

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA BARBARA

NOV 19 2004

1 Tony S. Sadri [CBN:185418]
2 FELDMAN & ROTHSTEIN
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4 Pasadena, CA 91101
5 Telephone No.: (626) 578-7188
6 Facsimile No.: (626) 578-1293

7 Attorneys for George O. Feldman &
8 Thomas D. Rothstein

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

** Unsealed pursuant
to 11/16/05 court
order*

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

11 THE PEOPLE OF THE STATE OF
12 CALIFORNIA

13 vs.

14 MICHAEL JOSEPH JACKSON

15 Defendant.

CASE NO.: 1133603
Assigned to Hon. Rodney S. Melville

16 **GEORGE O. FELDMAN & THOMAS D.**
17 **ROTHSTEIN'S REPLY TO MICHAEL**
18 **JACKSON'S OPPOSITION TO MOTION**
19 **TO QUASH THE SUBPOENA AND FOR**
20 **A PROTECTIVE ORDER**

21 Date: November 22, 2004
22 Time: 1:30 p.m.
23 Dept.: SM-2

24 **THIS REPLY SHALL BE**
25 **UNDER SEAL & THE HEARING HELD**
26 **IN CAMERA**

27 COME NOW George O. Feldman and Thomas D. Rothstein in reply to Michael
28 Jackson's opposition to quash the summons and for a protective order.

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1 **DECLARATION OF THOMAS D. ROTHSTEIN**

2 **In Support of Reply to Michael Jackson's Opposition**

3 1. I am an Attorney at Law, duly licensed to practice before all of the courts of
4 California. I know the following to be true of my own personal knowledge and if called as a
5 witness I would and could competently testify thereto.

6 2. Feldman & Rothstein's only interest in this matter is to, within the law, protect the
7 interests and honor the wishes of our former clients regarding their file. We have no independent
8 interest in either retaining or releasing the file to any of the parties to the instant action.

9 3. The Order of the Court that accompanied the subpoena instructed us not to,
10 directly or indirectly, allow the People to become aware of the instant subpoena. Therefore, we
11 were unable to ask the Arvizos if they would allow us to comply with the subpoena, as we could
12 not guarantee that they would not inform the People. And since we did not have authorization to
13 comply, we felt that our only recourse was to file the instant motion.

14 4. Janet Arvizo did not authorize us to release the file to anyone other than the
15 District Attorney or his representatives (Ex. 1), and to her attorneys at Kaye Scholer, LLP. (Ex.
16 2). Additionally:

17 (1) Janet Arvizo's attorney at the Law offices of Kaye Scholer LLP also
18 advised me not to release the file to anyone other than to the People and Kaye Scholer, LLP;

19 (2) Janet Arvizo told me orally by telephone not to release the file to either David
20 Arvizo or his attorney in the custody matter, Russell Halpern;

21 (3) Janet Arvizo, through her attorney Sandra Polin in the custody
22 matter, opposed a subpoena for the file filed by Mr. Halpern's office on behalf of David Arvizo;

23 (4) Janet Arvizo would not sign a written waiver of the attorney-client privilege
24 that I prepared and sent to Kaye Scholer, L.L.P., which would have allowed this office to release
25 the file to all relevant parties who so requested it.

26 5. David Arvizo and his attorney Mr. Halpern did sign a waiver of the attorney-
27 client privilege allowing this office to release the file to any relevant persons, (Ex. 3) but upon
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1 the oral condition that David Arvizo also be allowed to receive a copy of the file. (Ex. 4). Since
2 Janet Arvizo, as stated above, opposed the release of the file to David Arvizo, his waiver never
3 became effective.

4 6. As previously stated, due to the issuance of the protective order by this Court,
5 this Office was not able to request instructions from our former clients as to their position
6 regarding the release of their file, as we could not guarantee that they would not inform the
7 People about the subpoena. Despite diligent research and consultation, with both private
8 counsel and the State Bar Ethics Hotline regarding this area of the law, we remain far from
9 experts.

10 7. Therefore, we respectfully request that our former clients be contacted regarding
11 the subpoena. This will enable our former clients to either consent to the file's release, or obtain
12 independent counsel in order to submit to the Court any objections to the subpoena.
13 Consequently, we respectfully request that the Court withhold any rulings regarding the release
14 of the file until such time that the Arvizos themselves have an opportunity to appear before the
15 Court and be heard on the matter. It would be wholly unjust if the holders of the privilege were
16 precluded from defending their own privilege, including submitting their own evidence and
17 arguments regarding the waiver issue.

18 8. Absent this, we respectfully request that the Court consider taking possession of
19 the original file, after notification to the Arvizos of that fact, so that they might have an
20 opportunity to retain independent counsel and be heard by this Court regarding this request. This
21 will enable the file to be independently reviewed by the Court prior to its release to either Mr.
22 Jackson or the People, and also, again, allow our former clients to submit any concerns or
23 objections to the Court at a subsequent hearing prior to any release of the file.

24 9. Lastly, it is also respectfully requested that, should the Court make any ruling
25 regarding the instant subpoena, that it also make a contemporaneous ruling regarding any
26 subpoenas that might be issued in the future for the file from any parties, including the People,
27 which we expect will be forthcoming.

1 I declare under penalty of perjury that the foregoing is true and correct.
2 Executed at Pasadena, California on this 19th day of November, 2004.

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5 THOMAS D. ROTHSTEIN, Declarant
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EXHIBIT "1"

1 WAIVER OF LAWYER-CLIENT PRIVILEGE and
2 CONSENT TO LIMITED DISCLOSURE OF PRIVILEGED COMMUNICATIONS
3 (Evid. Code, § 912)

4 I, JANET ARVIZO, say:

5 1. I am the mother of, and have legal custody of, my sons GAVIN ARVIZO,
6 whose date of birth is [REDACTED] STAR ARVIZO, whose date of birth is
7 [REDACTED] and my daughter DAVELLIN ARVIZO, whose date of birth is
8 [REDACTED]

9 2. On my own behalf and on behalf of one or more of my children, I have
10 consulted the following attorneys-at-law:

11 THOMAS DAVID ROTHSTEIN, SBN 77965

12 GEORGE OWEN FELDMAN, SBN 80025

13 ~~WILLIAM DICKERMAN, SBN 76237~~ *JA*

14 C. MICHAEL ALDER, SBN 170381

15 ~~LARRY ROBERT FELDMAN, SBN 45128~~ *JA*

16 3. I consulted one or more of those lawyers concerning an incident in which I,
17 Gavin and Star were detained by employees of J.C. Penney Company, and discussed
18 the facts of that incident with them. A civil suit arising out of that incident was filed in
19 the Los Angeles Superior Court on July 22, 1999, captioned "Janet Arvizo, et al. vs.
20 J.C. Penney, Inc., et al.," Case No. LC027876

21 4. In the course of that lawsuit, my deposition and the depositions of each of
22 my two sons were taken.

23 5. From time to time between January 1, 2000 and the present date, I
24 consulted one or more of those lawyers concerning Michael Jackson's interaction with
25 me and my children, at Neverland Ranch in Santa Barbara County and elsewhere in
26 this and other states, and concerning the return of some furniture stored by or in the
27 name of "Brad Miller" at "Dino's Storage" in North Hollywood (Los Angeles County),
28 California.

1 6. I understand that written and oral communications between me and my
2 children and a lawyer who has agreed to provide legal advice to us and to represent us
3 and protect our interests, which communications are intended by me, my children and
4 that lawyer to be made in confidence in the course of that relationship, are privileged
5 from disclosure to any third party except where reasonably necessary for the
6 transmission of the information or the accomplishment of the purpose for which the
7 lawyer is consulted.

8 7. To the extent any lawyer I and my children consulted concerning any aspect
9 of my dispute with J.C. PENNEY, INC. and/or concerning MICHAEL JACKSON or
10 BRAD MILLER believes that my communications and my children's communications
11 with him or her concerning any of those matters are protected by the "lawyer-client"
12 privilege and that he or she must therefore assert and claim the lawyer-client privilege
13 on my behalf and on behalf of my children, I HEREBY AUTHORIZE, FOR MYSELF
14 AND FOR EACH OF MY MINOR CHILDREN, each and every one of those lawyers,
15 including the lawyers listed by name above, to make full disclosure of those
16 communications (including transcripts of all depositions of me and any one or more of
17 my children) to the Sheriff of Santa Barbara County and his duly-appointed deputies
18 and investigators and to the District Attorney of Santa Barbara County and his duly-
19 appointed deputies and investigators, upon the request of any of them accompanied
20 by a signed copy of this Waiver and Consent.

21 DATED: December 19, 2003

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24 JANET ARVIZO
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EXHIBIT "2"

Janet Arvizo

February 17, 2004

VIA FACSIMILE AND U.S. MAIL

Thomas D. Rothstein
Feldman & Rothstein
790 E. Colorado Blvd.
Pasadena, California 91101-2113

Dear Mr. Rothstein:

You are hereby instructed to turn over to Larry R. Feldman and Robert M. Turner of Kaye Scholer LLP all files in your possession relating to me or my children. Their address is:

1999 Avenue of the Stars, Suite 1700
Los Angeles, California 90067

You can contact Mr. Feldman or Mr. Turner at (310) 788-1000.

Janet Arvizo

EXHIBIT "3"

**AUTHORIZATION TO WAIVE ATTORNEY-CLIENT PRIVILEGE
AS TO ANY AND ALL MATTERS, COMMUNICATIONS AND DOCUMENTS**

I, DAVID ARVIZO, hereby make the following authorization to waive the attorney-client privilege and agree to the following terms governing the waiver of the attorney-client privilege:

1. The law firm of FELDMAN & ROTHSTEIN and the LAW OFFICES OF MICHAEL ALDER (hereinafter "ATTORNEYS") represented my ex-spouse JANET ARVIZO, my children GAVIN ARVIZO, STAR ARVIZO, and myself in a civil suit against J.C. Penny, Inc., et al., Los Angeles Superior Court, case number KC027876 and entitled Janet Arvizo, et al. v. J.C. Penny, Inc., et al.

2. Any references I make to ATTORNEYS in this authorization shall include but not be limited to the agents, employees, partners and associates of ATTORNEYS whether past, present or future, and any other person used by ATTORNEYS to further my interests or aid in the transmission of privileged information.

3. I understand that I am the holder of the attorney-client privilege and that information transmitted between ATTORNEYS and myself is privileged and not subject to disclosure to third parties without my express consent.

4. I hereby waive any and all privileged communications, information, and documents transmitted to or by ATTORNEYS that in any shape or form relate to me.

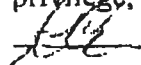
5. I hereby give full and complete consent to ATTORNEYS to disclose to anyone, including but not limited to any persons, governmental representatives, and entities of any kind, any and all privileged information, including but not limited to privileged communications and documents.

6. Waiver of the privilege shall not be limited to the Janet Arvizo, et al. v. J.C. Penny, Inc., et al. civil proceeding, but to all matters that I consulted or communicated with ATTORNEYS irrespective of when the consultations and communications were made.

7. I understand that the waiver of the privilege may be adverse to my own interests.

8. I hereby agree to hold ATTORNEYS harmless for any losses, damages, injuries, or other adverse consequences that may occur as a result of the waiver of the attorney-client privilege. I further agree to defend and indemnify ATTORNEYS against any actions arising from the waiver of the attorney-client privilege.

9. I understand that I have the right to consult any attorney of my choosing to obtain consultation regarding my decision to waive the attorney-client privilege, prior to executing this authorization.



10. I have fully read and understood the above terms. I fully agree to all of the above enumerated terms.

David Arvizo 2/2/04
DAVID ARVIZO Date

Witness: _____ Date

Approved as to Form and Content:

H. Russell Halpern 2/2/04
H. Russell Halpern Date

EXHIBIT "4"

FELDMAN & ROTHSTEIN
ATTORNEYS AT LAW
790 EAST COLORADO BLVD.
SUITE 800
PASADENA, CA 91101
(626) 578-7188
FAX: (626) 578-1293

OF COUNSEL ONLY
GEORGE O. FELDMAN

March 4, 2004

VIA FACSIMILE AND U.S. MAIL

Sandra Segal Polin
Polin & Hall
1620 26th Street
Suite 2080 North
Santa Monica, CA 90404
Fax No.: (310) 449-0014

H. Russell Halpern
Law Offices of Halpern & Halpern
18663 Ventura Boulevard, Suite 205
Tarzana, CA 91356
Fax No.: (818) 758-1567

Larry R. Feldman
Kaye Scholer LLP
1999 Avenue of the Stars, Suite 1700
Los Angeles, CA 90067
Fax No.: (310) 788-1200

Re: Marriage of Arvizo
LASC Case No.: BD 356568

Dear Ms. Polin, Mr. Halpern and Mr. Feldman:

I am in physical possession of the file regarding Arvizo et al. v. J.C. Penny, et al. I have received requests for a copy of the file from the District Attorney's Office on behalf of Ms. Janet Arvizo, from Larry Feldman and Robert Turner of Kaye Scholer in behalf of Janet, from Russ Halpern in behalf of Mr. David Arvizo, and from both Janet Arvizo and David Arvizo themselves. Additionally, I have been served with a subpoena for the file from Russ Halpern, and have been advised that Ms. Polin intends to file a motion to quash said subpoena.

I have been instructed by Janet Arvizo, personally and through Robert Turner and Sandra S. Polin not to give a copy of the file to David Arvizo. I have also been instructed by Mr. Halpern that should Janet Arvizo not allow David Arvizo to receive a copy of the file that I should not give a copy to Janet Arvizo or her counsel.

March 4, 2004

Page 2 of 2

I have consulted with the Ethics Hotline of the State Bar on numerous occasions, have consulted with attorneys specializing in ethics, as well as other attorneys regarding my duties and obligations regarding this matter. Additionally, this office has researched this matter independently.

The advice I have received is all over the board, and the research this office has done has not given any clear indications of what my obligations and responsibilities are due to the various and conflicting requests and instructions I have received. Therefore, I am respectfully requesting that you folks attempt to resolve this matter among yourselves. The file is available for copying should you be able to reach some sort of agreement. Absent that, I feel my recourse is to interplead the file into Court.

If any of the statements I have made regarding your various positions in this matter are incorrect, please accept my apologies and notify me immediately. This office has no interest in any of the current matters at hand, and we are attempting to follow the instructions and protect the interest of both Janet Arvizo and David Arvizo. Should anyone have any suggestions, supported by the law and the Rules of Professional Conduct, other than interpleading the file, I would also appreciate you notifying me immediately.

Thank you and if you have any questions or comments do not hesitate to contact me.

Very truly yours,

FELDMAN & ROTHSTEIN



Thomas D. Rothstein

TDR/ct

cc: Tom Sneddon

PROOF OF SERVICE

CCP §(1013(a) Revised 5-1-88)

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the aforesaid County, State of California; I am over the age of eighteen and not a party to the within entitled action; my business address is 790 E. Colorado Boulevard, Suite 800 Pasadena, CA 91101

On November 19, 2004, I served the foregoing:
GEORGE O. FELDMAN & THOMAS D. ROTHSTEIN'S REPLY TO MICHAEL JACKSON'S OPPOSITION TO MOTION TO QUASH THE SUBPOENA AND FOR A PROTECTIVE ORDER
upon the following parties:

Thomas A. Mescreau, Jr., Esq.
Collins Mescreau, Reddock & Yu
Fax No.: [310] 284-3133

Brian Oxman
Oxman & Jaroscak
Fax No.: [562] 921-2298

_____ (By Mail) I caused each envelope, with postage prepaid, to be placed in the United States mail.

_____ (By Hand) I caused each envelope to be delivered by hand.

_____ (By Overnight Courier) I caused each envelope, with postage prepaid, to be sent by Federal Express/Express Mail.

 X (By Facsimile Transmission) I caused each page of the document to be sent by automatic facsimile transmission and confirmed that the transmission was received.

 X (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.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Pasadena, California on November 19, 2004.

SHERRY TSAI
TYPE OR PRINT NAME

Sherry Tsai
SIGNATURE