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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

DEC 17 2004

GARY M. BLAIR, Executive Officer
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to 11/6/05 court
order

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

22 THE PEOPLE OF THE STATE OF
23 CALIFORNIA,

24 Plaintiffs,

25 vs.

26 MICHAEL JOSEPH JACKSON,

27 Defendant.

Case No. 1133603

MR. JACKSON'S REPLY TO OBJECTOR'S
PRIVILEGE LOG

Honorable Rodney S. Melville

Date: December 22, 2004

Time: 1:30 p.m.

Dept: SM 2

~~FILED UNDER SEAL AND IN CAMERA~~

1 **A. Introduction**

2 Mr. Michael Jackson submits the Reply Brief in response to the Privilege Log submitted by
3 Objector, Janet Arvizo in connection with the Motion to Quash Subpoena by Feldman & Rothstein and C.
4 Michael Adler. Mr. Jackson's opposition to the claim of privilege is based on the following grounds:

5 (1) The Arvizos have waived their attorney-client privilege with the Subpoenaed Parties by Janet
6 Arvizo signing a written waiver of privilege dated December 18, 2003, and by David Arvizo signing a
7 written waiver dated February 2, 2004;

8 (2) Janet Arvizo may not assert attorney work product privilege because the exclusive holder of the
9 privilege are the attorneys, and the Subpoenaed Party attorneys have stated in open court they wish to turn
10 the file over to the court and be done with the matter;

11 (3) Objectors have no right to privacy of any of the materials identified in the Privilege Log, and
12 none of the documents relating to mediation are privileged as offers of compromise because Mr. Jackson
13 does not seek to use any offer to compromise "to prove [the offeror's] liability for the loss or damages or
14 any part of it" as set forth in Evidence Code section 1152.

15 **1. Statement of the Case.**

16 On November 9, 2004, Feldman & Rothstein and C. Michael Adler filed a Motion to Quash
17 subpoenas served on them seeking records from a lawsuit entitled Janet Arvizo and David Arvizo v. J.C.
18 Penney, Inc., Los Angeles County Superior Court Case No. KC 027876. Mr. Jackson responded to the
19 motion pointing out that on December 18, 2003, Janet Arvizo, on behalf of herself and as guardian Ad
20 Litem for her children, Davellin, Gavin, and Star Arvizo, executed a written waiver of the attorney-client
21 privilege with her attorneys in that lawsuit. David Arvizo also executed a waiver dated February 2, 2004,
22 and all privileges regarding the files in that proceeding were waived.

23 On November 22, 2004, the Court held a hearing at which the Court felt notice should be given to
24 both Janet and David Arvizo. The Court continued the hearing to November 29, 2004. At the November
25 29, 2004, hearing, Attorney Russell Halperin appeared for David Arvizo and stated on the record that Mr.
26 Arvizo had waived the attorney client privilege and had no objection to the production of the documents.

27 At that same hearing, Attorney Tony S. Sadri, informed the court that Feldman & Rothstein and C.
28 Michael Adler wanted to turn over the records to the court and be done with the matter. Attorney Sandra

Polin appeared for Janet Arvizo and claimed Ms. Arvizo had not waived attorney-client privilege. The Court requested Ms. Polin to provide the court with a Privilege Log to determine what matters were in issue. On December 9, 2004, Ms. Polin filed a Privilege Log claiming 37 items were privileged.

2. Objector's privilege claims are without foundation.

Objector's privilege claims fail because nothing vitiates, alters, or invalidates the full and complete waiver of attorney-client privilege of December 18, 2003. Objector is not the holder of any work product privilege, and only the attorneys are capable of asserting work product privilege. Lasky, Hass, Cohler & Munter v. Superior Court, 172 Cal. App.3d 264, 271 (1985). The attorneys have not only declined to assert work product privilege, but also they have affirmatively waived that claim by telling this Court they wish to deliver the files to the Court and be done with the matter.

The materials identified in the Privilege Log do not violate Objector's right to privacy. None of the documents in any manner constitute private material. In all events, Mr. Jackson's right to a fair trial outweighs any claim of right to privacy Objector might assert.

Objectors claim that some of the documents constitute inadmissible offers to compromise because they are contained in a Mediation Brief. The argument is without foundation because Evidence Code section 1152 prohibits a party from introducing offers to compromise "to prove [the offeror's] liability for the loss or damages or any part of it." Mr. Jackson does not seek to discover such information in order to establish liability on the claim being mediated, not is the admissibility of such evidence the issue in discovery. Rather, Mr. Jackson seeks to establish the Arvizos' preexisting injuries, mental illness, and fraudulent activity of concealing settlement proceeds from the J.C. Penny's case from numerous persons, including County Welfare Authorities, Fritz Coleman, and Mr. Jackson.

B. Objector's Privilege Log Ignores the Express Waiver of Privileges and Fails to Establish Any Right to Privacy or Offer to Compromise Exclusions.

1. Business cards from witnesses.

a. Objector's Privilege Claim:

1	Undated	One sheet of paper containing photocopies of business cards for witnesses from the Westfield Shopping Town Mall in West Covina with handwritten notes with addresses	Attorney work product
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and telephone numbers of persons

b. Mr. Jackson's Response:

(i) Identity of witnesses is not attorney work product.

The business cards from third parties are neither attorney-client privileged nor work product because they are not communications to or from the attorney. Green & Shinee v. Superior Court, 88 Cal. App. 4th 532, 536 (2001)(public records sent to or gathered by an attorney are not subject to attorney client privilege). There is no work product privilege because a document gathered by or delivered to an attorney does not become privilege merely because the attorney is the recipient. Holm v. Superior Court, 42 Cal. 2d 500, 511 (1954). The business cards have no privileged communication or attorneys thoughts, and they are not privileged. American Mut. Liab. Ins. Co. v. Superior Court, 38 Cal. App. 3d 579, 594 (1974)(work product applies only to documents containing attorneys's impressions, conclusions, opinions, or legal theories). is not subject to privilege.

Code of Civil Procedure section 2018 provides:

"(b) 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) Any writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances."

The claim of work product for the business cards is without foundation. They are not attorney work product and they contain no communications, thoughts, or opinions. Mr. Jackson's right to a fair trial outweighs any claim of work product because these cards demonstrate potential witnesses and witness statements of the incident that is highly relevant to this proceeding. Trade Center Properties v. Superior Court, 185 Cal. App. 2d 409 (1960) (statements taken by attorney from witnesses, or other third parties are not communications by client to attorney and not subject to attorney-client or work product privilege).

(ii) Clients may not assert attorney work product privilege

The attorney, not the client, is the holder of the attorney work product privilege. Lasky, Hass, Cohler & Munter v. Superior Court, 172 Cal. App.3d 264, 271 (1985). Here, the attorneys have affirmatively indicated they do not assert any privilege on their own behalf, but also that they wish to

1 interplead and deliver the files so that they are no longer involved in the matter. The client has no basis to
2 assert work product privilege. .

3 Nothing about the business cards contain attorneys impressions, theories, opinions, or conclusions.
4 Judge Jefferson states:

5 "Not every writing or document in a client's possession becomes a confidential
6 communication immune from disclosure merely because the client sends it to his or her lawyer.
7 The lawyer-client privilege was primarily designed to protect oral communications and any writing
8 that the client prepares in order to provide his or her lawyer with confidential information relevant
9 to the purpose of the consultation. See In re Jordan (1972) 7 C3d 930, 103 CR 849. Writings or
10 documents that may be prepared for a purpose other than furnishing counsel with confidential
11 information. Any writing or documents in the client's possession that contain admissible evidence
12 or discoverable matter do not become privileged by the client's transmitting them to counsel. See
13 Holm v. Superior Court (1954) 42 C2d 500, 267 P2d 1025. Such documents or writings are created
14 without the intent that they constitute a confidential communication and hence the client's
15 transmittal of the documents or writings to counsel cannot change their non-confidential character."
16 2 Jefferson's California Evidence Benchbook, sec. 40.17, at 304 (3d ed. 2004)(emphasis original).

17 Nothing about these business card documents are work product or attorney-client privileged. There
18 is no basis for objection in this case on any grounds. Mr. Jackson requests the court compel disclosure of
19 these business cards.

20 **2. Mediation Brief.**

21 **a. Objector's Privilege Claim:**

22 2. 04/27/01 Plaintiff's Mediation Brief Evidence Code sec. 1152

23 **b. Mr. Jackson's Response:**

24 Evidence Code section 1152 is not a privilege from discovery, and nothing in that section precludes
25 Mr. Jackson's subpoena. Rather, the section prohibits introduction of an offer of compromise "to prove
26 [the offeror's] liability for the loss or damages or any part of it." If the purpose is other than to establish the
27 offeror's liability, section 1152 provides neither a privilege nor a basis to exclude the evidence from
28

1 introduction in any court proceeding where it is relevant. I B. Witkin, California Evidence, Circumstantial
2 Evidence, sec 424, at 398-99 (3d ed. 1986).

3 Evidence Code section 1152 provides:

4 "Evidence that a person has, in compromise or from humanitarian motives, furnished or
5 offered or promised to furnish money or any other thing, act, or service to another who has
6 sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as
7 well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her
8 liability for the loss or damage or any part of it."

9 Mr. Jackson does not seek the Mediation Brief as an admission of liability. Rather, it contains
10 information such as the nature of the Arvizo's claimed injuries, their medical disclosures and waivers of
11 medical privileges, and their testimony regarding their mental condition. The issue here is discovery, not
12 admissibility at trial. Section 1152 is not applicable under these conditions because a Mediation Brief is no
13 sought to be admitted at trial to "prove [the Arvizos'] liability for loss or damages or pay part of it.. This
14 evidence is critical to Mr. Jackson's defense to demonstrate not only the complaining witnesses preexisting
15 injuries and mental illness, but also fraudulent activity of concealing the J.C. Penny settlement proceeds
16 from County Welfare Authorities, Fritz Coleman, and Mr. Jackson.

17
18 **3. Letter from Attorney Rothstein**

19 **a. Objector's Privilege Claim:**

20 3. 08/01/02 Letter from Thomas D. Rothstein to Attorney-client privilege
21 Janet Arvizo

22 **b. Mr. Jackson's Response:**

23 Both David Arvizo and Janet Arvizo have fully waived all claims of attorney-client privilege. There
24 is no partial or qualified waiver of that privilege recognized under California law. McKesson HBOC, Inc.
25 v. Superior Court, 115 Cal. App. 4th 1229, 1241 (2004). There is no basis for the assertion of an attorneys-
26 client privilege and the Arvizo's attempt to ignore their full waiver of privilege in their December 18, 2003,
27 written waiver is without merit

28 **4. Documents showing Minor's bank account..**

1 **a. Objector's Privilege Claim:**

2 4. Undated Information regarding Minor's blocked Attorney work product
3 Account with attachments regarding
 said account

4 **b. Mr. Jackson's Response:**

5 The information from the Arvizo's bank account is not work product privileged. It contains no
6 impressions, thoughts, conclusions, opinions, or legal theories. American Mut. Liab. Ins. Co. v. Superior
7 Court, 38 Cal. App. 3d 579, 594 (1974). The bank documents are communications from their parties to the
8 attorneys and have no work product aspect to them because by definition they come from their parties and
9 are disclosed to third parties. . 2 Jefferson's California Evidence Benchbook, sec. 40.26, at 885 (3d ed.
10 2004)(disclosure of a privileged communication waives all attorney-client and work privilege associated
11 with the disclosure).

12 A communication from a third party to the attorney, such as a bank that sends a statement to an
13 attorney, is not attorney-client privileged. Olende v. United States, 310 F.2d 795, 806 (9th Cir. 1954). Nor
14 is a cancelled check attorney-client privileged because a check is an order to a third party payor, usually a
15 bank, to pay the client, and involves no communication to the client. California Commercial Code sec.
16 3104(f). Lawyer who maintains accounts for client as either checking or savings accounts are not covered
17 by attorney client privilege, and the transactions in question are not clothed with privilege. U.S. v. Chin
18 Lim Mow, 12 F.R.D. 433, 434 (D.C. Cal. 1952).

19 **5. Mediation Brief**

20 **a. Objector's Privilege Claim:**

21 5. 09/21/01 Plaintiff's Confidential Mediation Brief Evidence Code sec. 1152
22 For Mediation on September 21, 2001

23 **b. Mr. Jackson's Response:**

24 This item is identical to Item No. 2 above. There is no section 1152 privilege because only the
25 attorney can assert the privilege, and that has not happened here. In addition, Mr. Jackson does not seek
26 discovery of such evidence to establish liability on behalf of the Arvizo's, but rather to find out the nature
27 of their injuries and mental illness, along with demonstrating a pattern of fraud in concealing the \$152,000
28 J.C. Penny settlement from people the complaining family solicited to pay for non-existent medical bills.

1 **6. Letter from Attorney Adler to minor.**

2 **a. Objector's Privilege Claim:**

3 6. 09/14/01 Letter from Law Offices of c. Michael Attorney-client privilege
4 Adler to Janet Arvizo regarding
5 Settlement offer from J.C. Penney

6 **b. Mr. Jackson's Response:**

7 Janet Arvizo waived attorney-client privilege by her written waiver of December 18, 2003. There
8 was no conditions or qualifications attached to that waiver. McKesson HBOC, Inc. v. Superior Court, 115
9 Cal. App. 4th 1229, 1241 (2004). The court should require production of the documents.

10 **7. Letter from Mediator**

11 **a. Objector's Privilege Claim:**

12 7. Undated Fax confirmation invoice from JAMS Attorney work product
13 Arbitration and Mediation Services to
14 C. Michael Adler, Esq. with
15 handwritten notes on said fax
16 transmittal

17 **b. Mr. Jackson's Response:**

18 The document is a transmittal letter to a third person and is not an offer for compromise. It does not
19 contain any thoughts, opinions, theories, or attorneys impressions. The document is not privileged in any
20 manner and should be disclosed.

21 **8. Transmittal letter for brief to Mediator**

22 **a. Objector's Privilege Claim:**

23 8. 09/21/01 Fax cover from Law offices of Attorney work product
24 C. Michael Adler to Judge William
25 McVittie enclosing Mediation Brief
26 with handwritten notes regarding
27 settlement

28 **b. Mr. Jackson's Response:**

29 Here again the assertion of work product is both excessive and without merit, especially when it can
30 be asserted only by the attorney, and not the client. This is a communication to a third party. It is not work
31 product because it contains no attorney impressions, opinions, theories, or thoughts.

32 **9. Letter from opposing counsel regarding settlement**

33 **a. Objector's Privilege Claim:**

9. 09/13/01 Letter from Thomas J. Griffin of
Nelson & Griffin to C. Michel Adler
regarding settlement proposal

Evidence Code sec. 1152

b. Mr. Jackson's Response:

Mr. Jackson does not seek this letter, which was disclosed to a third party, because he wishes to establish anything relating to the Arvizos' liability. Rather, he seeks it because it contains information relating to the Arvizos' injuries, their claims of damages, and their mental status, all of which have been placed in issue in this case. Evidence Code section 1152 does not preclude Mr. Jackson from subpoenaing this document because he does not seek to establish "liability for the loss or damage or any part of it."

10. Address for David Arvizo

a. Objector's Privilege Claim:

10. Undated Legal notes on 8-1/2 x 11 piece
of paper with handwritten notes
regarding David Arvizo, specifically
his address, and some other illegible
notes

Attorney work product

b. Mr. Jackson's Response:

David Arvizo's address is not an attorney impression, thought, theory, or opinion. It is not work product privileged. More important, both parties have waived all privileges in this case, and the attorneys in question have asserted no work product privilege. The court should require disclosure of the document.

11. Things to do list

a. Objector's Privilege Claim:

11. Undated Legal notes on one 8-1/2 x 11 piece
of paper with handwritten notes of two
paragraphs of things to do

Attorney work product

b. Mr. Jackson's Response:

This "to do" list may or may not contain attorney thoughts, impressions, theories, or opinions. However, the attorneys have not asserted any work product privilege. The Arvizos cannot assert it, and the Court should require production of the document.

The assertion loses sight of the fact there has been a full waiver of all privileges here by both clients. That waivers cannot be ignored. No basis exists to withhold this document.

12. Legal research

1 **a. Objector's Privilege Claim:**

2 12. Undated Legal notes on one 8-1/2 x 11 piece Attorney work product
3 of paper regarding legal research

4 **b. Mr. Jackson's Response:**

5 It is uncertain what "legal notes" mean, and it cannot be ascertained from this description if
6 opinions, impressions, theories, or opinions from an attorneys are contained within such a document.
7 However, regardless of such a determination, the attorneys are the holders of the privilege, not the client,
8 and they have not asserted such a privilege here. The Court should require production because in the final
9 analysis, both clients have fully waived all privileges.

10 **13. Disposition of settlement proceeds**

11 **a. Objector's Privilege Claim:**

12 13. 11/01/01 Handwritten notes on back of one Attorney work product
13 piece of pleading paper regarding
14 disposition of settlement proceeds

15 **b. Mr. Jackson's Response:**

16 The disposition of settlement proceeds is not an attorney opinion, though, theory, or impression
17 regarding the case. It is not a communication from the client to the attorneys. Any attorney-client
18 communication was waived here, and in a more fundamental sense, bookkeeping or banking transactions
19 handled by an attorneys for a client are in no manner attorney client privileged. U.S. v. Chin Lim Mow, 12
20 F.R.D. 433, 434 (D.C. Cal. 1952). It is not work product because the distribution of money is not an
21 attorney though, theory, impression, or opinion.

22 **14. Message to Janet Arvizo**

23 **a. Objector's Privilege Claim:**

24 14. Undated Handwritten notes on one piece of Attorney work product
25 legal size paper regarding message
26 to Janet Arvizo

27 **b. Mr. Jackson's Response:**

28 Any message to Janet Arvizo is a communication, not an internal though impression, opinion, or
theory kept within the thoughts of the attorney. Work product is inapplicable to any such communication,
and the claim does not establish the message to Janet Arvizo came from an attorney. The communication

1 should be disclosed because attorney-client privilege was waived by both parties. Further, the attorneys
2 have not asserted work product privilege, and in fact, said they wish to party with the files to the Court.

3 **15. Mike and Woody notes on experts**

4 **a. Objector's Privilege Claim:**

5 15. 08/16/01 Internal memorandum from Mike to Attorney work product
6 Woody containing both handwritten
7 and typewritten text regarding
8 experts and other notes on things to do

9 **b. Mr. Jackson's Response:**

10 Objector has failed to identify who Mike or Woody might be, and it cannot be reasonable
11 ascertained if they are attorneys. If any of this document contains attorney thoughts, impressions, opinions,
12 or theories, it is the attorney who must assert work product privilege, not the client. The attorneys have
13 stated they wish to part with the file, and the Court should compel its production.

14 **16. Attorney notes on experts.**

15 **a. Objector's Privilege Claim:**

16 16. 09/17/01 One page of attorney notes on 8-1/2 x Attorney work product
17 11 paper regarding experts

18 **b. Mr. Jackson's Response:**

19 The nature of the notes is not identified, nor is it possible to determine if the notes contain thoughts,
20 reflections, opinions, or theories of the case. If the notes contain addresses or other factual matters, as is
21 the case in the other items identified in this motion, there is no work product privilege. In all events, the
22 attorney has not claimed work product privilege, and the objection is without foundation.

23 **17. Letter from Henderson on settlement.**

24 **a. Objector's Privilege Claim:**

25 17. 10/10/01 Letter from Cheryl Henderson of Law Attorney-client privilege
26 Offices of C. Michael Adler to Janet
27 Arvizo regarding settlement
28 agreement

b. Mr. Jackson's Response:

This attorney-client communication privilege was waived by both parties. The complaining mother
cannot now pretend she did not waive privilege. The court should require production of this document.

1 **18. Memo on conversation with court clerk**

2 **a. Objector's Privilege Claim:**

3 18. 09/18/01

Internal memorandum from Cheryl to
Michael Adler with typewritten text
only regarding conversation with clerk

Attorney work product

5 **b. Mr. Jackson's Response:**

6 Nowhere is the identity, capacity, or status of Cheryl Henderson identified. The court should take
7 judicial notice that Cheryl Henderson is not admitted to the California Bar. While an attorneys's thoughts,
8 impressions, opinions, and theories are work product privileged, non-attorneys have no such privilege.

9 In National Steel Products Co. v. Superior Court, 164 Cal. App. 3d 476 (1985), the court found that
10 where an attorney utilizes the services of non-attorneys consultants or employees, the product of those
11 services will qualify as attorneys work-product only where (1) the material in whole, or in part, reflects an
12 attorneys's impressions, conclusions, opinions, or legal research or theories as communicated to the
13 consultant or employee, (2) if any portion of the materials is advisory to the attorneys, is that portion
14 severable from the portions that are not advisory to the attorneys, and (3) as to the non-advisory portions,
15 the judge should determine whether good cause for discovery outweighs the principles supporting the
16 conditional work product privilege. Id. at 489-90.

17 The National Steel Products case contemplates an In Camera review of all such documents.
18 However, in this case, there is no necessity of that review because the attorneys who hold the work product
19 privilege have not asserted it. They have waived it by informing the Court they wish to turn over all
20 materials to the court and be done with the matter.

21 **19. Notes regarding depositions**

22 **a. Objector's Privilege Claim:**

23 19. Undated

One page photocopy of attorney
notes regarding taking depositions

Attorney work product

25 **b. Mr. Jackson's response:**

26 What these notes say is not identified. It is not possible to determine if the notes contains thoughts,
27 reflections, opinions, or theories of the case. There is no work product privilege involved because the
28 attorney has not claimed work product privilege.

20. Verdicts on Disk

a. Objector's Privilege Claim:

20. Undated

Downloaded pages of "Verdicts on
Disk" ~ preparation for trial material

Attorney work product

b. Mr. Jackson's response:

Jury Verdict sheets do not contain an attorneys's thoughts, reflections, opinions, or theories. There is no work product privilege for public documents such as jury verdicts. Green & Shinee v. Superior Court, 88 Cal. App. 4th 532, 536 (2001)(public records sent to or gathered by an attorney are not subject to attorney client privilege). Nothing in these jury verdict sheets constitutes attorney work product.

21. Things to do

a. Objector's Privilege Claim:

21. Undated

One page of legal notes on legal size paper containing notes on things to do

Attorney work product

b. Mr. Jackson's response:

A “things to do” list may or may not be attorney work product. The author of the list is not identified, nor is there any suggestion there are thoughts, opinions, reflections, or theories contained in the list. The attorneys have not asserted any work product privilege, and the Objector cannot assert it.

22. Names, addresses, and telephone numbers

a. Objector's Privilege Claim:

22. Undated

Attorney notes on legal size paper, 3 pages, stapled, containing addresses, telephone numbers, and names of persons

Attorney work product

b. Mr. Jackson's response:

Addresses, telephone numbers, and names of persons do not constitute attorney work product because they contain no opinions, reflections, thoughts, or theories. The Objectors cannot claim work product privileges because they are not the holder of the privilege. Only the attorney can claim that privilege and they have stated to the court they wish to part with the entire file.

22. Witness list with names, addresses, and telephone numbers

a. Objector's Privilege Claim;

23. Undated

Document entitled "character Witness List" containing handwritten interlineations and post-its with thirty party names, addresses, and telephone numbers

Attorney work product;
right to privacy

b. Mr. Jackson's response:

The names and addresses of witnesses are not attorney work product. Mr. Jackson has a right to a fair trial, and the names of witnesses who observed the falsity of the Objector's prior claims, mental illness, and fraudulent money raising, are material to Mr. Jackson's defense. There is no basis for the Objector's to claim work product because the attorneys's have told the Court they wish to part with the material.

There is no invasion of privacy by disclosure of witnesses. Witnesses are not the property of or a private concern of any individual. The objection is without merit.

The constitutional right to privacy is not absolute and is outweighed by rights to a fair trial. Binder v. Superior Court, 196 Cal. App. 3d 893, 900 (1987). Other state interests, such as facilitating the ascertainment of truth in a criminal proceeding, outweigh privacy rights. Board of Trustees v. Superior Court, 119 Cal. App. 3d 516, 524-25 (1981). In Palay v. Superior Court, 18 Cal. App. 4th 919, 933 (1993), the court stated:

"The constitutional right to privacy is not absolute. ([Jones v. Superior Court,] 119 Cal.App.3d at p. 550; Board of Medical Quality Assurance v. Gherardini, supra, 93 Cal.App.3d at p. 679.) It may be outweighed by supervening concerns. (Ibid.) The state has enough of an interest in discovering the truth in legal proceedings, that it may compel disclosure of confidential material. (Jones v. Superior Court, supra, 119 Cal.App.3d at p. 550.) "[A]n individual's medical records may be relevant and material in the furtherance of this legitimate state purpose" (Board of Medical Quality Assurance v. Gherardini, supra, 93 Cal.App.3d at p. 679.) An "intrusion upon constitutionally protected areas of privacy requires a 'balancing of the juxtaposed rights, and the finding of a compelling state interest.' [Citations.]" (Jones v. Superior Court, supra, 119 Cal.App.3d at p. 550.)"

For the complaining mother to suggest her witness list is private strains credulity. These witnesses not only know about the mother's schizophrenia and psychosis, but also they know about her fraudulent

conduct toward Fritz Coleman, Mr. Jackson, J.C. Penny, and many others. Mr. Jackson has a right to know what these individuals know about the Objector's history of fraudulent activities.

24. Business cards of witnesses

a. Objector's Privilege Claim:

24.	Undated	Original of document identified earlier containing photocopies of business cards from persons at Westfield Shopping Town Mall	[No objection stated]
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b. Mr. Jackson's response:

This information appears to be the same as identified in Item No. 1 above. There is no work product privilege because a document gathered by or delivered to an attorney does not become privilege merely because the attorney is the recipient. Holm v. Superior Court, 42 Cal. 2d 500, 511 (1954). The business cards have no privileged communication or attorneys thoughts, and they are not privileged. American Mut. Liab. Ins. Co. v. Superior Court, 38 Cal. app. 3d 579, 594 (1974)(work product applies only to documents containing attorneys's impressions, conclusions, opinions, or legal theories). is not subject to privilege.

25. Legal research on remedial repairs

a. Objector's Privilege Claim:

25.	09/20/00	Internal memorandum from Jane to Mile./File containing legal research regarding subsequent remedial measures	Attorney work product
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b. Mr. Jackson's response:

Who Jane and Mike might be is not identified, nor is it possible to determine if they are attorneys. Whether an attorney's thoughts, reflections, opinions, or theories are contained in this document is not identified. The attorneys have not claimed work product privilege, and Objector cannot claim it for them.

26. Subpoenaed documents from Hilton Hotels

a. Objector's Privilege Claim:

26.		Subpoenaed documents from Hilton Hotels regarding Janet Arvizos employment	Right to privacy
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b. Mr. Jackson's response:

1 There is no right to privacy of a hotel's records subject to a subpoena. By definition the matter was
2 publically disclosed through the subpoena, and the time to claim any such privilege was at the time of the
3 subpoena, not now when the records were already disclosed. Objector's claim of privacy is without merit.

4 **27. Table of Trial Notebook contents**

5 **a. Objector's Privilege Claim:**

6 27. Undated Document entitled "Trial Notebook" Attorney work product
7 regarding contents of trial notebook

8 **b. Mr. Jackson's response:**

9 The description of "trial notebook" is vague because it cannot be determined what is contained in
10 the notebook or the documents that show its contents without examining the contents, or at least getting a
11 description. Public documents and previously disclosed documents are the likely contents of the trial
12 notebook, and no work product privilege attaches to them. More important, the Objector cannot claim
13 attorney work product privilege not only because Objector is not the attorney, but also the attorneys have
14 told this Court they wish to part with the file and be done with this matter.

15 **28. Attorney letter to minor**

16 **a. Objector's Privilege Claim:**

17 28. 08/19/99 Letter from Thomas C. Rothstein to Attorney-client privilege
18 Gavin Anton Arvizo regarding incident
19 occurring on August 27, 1998

20 **b. Mr. Jackson's response:**

21 Objector signed a waiver of attorney-client privilege on December 18, 2003. The waiver bound her
22 children for whom she was Guardian Ad Litem. David Arvizo did the same on February 2, 2004. The
23 privilege for the communication from the attorney to the son was waived.

24 **29. Attorney letter to minor**

25 **a. Objector's Privilege Claim:**

26 29. 08/19/99 Letter from Thomas C. Rothstein to Attorney-client privilege
27 Star David Arvizo regarding incident
28 occurring on August 27, 1998

b. Mr. Jackson's response:

1 Objector signed a waiver of attorney-client privilege on December 18, 2003. David Arvizo did the
2 same on February 2, 2004. The waiver bound their children as Guardian Ad Litem. The privilege for the
3 communication from the attorney to her son was waived.

4 **30. Letter from Attorney to Janet Arvizo**

5 **a. Objector's Privilege Claim:**

6 30. 08/19/99 Letter from Thomas C. Rothstein to Attorney-client privilege
7 Janet Ventura Arvizo regarding
8 incident occurring on August 27, 1998

9 **b. Mr. Jackson's response:**

10 Objector signed an attorney-client privilege waiver on December 18, 2003. So did David Arvizo on
11 February 2, 2004. The waivers were without qualification. The privilege for Objector was waived.

12 **31. Letter from Attorney to minor**

13 **a. Objector's Privilege Claim:**

14 31. 08/19/99 Letter from Thomas C. Rothstein to Attorney-client privilege
15 Gavin Anton Arvizo regarding incident
16 occurring on August 27, 1998

17 **b. Mr. Jackson's response:**

18 Objector signed an attorney-client privilege waiver on December 18, 2003. So did David Arvizo on
19 February 2, 2004. The waiver bound ter children. The privilege for the son was waived.

20 **32. Attorney notes on Kaiser Hospital**

21 **a. Objector's Privilege Claim:**

22 32. Undated Attorney notes on 8-1/2 x 11 paper Attorney work product
23 regarding Kaiser and other
24 miscellaneous notes

25 **b. Mr. Jackson's response:**

26 Objector signed a waiver of attorney-client privilege on December 18, 2003. The waiver directed
27 disclosure of all files. The attorneys have asserted no work product privilege, and not only have they told
28 the Court they wish to turn over the files to be done with the matter, but also Objector has no legal right to
assert the attorney's work product privilege which is held exclusively by the attorneys.

33. Addresses and telephone numbers

a. Objector's Privilege Claim:

33. Undated Attorney notes on 8-1/2 x 11 paper Attorney work product
with addresses and telephone
numbers and other miscellaneous
notes

b. Mr. Jackson's response:

Addresses and telephone numbers do not contain attorneys thoughts, opinions, impressions, or theories, and they are not work product privileged. Objection has no ability to assert a work product privilege for attorneys who have told this court they wish to part with the entire file. Mr. Jackson's right to a fair trial outweighs any claims objector is making, particularly in view of the December 18, 2003, waiver where Objector directed release of the entire file to the District Attorney.

34. Attorney letter to Janet Arvizo regarding deposition.

a. Objector's Privilege Claim:

34. 01/08/01 Letter from Anthony N. Ranieri of Attorney-client privilege
Feldman & Rothstein to Janet and
David Arvizo regarding deposition
transcripts

b. Mr. Jackson's response:

Objector signed an attorney-client privilege waiver on December 18, 2003. The waiver bound her without condition. The privilege for the communication from the attorney to Objector was waived.

35. Attorney letter to David Arvizo regarding mediation

a. Objector's Privilege Claim:

35. 03/30/01 Letter from Anthony N. Ranieri of Attorney-client privilege
Feldman & Rothstein to Janet and
David Arvizo regarding mediation

b. Mr. Jackson's response:

Objector signed a waiver of attorney-client privilege on December 18, 2003. David Arvizo also waived all attorneys-client privileges. The waiver bound the parties without condition or qualification. The privilege for the communication from the attorney was waived.

36. Attorney letter to Janet and David Arvizo regarding mediation

a. Objector's Privilege Claim:

36. 04/04/01 Letter from Russell L. Bolin of Attorney-client privilege
Feldman & Rothstein to Janet
and David Arvizo regarding mediation

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Objector signed a waiver of attorney-client privilege on December 18, 2003. David Arvizo also waived all attorneys-client privileges. The waiver bound the parties without condition or qualification. The privilege for the communication from the attorney was waived.

37. Letter from Bank to Janet Arvizo regarding account

a. Objector's Privilege Claim:

37.	05/08/02	Letter from Mary Holzer to Janet Arvizo regarding account at City National Bank	Attorney-client privilege
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b. Mr. Jackson's response:

The Court should take judicial notice that Mary Holzer is not a member of the California Bar. A letter from the Bank to Janet Arvizo is not attorney-client privileged, and even if the attorneys transmitted it to the client, it is not attorney client privileged. In all events, Janet Arvizo waived attorney-client privilege on December 18, 2003, and the objection is without merit.

C. Conclusion.

For the foregoing reasons, Mr. Michael Jackson requests the Motion to Quash by Feldman & Rothstein be denied, and the Claim of Privilege asserted by Janet Arvizo be overruled.

Dated: December 10, 2004

Respectfully submitted,

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