvizo v. David Arvizo, Los Angeles Superior Court case number BD356568. Feldman & Rothstein objected to the subpoena and Mr. Arvizo filed a motion to compel production. The family law court denied Mr. Arvizo's motion on the grounds that the release of the file would violate the attorney-client privilege and work-product privilege.

Mr. Arvizo and Ms. Arvizo for herself and on behalf of her children, are the holders of the attorney-client privilege. F & R, and the Law Offices of C. Michael

1 Alder, P.C., as the former attorneys of record for Mr. Arvizo, Ms. Arvizo, and their minor
 2 children, Gavin and Star Arvizo, in the J.C. Penney case, have the duty to protect the
 3 attorney-client privilege until such time that the holders of the privilege waive their rights
 4 to the privilege. Counsel would like nothing more than for Mr. Arvizo and Mr. Arvizo to
 5 agree to waive the privilege or to take custody of the file. But until such time, Counsel
 6 has a legal and ethical duty to shoulder the burden of having to protect the privilege.
 7 Counsel has no interest in the outcome of the Michael Jackson criminal case.

9 II.

10 **MEMORANDUM OF POINTS & AUTHORITIES**

11 A. **DEFENDANT JACKSON IS REQUESTING DOCUMENTS THAT ARE**
 12 **PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY**
 13 **WORK PRODUCT PRIVILEGE**

14 Defendant is seeking documents that clearly fall within the scope of the attorney-
 15 client privilege and attorney work-product privilege. *Evidence Code* §952 reads:

16 As used in this article, "confidential communication between
 17 client and lawyer" means information transmitted between a client and
 18 his or her lawyer in the course of that relationship and in
 19 confidence by a means which, so far as the client is aware, discloses
 20 the information to no third persons other than those who are present
 21 to further the interest of the client in the consultation or those
 22 to whom disclosure is reasonably necessary for the transmission of
 23 the information or the accomplishment of the purpose for which the
 24 lawyer is consulted, and includes a legal opinion formed and the
 25 advice given by the lawyer in the course of that relationship.

26 *Evidence Code* §952.

27 There are eight separate categories of documents, which the subpoena seeks.
 28 Except for categories six and eight, the subpoena essentially demands that the
 complete civil file in the J.C. Penney case, including trust-account information, to be
 produced to defendant Jackson. These documents are all confidential communications

1 pursuant to *Evidence Code* §952 because they contain communications made by the
2 clients for the purposes of advancing their civil case against J.C. Penney.

3 Furthermore, the privilege covers the transmission of documents which are
4 available to the public, and not merely information in the sole possession of the attorney
5 or client. Mitchell v. The Superior Court (Shell Oil Company)(1985) 37 Cal.3d 591.
6 This would include documents filed with the court. In fact, any documents in a client file
7 which are reasonably necessary to the client's representation belong to the client.
8 Client's papers include such items as correspondence, pleadings, deposition
9 transcripts, exhibits, and expert witness reports. Eddy v. Fields (2004) 121 Cal.App.4th
10 1543, 1548. As such, the pleadings, exhibits and deposition transcripts in the Arvizo
11 file also fall under the attorney-client privilege.

12 **B. ALDER HAS THE LEGAL AND ETHICAL OBLIGATION TO PROTECT THE**
13 **ATTORNEY-CLIENT PRIVILEGE HELD BY THE ARVIZOS**

14 Alder must protect the Arvizos' attorney-client privilege until such time that they
15 agree to waive it or retain their own counsel to defend the privilege.

16 *Evidence Code* §954 reads:

17 Subject to Section 912 and except as otherwise provided in this article,
18 the client, whether or not a party, has a privilege to refuse to disclose,
19 and to prevent another from disclosing, a confidential communication
between client and lawyer if the privilege is claimed by:

- 20 (a) The holder of the privilege;
21 (b) A person who is authorized to claim the privilege by the holder of
the privilege; or
22 (c) The person who was the lawyer at the time of the confidential
23 communication, but such person may not claim the privilege if there
is no holder of the privilege in existence or if he is otherwise
instructed by a person authorized to permit disclosure.

24 *Evidence Code* §954.

25 Alder falls into the (c) category. Since Alder was the attorney of record in the
26 J.C. Penney case, it is legally authorized to refuse to disclose the confidential
27

28 *///*

1 information requested in the subpoena. In fact, *Evidence Code* §955 demands that the
2 attorney shall claim the privilege.

3 *Evidence Code* §955 reads:

4
5 The lawyer who received or made a communication subject to the
6 privilege under this article shall claim the privilege whenever he is present
7 when the communication is sought to be disclosed and is authorized to
8 claim the privilege under subdivision (c) of the Section 954.

9 *Evidence Code* §955.

10 *Business and Professions Code* §6068 is consistent with *Evidence Code* §955.

11 *Bus & Prof. Code* §6068 states in pertinent part: "It is the duty of any attorney to do all
12 of the following . . . to maintain inviolate the confidence, and at every peril to himself or
13 herself to preserve the secrets, of his or her client." It is a BAR ethics violation to
14 breach B & F Code §6068.

15 *Rules of Profession Conduct*, Rule 3-100(A) states:

16 A member shall not reveal information protected from disclosure by
17 *Business and Professions Code* section 6068, subdivision (e)(1) without
18 the informed consent of the client, or as provided in paragraph (B) of the
19 this rule. *Rules of Profession Conduct*, Rule 3-100(A).

20 To date, neither Mr. Arvizo nor Ms. Arvizo has granted permission to waive the
21 attorney-client privilege but for one exception. Ms. Arvizo did sign an authorization to
22 release the file to the Santa Barbara district attorney's office only. But since that would
23 necessarily require disclosure of privileged information concerning Mr. Arvizo, since the
24 file is intertwined, F & R did not comply with Ms. Arvizo's request to provide the file to
25 the district attorney's office.

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1 C. THERE EXIST A STRONG PUBLIC POLICY TO ENSURE THAT EVERY
2 PERSON CAN FREELY CONFER AND CONFIDE WITH THEIR ATTORNEY

3 A person cannot freely confer and confide with an attorney if she knows her
4 disclosures will not remain confidential. Confidentiality between the attorney and client
5 is one of the cornerstones of our judicial system. The attorney-client privilege is
6 "absolute and disclosure may not be ordered, without regard to relevance, necessity or
7 any particular circumstances to the case." Gordon v. Superior Court (1997) 55
8 Cal.App.4th 1546, 1557.

9
10 Relevance alone, however, is not a basis for stripping a client of her right to the
11 privilege. "Although exercise of the privilege may occasionally result in the suppression
12 of relevant evidence, the Legislature of this state has determined that these concerns
13 are outweighed by the importance of preserving confidentiality in the attorney-client
14 relationship." Gordon at 1557. If defendant Jackson's subpoena is upheld by the court,
15 it will create the destructive effect of compromising the attorney-client privilege. In
16 essence, the public would not feel free to disclose confidential information to their
17 attorney in a civil case due to the fear that they would lose the privilege if they somehow
18 became witnesses in a subsequent criminal case that is unrelated to the civil case.

19
20 D. DEFENDANT JACKSON HAS NOT GIVE NOTICE OF THE SUBPOENA TO
21 THE HOLDERS OF THE PRIVILEGE

22 *Code of Civil Procedure* §1985.3(b)(1) requires that the subpoenaing party serve
23 the party whose records are being sought, with a "notice to consumer." A consumer is
24 defined as someone who has used the services of an attorney. *Code of Civ.*
25 *Proc.* §1985.3(a)(1) & (2). In the case at issue, the Arvizos are the consumers. Yet
26 they have no knowledge that their confidential and privileged documents are being
27 sought and on the verge of being disclosed.

1 Pursuant to *Code of Civ. Proc.* §1985.3 the Arvizos should have an opportunity to
2 be heard on this matter and to retain their own counsel to defend their privilege.

3 E. THE SUBPOENA IS OVERBROAD AND BURDENSOME

4 The subpoena is seeking the complete file, settlement checks, and client-trust
5 account information. Such a demand is overbroad and very burdensome. Since Alder
6 represented all of the Arvizo complainants in the J.C. Penney case, attempting to
7 separate the documents among the various complainants is impractical. The file is too
8 intertwined.
9

10 III.

11 CONCLUSION

12 Alder respectfully requests that the Court grant its motion to quash the subpoenas.
13 Alder further requests a protective order against any party in the People v. Jackson
14 case from subpoenaing the file in the future. If the ruling requested by Alder is not
15 acceptable to the Court, Alder respectfully requests that in the alternative the Arvizos be
16 notified of the subpoenas to provide them with an opportunity to retain their own
17 counsel to defend their privilege.
18

19 Dated: November 10, 2004

LAW OFFICES OF C. MICHAEL ALDER, P.C.

20
21
22 By: _____


C. Michael Alder, Esq.
Attorney for C. Michael Alder

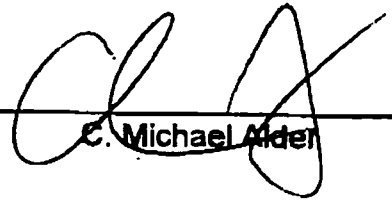
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6. Ms. Arvizo did sign an authorization to release the file to the Santa Barbara district attorney's office only. But since that would necessarily require disclosure of privileged information concerning Mr. Arvizo, since the file is intertwined, F & R did not comply with Ms. Arvizo's request to provide the file to the district attorney's office.

7. I have no interest in the outcome of the People v. Jackson case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California on this 10th day of November, 2004.


C. Michael Alder

LAW OFFICES OF C. MICHAEL ALDER, P.O.
9309 Civic Center Drive
Beverly Hills, California 90210