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

DEC 08 2004

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

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF *\* unsealed pursuant*  
10 *to 6/11/05 court*  
11 *order*

11 THE PEOPLE OF THE STATE OF CALIFORNIA,

12 Plaintiff,

13 v.

14 MICHAEL JACKSON,

15 Defendant.

12 CASE NO. 1133603

13 MEMORANDUM OF POINTS AND  
14 AUTHORITIES IN SUPPORT OF  
15 OBJECTIONS MADE BY LARRY R.  
16 FELDMAN IN RESPONSE TO THE  
17 SUBPOENA DUCES TECUM DATED  
18 NOVEMBER 11, 2004 AND SIGNED BY  
19 R. BRIAN OXMAN, ATTORNEY FOR  
20 MICHAEL J. JACKSON; PRIVILEGE  
21 LOG

**FILED UNDER SEAL**  
*+ In camera*

19 Attached to this Memorandum is a privilege log of documents that were not produced  
20 in response to a subpoena duces tecum dated November 11, 2004 and signed by R. Brian  
21 Oxman, attorney for Michael J. Jackson. The documents listed on the privilege log were  
22 withheld from production on the grounds of the attorney-client privilege and the work-  
23 product doctrine.

24 **I. THE ATTORNEY-CLIENT PRIVILEGE**

25 The attorney-client privilege, the party who has the burden of proof with respect to  
26 waiver of the privilege, the exceptions to the privilege and the grounds for waiver of the  
27 privilege are codified in Evidence Code sections 912, 915, 917 and 950-62. Evidence Code  
28 section 954 is the basic statement of the privilege. It provides that: "Subject to Section 912

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1 and except as otherwise provided in this article, the client, whether or not a party, has a  
2 privilege to refuse to disclose, and to prevent another from disclosing, a confidential  
3 communication between client and lawyer. . .” Evid. Code §954. Section 952 defines a  
4 confidential communication between a client and a lawyer as “information transmitted  
5 between a client and his or her lawyer in the course of that relationship and in confidence by  
6 a means which, so far as the client is aware, discloses the information to no third persons  
7 other than those who are present to further the interest of the client in the consultation or  
8 those to whom disclosure is reasonably necessary . . .” Confidential communication between  
9 client and lawyer also “includes a legal opinion formed . . . by the lawyer in the course of that  
10 relationship.” Moreover, “the opponent of the claim of privilege has the burden of proof  
11 with respect to waiver of the privilege to establish that the communication was not  
12 confidential.” Evid. Code §917; *see Romo v. Southern Pac. Transp. Co.*, 71 Cal.App.3d 909,  
13 139 Cal.Rptr. 787 (1977) (claim of attorney-client privilege imposes on the party seeking  
14 disclosure the burden of establishing lack of confidentiality).

15 Evidence Code section 912 sets forth the rules for waiver of the privilege. This  
16 section provides that the attorney-client privilege “is waived with respect to a communication  
17 protected by such privilege if any holder of the privilege, without coercion, has disclosed a  
18 significant part of the communication or has consented to such disclosure made by anyone.”  
19 Evid. Code §912.

20 In *Southern Ca. Gas. Co. v. Public Utilities Com.* (1990) 50 Cal. 3d 31 the court  
21 explained why the attorney-client privilege is an integral part of California law even though it  
22 may prevent the discovery of relevant information:

23 “The attorney-client privilege has been a well established part of  
24 Anglo-American jurisprudence for over 400 years. It has been  
25 part of California statutory law in one form or another since  
26 1851. As this court has previously noted, the privilege seeks to  
27 insure the right of every person to freely and fully confer and  
28 confide in one having knowledge of the law, and skilled in its  
practice, in order that the former may have adequate advice and

1 proper defense. If a lawyer could not promise to maintain the  
2 confidentiality of his client's secrets, the only advice he or she  
3 could provide would be, 'Don't talk to me.' Application of the  
4 privilege will occasionally shield relevant information which may  
5 very well create obstacles for the party seeking the privileged  
6 information; however, the Legislature and the courts of this state  
7 have determined that the party's concern is outweighed by the  
8 importance of preserving confidentiality in the attorney-client  
9 relationship."

10 50 Cal 3d at p.37. Internal quotations and citations omitted.

11 The California Supreme court recently held in *Wells Fargo Bank v. Superior Court*  
12 (2000) 22 Cal. 4th 201 that since the attorney-client privilege is created by statute, California  
13 courts do not have the power to create any implied exceptions or waivers to the privilege; the  
14 only exceptions or waivers to the privilege recognized in California are those created by  
15 statute; and that authority from other states is not relevant since the California courts are not  
16 free to create exceptions or waivers to the privilege.

17 In *Wells Fargo* the beneficiaries of a trust (the Boltwoods) sought to compel the  
18 trustee to disclose privileged communications with its attorneys. The Supreme Court refused  
19 to find any implied waiver of the attorney-client privilege and held that the privileged  
20 documents were not subject to discovery for the following reasons:

- 21 (1) "The attorney-client privilege is commonly regarded as 'fundamental to . . .the  
22 proper functioning of our judicial system' (*Mitchell v. Superior Court* (1984)  
23 37 Cal. 3d 591, 611 [208 Cal. Rptr. 886, 691 P.2d 642]) and thought to  
24 'promote broader public interests in the observance of law and administration  
25 of justice' (*Upjohn Co. v. United States* (1981) 449 U.S. 383, 389 [101 S. Ct.  
26 677, 682, 66 L. Ed. 2d 584]). If the legislature had intended to restrict a  
27 privilege of this importance, it would likely have declared that intention  
28 unmistakably, rather than leaving it to courts to find the restriction by inference  
and guesswork in the interstices of the Probate Code." 22 Cal. 4th at p. 207.

- 1 (2) “Wells Fargo’s duties as a trustee, the Boltwoods argue, take precedence over  
2 its privilege as the client of an attorney. (Evid. Code, § 954 .) The argument  
3 lacks merit. *The privileges set out in the Evidence Code are legislative*  
4 *creations; the courts of this state have no power to expand them or to recognize*  
5 *implied exceptions. (Roberts v. City of Palmdale (1993) 5 Cal. 4th 363, 373*  
6 *[20 Cal. Rptr. 2d 330, 853 P. 2d 496]; see also Moeller, supra, 16 Cal. 4th at p.*  
7 *1129.) The Boltwoods’ argument is nothing more than a plea for an implied*  
8 *exception.” 22 Cal. 4th at p. 206, emphasis added.*
- 9 (3) “Nor does the Boltwoods’ argument for limiting the attorney-client privilege  
10 find support in *Strauss v. Superior Court, supra*, 36 Cal.2d 396. In that  
11 decision, we acknowledged the trustee’s common law duty to report to  
12 beneficiaries . . . Our earlier decision in *Union Trust Co. v. Superior Court,*  
13 *supra*, 11 Cal.2d at pages 460-462, is to the same effect. In neither *Strauss* nor  
14 *Union Trust Co.*, however, did we address any question concerning the  
15 attorney-client privilege. *To attempt to use those decisions as to the foundation*  
16 *for an implied exception to the attorney-client privilege would, moreover, be*  
17 *inconsistent with the rule that we have no power to create such exceptions.*  
18 *(See Roberts v. City of Palmdale, supra, 5 Cal. 4th at p. 373.)” 22 Cal. 4th at*  
19 *pp. 207-208, emphasis added.)*
- 20 (4) “In most of the other jurisdictions in which this question has arisen, courts have  
21 given the trustee’s reporting duties precedence over the attorney-client  
22 privilege. [Citation omitted.] But those courts consider themselves free, in a  
23 way we do not, to create exceptions to the privilege.” 22 Cal. 4th at p. 208.

## 24 II. THE ATTORNEY WORK-PRODUCT DOCTRINE

25 Under California law, the work product of an attorney is usually not discoverable and  
26 any writing that reflects an attorney’s impressions, conclusions, opinions or legal research or  
27 theories shall not be discoverable under any circumstances. These rules are embodied in  
28 California Code of Civil Procedure section 2018 which provides in relevant part:

- (a) [Statement of Policy] It is the policy of the state to:  
(1) preserve the rights of attorneys to prepare cases for trial with  
that degree of privacy necessary to encourage them to prepare  
their cases thoroughly and to investigate not only the favorable

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but the unfavorable aspects of those cases; and (2) to prevent attorneys from taking undue advantage of their adversary's industry and efforts.


(b) [Attorney's Work Product in General] Subject to subdivision (c), the work product of an attorney is not discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claim or defense or will result in an injustice.

(c) [Attorneys' Impressions, Conclusions, Opinions, or Legal Research] Any writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances.

Thus, writings containing an attorney's impressions, conclusions, opinions, etc. are absolutely protected from discovery. Cal. Civ. Proc. §2018(c); *see Popelka, Allard, McCowan & Jones v. Sup.Ct.*, 107 Cal.App.3d 496 (1980) (holding that law firm's interoffice memos concerning a previous action are absolutely privileged from discovery).

DATED: December 7, 2004

KAYE SCHOLER LLP  
ROBERT M. TURNER

By   
ROBERT M. TURNER



**PRIVILEGE LOG**

Date	Description	Privilege
5-20-04	Communication from Janet Arvizo to Larry Feldman	Attorney-client
5-7-03	Communication from Janet Arvizo and William Dickerman to Larry Feldman	Attorney-client
05-04-04	Letter written by Janet Arvizo and delivered to Larry Feldman	Attorney-client
10-22-03	Letter from William Dickerman to Janet Arvizo with a copy to Larry Feldman	Attorney-client, work product
10-15-03	Letter from Larry Feldman to Janet Arvizo with a copy to William Dickerman	Attorney-client, work product
10-14-03	Letter from William Dickerman to Janet Arvizo with a copy to Larry Feldman	Attorney-client, work product
10-03-03	Letter from Larry Feldman to Janet Arvizo with a copy to William Dickerman	Attorney-client, work product
8-11-03	Letter from Robert Turner to Janet Arvizo	Attorney-client, work product
8-1-03	Fax from William Dickerman to Robert Turner	Attorney-client, work product
7-15-03	Fax from William Dickerman to Robert Turner	Attorney-client, work product
7-10-03	Fax from William Dickerman to Robert Turner	Attorney-client, work product
7-10-03	Letter from William Dickerman to Janet Arvizo	Attorney-client, work product
7-9-03	Fax from William Dickerman to Robert Turner	Attorney-client, work product
7-9-03	Fax from William Dickerman to Robert Turner	Attorney-client, work product

Date	Description	Privilege
7-7-03	Fax from William Dickerman to Robert Turner	Attorney-client, work product
6-17-03	Legal research memorandum from Jan Levine to Robert Turner	Attorney-client, work product
6-9-03	Fax from William Dickerman to Larry Feldman	Attorney-client, work product
5-29-03	Fax from William Dickerman to Robert Turner	Attorney-client, work product
5-9-03	Letter from William Dickerman to Robert Turner regarding Janet Arvizo	Attorney-client, work product
5-7-03	Fax from William Dickerman to Robert Turner	Attorney-client, work product
3-24-03	Letter from William Dickerman to Janet Arvizo, Gavin Arvizo, Star Arvizo, Davellin Arvizo	Attorney-client, work product
Undated	Memorandum signed by Janet Arvizo and delivered to Larry Feldman	Attorney-client
Undated	Memorandum signed by Janet Arvizo and delivered to Larry Feldman	Attorney-client
Undated	Memorandum signed by Janet Arvizo and delivered to Larry Feldman	Attorney-client
05-08-03	Memorandum signed by Janet Arvizo and delivered to Larry Feldman	Attorney-client
01-27-04	Letter from Robert M. Cooper, M.D. to Michael Manning regarding Gavin Arvizo	Attorney-client
12-09-03	Letter from Larry Feldman to Janet Arvizo	Attorney-client, work product
03-26-03	Memorandum of William Dickerman regarding conversation with Janet Arvizo regarding attached medical records	Attorney-client, work product



Date	Description	Privilege
11-08-04	Research memorandum from Theodore Maya to Larry Feldman	Attorney-client, work product
11-15-04	Fax from Jay Jackson to Larry Feldman	Attorney-client
10-1-04	Research memorandum from Matthew Clark to Larry Feldman	Attorney-client, work product
undated	Kaye Scholer internal memorandum regarding Janet Arvizo	Attorney-client, work product
7-19-04	Fax from Jay Jackson to Larry Feldman	Attorney-client
6-18-03	Legal research memorandum from Alex Turkeltaub to Bob Turner	Attorney-client, work product
4-29-03	Memorandum from William Dickerman to Arvizo file	Attorney-client, work product
6-12-03	Memorandum from Larry Feldman delivered to Janet Arvizo	Attorney-client
05-17-04	Memorandum from Sandra Polin to Larry Feldman regarding Arvizo	Attorney-client
04-29-04	Memorandum from Sandra Polin to Larry Feldman regarding Arvizo	Attorney-client
04-19-04	Letter from Brigitte S. Potts (assistant to Sandra Polin) to Larry Feldman regarding Arvizo	Attorney-client
04-6-04	Memorandum from Vanessa Longoria (assistant to Sandra Polin) to Robert Turner	Attorney-client
04-2-04	Memorandum from R. Dane (assistant to Sandra Polin) to Larry Feldman	Attorney-client
03-10-04	Fax from Tony S. Sadri of Feldman & Rothstein to Larry R. Feldman	Attorney-client

Date	Description	Privilege
3-24-04	Fax from Rose (for Sandra Polin) to Bob Turner	Attorney-client
03-11-04	Memorandum from R. Dane (assistant to Sandra Polin) to Larry Feldman	Attorney-client
03-4-04	Fax from Brigitte (for Felicia R. Meyers of Polin & Hall) to Bob Turner	Attorney-client
06-12-03	Memorandum from William Dickerman to Larry Feldman	Attorney-client, work product
02-5-04	Letter from Michael Manning to Janet Arvizo	Attorney-client, work product
02-17-04	Letter from Janet Arvizo to Thomas D. Rothstein	Attorney-client
02-17-04	Fax from Tom Rothstein to Bob Turner	Attorney-client
02-27-04	Memorandum from Larry Feldman to Sandra Polin	Attorney-client
01-30-04	Fax from Michael Manning to Larry Feldman	Attorney-client, work product
04-3-03	Letter from Michael Manning to William Dickerman	Attorney-client, work product
01-24-03	Letter from Michael Manning to Janet Arvizo	Attorney-client, work product
09-21-01	Letter from Michael Manning to Janet Arvizo	Attorney-client, work product
11-1-01	Notes of phone message from Janet Arvizo to Michael Manning	Attorney-client, work product
10-29-01	Notes of phone message from Janet Arvizo to Michael Manning	Attorney-client, work product
9-21-01	Letter from Michael Manning to Janet Arvizo	Attorney-client, work product
	Research materials	Attorney-client, work product

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA**  
3 **COUNTY OF LOS ANGELES**

4 I am employed in the County of Los Angeles, State of California. I am over the age of  
5 18 and not a party to the within action. My business address is 1999 Avenue of the Stars,  
6 Suite 1700, Los Angeles, California 90067.

7 On December 7, 2004, I served the following documents described as:

8 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**  
9 **OBJECTIONS MADE BY LARRY R. FELDMAN IN RESPONSE TO**  
10 **THE SUBPOENA DUCES TECUM DATED NOVEMBER 11, 2004 AND**  
11 **SIGNED BY R. BRIAN OXMAN, ATTORNEY FOR MICHAEL J.**  
12 **JACKSON; PRIVILEGE LOG**

13 by placing a true copy of the above entitled document in a sealed envelope addressed as  
14 follows:

15 **Thomas A. Mesereau, Jr.**  
16 **1875 Century Park East, Suite 700**  
17 **Los Angeles, CA 90067**

18  by **FEDERAL EXPRESS**

19  by **U.S. MAIL** (I am readily familiar with the firm's practice of collection and  
20 processing correspondence for mailing. Under that practice it would be deposited  
21 with U.S. Postal Service on that same day with postage thereon fully prepaid at Los  
22 Angeles, California in the ordinary course of business. I am aware that on motion of  
23 the party served, service is presumed invalid if postal cancellation date or postage  
24 meter date is more than one day after date of deposit for mailing in affidavit.)

25 **OR**

26  by **PERSONAL SERVICE**

27  by personally delivering such envelope to the addressee.

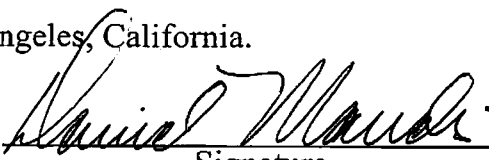
28  by causing such envelope to be delivered by messenger to the office of the  
addressee.

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

(Federal) I declare that I am employed in the office of a member of the bar of this  
court at whose direction the service was made.

Executed on December 7, 2004, at Los Angeles, California.

29 David Mandis  
30 Name

31   
32 Signature

KAYE SCHOLERlp