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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

** unsealed pursuant
to 6/16/05 court order*

9 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA BARBARA**
10 **SANTA MARIA DIVISION**

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA,

13 vs.

14 MICHAEL JACKSON,

15 Defendant.
16

17) CASE NO.: 1133603
18) Assigned to Hon. Rodney S. Melville

19) **GEORGE O. FELDMAN & THOMAS D.**
20) **ROTHSTEIN'S MOTION TO QUASH**
21) **SUBPOENA AND FOR A PROTECTIVE**
22) **ORDER; DECLARATION OF TONY S.**
23) **SADRI, ESQ.**

24) Date: November 22, 2004
25) Time: 1:30 p.m.
26) Dept.: SM-2

27) **THIS MOTION SHALL BE FILED**
28) **UNDER SEAL & THE HEARING HELD**
29) **IN CAMERA**

30 TO DEFENDANT JACKSON AND TO HIS ATTORNEYS OF RECORD:

31 PLEASE TAKE NOTICE that on November 22, 2004 at 1:30 p.m. or as soon thereafter
32 as the matter may be heard in Department "SM 2" of the above-entitled court located at 312 E.
33 Cook Street, Santa Maria, California 93454, GEORGE O. FELDMAN and THOMAS D.

34 _____
35 1
36 GEORGE O. FELDMAN & THOMAS D. ROTHSTEIN'S MOTION TO QUASH SUBPOENA AND FOR A
37 PROTECTIVE ORDER

1 ROTHSTEIN will appear to move the court for an order to quash and for a protective order
2 regarding the subpoenas served upon them by defendant JACKSON.

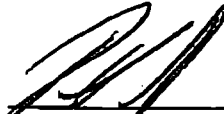
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4 This motion will be made pursuant to *Evidence Code* §§ 951-555, *Rules of Professional*
5 *Conduct*, Rule 3-100, *Code of Civil Procedure* §1985.3 and *Business and Professions Code*
6 §6068.

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

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11 This motion will be based on this notice, the declaration of Tony S. Sadri, the
12 Memorandum of Points and Authorities, and on the pleadings, records, and files in this action.

13 Dated: November 9, 2004

FELDMAN & ROTHSTEIN

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16 TONY S. SADRI
17 Attorneys for George O. Feldman & Thomas D.
18 Rothstein

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. Penny 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. Penny, et al. The case settled. Thomas D. Rothstein of F & R is in possession of the original file. George O. Feldman of F & R is no longer a partner and does not possess any portion of the file. Mr. Feldman performed no work in the case and was never involved in the case.

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, Ms. 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.

1 Mr. Arvizo and Ms. Arvizo for herself and on behalf of her children, are the holders of
2 the attorney-client privilege. F & R as the former attorneys of record for Mr. Arvizo, Ms.
3 Arvizo, and their minor children Gavin and Star Arvizo in the J.C. Penny case, has the duty to
4 protect the attorney-client privilege until such time that the holders of the privilege waive their
5 rights to the privilege. F & R would like nothing more than for Mr. Arvizo and Mr. Arvizo to
6 agree to waive the privilege or to take custody of the file. But until such time, F & R has a
7 legal and ethical duty to shoulder the burden of having to protect the privilege. F & R has no
8 interest in the outcome of the Michael Jackson criminal case.
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11 II.

12 **MEMORANDUM OF POINTS & AUTHORITIES**

13 A. **DEFENDANT JACKSON IS REQUESTING DOCUMENTS THAT ARE**
14 **PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY WORK**
15 **PRODUCT PRIVILEGE**
16

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

19 As used in this article, "confidential communication between
20 client and lawyer" means information transmitted between a client and
21 his or her lawyer in the course of that relationship and in
22 confidence by a means which, so far as the client is aware, discloses
23 the information to no third persons other than those who are present
24 to further the interest of the client in the consultation or those
25 to whom disclosure is reasonably necessary for the transmission of
26 the information or the accomplishment of the purpose for which the
27 lawyer is consulted, and includes a legal opinion formed and the
28 advice given by the lawyer in the course of that relationship. *Evidence Code §952.*

26 There are eight separate categories of documents, which the subpoena seeks. Except for
27 categories six and eight, the subpoena essentially demands that the complete civil file in the J.C.
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1 Penny case, including trust-account information, to be produced to defendant Jackson. These
2 documents are all confidential communications pursuant to *Evidence Code* §952 because they
3 contain communications made by the clients for the purposes of advancing their civil case
4 against J.C. Penny. Furthermore, the privilege covers the transmission of documents which are
5 available to the public, and not merely information in the sole possession of the attorney or
6 client. Mitchell v. The Superior Court (Shell Oil Company)(1985) 37 Cal.3d 591. This would
7 include documents filed with the court. In fact, any documents in a client file which are
8 reasonably necessary to the client's representation belong to the client. Client's papers include
9 such items as correspondence, pleadings, deposition transcripts, exhibits, and expert witness
10 reports. Eddy v. Fields (2004) 121 Cal.app.4th 1543, 1548. As such, the pleadings, exhibits and
11 deposition transcripts in the Arvizo file also fall under the attorney-client privilege.
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14 **B. F & R HAS THE LEGAL AND ETHICAL OBLIGATION TO PROTECT THE**
15 **ATTORNEY-CLIENT PRIVILEGE HELD BY THE ARVIZOS**
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17 F & R must protect the Arvizos' attorney-client privilege until such time that they agree
18 to waive it or retain their own counsel to defend the privilege.

19 *Evidence Code* §954 reads:

- 20 Subject to Section 912 and except as otherwise provided in this article,
21 the client, whether or not a party, has a privilege to refuse to disclose,
22 and to prevent another from disclosing, a confidential communication
23 between client and lawyer if the privilege is claimed by:
24 (a) The holder of the privilege;
25 (b) A person who is authorized to claim the privilege by the holder of
26 the privilege; or
27 (c) The person who was the lawyer at the time of the confidential
28 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. *Evidence Code* §954.

1 F & R fall into the (c) category. Since F& R was the attorney of record in the J.C. Penny
2 case, it is legally authorized to refuse to disclose the confidential information requested in the
3 subpoena. In fact, *Evidence Code* §955 demands that the attorney shall claim the privilege.
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5 *Evidence Code* §955 reads:

6 The lawyer who received or made a communication subject to the privilege
7 under this article shall claim the privilege whenever he is present when the
8 communication is sought to be disclosed and is authorized to claim the
9 privilege under subdivision (c) of the Section 954. *Evidence Code* §955.

10 *Business and Professions Code* §6068 is consistent with *Evidence Code* §955. *Bus &*
11 *Prof. Code* §6068 states in pertinent part: It is the duty of any attorney to do all of the following
12 . . .to maintain inviolate the confidence, and at every peril to himself or herself to preserve the
13 secrets, of his or her client." It is a BAR ethics violation to breach B & F Code §6068.

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

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

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

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

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

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

17 D. DEFENDANT JACKSON HAS NOT GIVE NOTICE OF THE SUBPOENA TO THE
18 HOLDERS OF THE PRIVILEGE

19 *Code of Civil Procedure* §1985.3(b)(1) requires that the subpoenaing party serve the
20 party whose records are being sought, with a "notice to consumer." A consumer is defined as
21 someone who has used the services of an attorney. *Code of Civ. Proc.* §1985.3(a)(1) & (2). In
22

1 the case at issue, the Arvizos are the consumers. Yet they have no knowledge that their
2 confidential and privileged documents are being sought and on the verge of being disclosed.
3 Pursuant to *Code of Civ. Proc.* §1985.3 the Arvizos should have an opportunity to be heard on
4 this matter and to retain their own counsel to defend their privilege.
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6 **E. THE SUBPOENA IS OVERBROAD AND BURDENSOME**

7 The subpoena is seeking the complete file, settlement checks, and client-trust account
8 information. Such a demand is overbroad and very burdensome. Since F& R represented all of
9 the Arvizo complainants in the J.C. Penny case, attempting to separate the documents among the
10 various complainants is impractical. The file is too intertwined.
11

12 **III.**

13 **CONCLUSION**

14 F & R respectfully request that the Court grant its motion to quash the subpoenas. F & R
15 further requests a protective order against any party in the People v. Jackson case from
16 subpoenaing the file in the future. If the ruling requested by F & R is not acceptable to the
17 Court, F & R respectfully requests that in the alternative the Arvizos be notified of the subpoenas
18 to provide them with an opportunity to retain their own counsel to defend their privilege.
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20

21 Dated: November 9, 2004

FELDMAN & ROTHSTEIN



22
23 **TONY S. SADRI**

24 Attorneys for George O. Feldman & Thomas D.
25 Rothstein
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1 Mr. Arvizo filed a motion to compel the production of the file. The family law court denied the
2 motion to compel.

3 7. Ms. Arvizo did sign an authorization to release the file to the Santa Barbara
4 district attorney's office only. But since that would necessarily require disclosure of privileged
5 information concerning Mr. Arvizo, since the file is intertwined, F & R did not comply with Ms.
6 Arvizo's request to provide the file to the district attorney's office.
7

8 8. F & R has no interest in the outcome of the People v. Jackson case.

9 I declare under penalty of perjury that the foregoing is true and correct.
10 Executed at Pasadena, California on this 10th day of November, 2004.

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14 TONY S. SADRI, Declarant
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