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FILED
SUPERIOR COURT of CALIFORNIA
COUNTY of SANTA BARBARA

DEC 03 2004

GARY M. BLAIR, Executive Officer
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to 6/16/05 court
order*

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SANTA BARBARA
16 SANTA MARIA DIVISION

18 THE PEOPLE OF THE STATE OF
CALIFORNIA,

19 Plaintiff,

20 vs.

21 MICHAEL JOSEPH JACKSON

22 Defendant.

CASE NO. 1133603

MR. JACKSON'S SUPPLEMENTAL
MEMORANDUM RE: WAIVER OF
ATTORNEY-CLIENT PRIVILEGE
FOR FELDMAN & ROTHSTEIN

23 TIME: ~~8:30 a.m.~~ 1:30 PM
DATE: December 22, 2004
PLACE: Department SM-2

24 FILED UNDER SEAL *+ J. L. ...*

1 Mr. Michael Jackson ("Mr. Jackson") respectfully submits this supplemental Memorandum
2 re: Waiver of Attorney-Client Privilege for Feldman & Rothstein in response to the request from the
3 Court for additional briefing on the effect of Janet Arvizo's waiver of attorney-client privilege.

4 On December 18, 2003, Janet Arvizo executed a waiver of her and her children's attorney
5 client privilege with Attorneys George Feldman, Thomas Rothstein, and C. Michael Alder. (See
6 Exhibit "E" Attached to the Opposition to Feldman & Rothstein's Motion to Quash, also attached to
7 this Memorandum for the Court's convenience.) This Waiver speaks for itself. It was not a
8 conditional waiver. Nor was it an attempt to be a selective waiver. Rather, it was a general and
9 complete waiver. Hence, Janet Arvizo cannot now be permitted to rewrite history to claim that
10 communications or documents bearing communications with the referenced attorneys are privileged.

11 In McKesson HBOC, Inc. v. Superior Court, 115 Cal. app. 4th 1229 (2004), the court rejected
12 a selective waiver theory of attorney client privilege. Id. at 1241. In California, the attorney-client
13 privilege is a legislative creation. Id. at 1236, citing Evidence Code sections 950-62. The courts
14 have no power to expand or to recognize implied exceptions. Id., citing Wells Fargo Bank v.
15 Superior Court, 22 Cal. 4th 201, 206 (2000). The privilege should be narrowly construed because it
16 prevents the admission of relevant and otherwise admissible evidence. Id. citing People v. Sinohui,
17 28 Cal. 4th 205, 212 (2002). A selective waiver theory where a client can waive the privilege as to
18 some but not all communications to his attorney is inconsistent with California statutory law that
19 makes no such distinction. Id. at 1241.

20 In Roberts v. City of Palmdale, 5 Cal. 4th 363, 373 (1993), the court stated:

21 Our deference to the Legislature is particularly necessary when we are called upon to
22 interpret the attorney-client privilege, because the Legislature has determined that
23 evidentiary privileges shall be available only as defined by statute. (Evid. Code, §
24 911.) Courts may not add to the statutory privileges except as required by state or
25 federal constitutional law (Valley Bank of Nevada v. Superior Court (1975) 15 Cal.3d
26 652, 656; see also Mitchell v. Superior Court (1984) 37 Cal.3d 268, 274, fn. 3), nor
27 may courts imply unwritten exceptions to existing statutory privileges. (Dickerson v.
28 Superior Court (1982) 135 Cal.App.3d 93, 99 (refusing to imply a stockholder's

1 exception to the attorney-client privilege between a corporate client and corporate
2 counsel); see also Cal. Law Revision Com. com., West's Ann. Evid. Code, § 911, p.
3 488 (privilege "is one of the few instances where the Evidence Code precludes the
4 courts from elaborating upon the statutory scheme.")

5 Janet Arvizo has waived the attorney-client privilege as to attorneys Feldman, Rothstein and
6 Alder. She did so knowingly and intentionally. Accordingly, neither Janet Arvizo nor any attorney
7 acting on her behalf should be allowed to assert the attorney-client privilege.

8 Mr. Jackson has the right to inquire into all subjects discussed between and/or among Janet
9 Arvizo, her children (i.e., Gavin Arvizo, Star Arvizo, Davellin Arvizo) and attorneys Feldman,
10 Rothstein and Alder. The motions to quash brought by attorneys Feldman, Rothstein and Alder
11 should be denied.

12
13 DATED: December 3, 2004

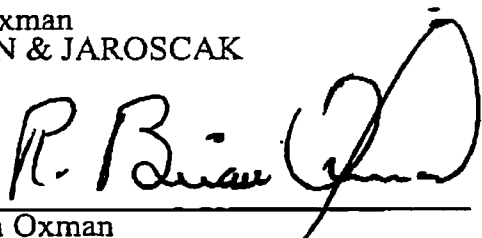
Respectfully submitted,

14 Thomas A. Mesereau, Jr.
15 Susan Yu
16 COLLINS, MESEREAU, REDDOCK & YU

17 Robert M. Sanger
18 SANGER & SWYSEN

19 Brian Oxman
20 OXMAN & JAROSCAK

21 By:


22 R. Brian Oxman
23 Attorneys for Defendant
24 MICHAEL JOSEPH JACKSON
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(A) LIST CONTINUATION. (B) DESCRIBE: PHYSICAL EVIDENCE, LOCATION FOUND & DISPOSITION. (C) NARRATIVE. (D) CASE DISPOSITION

WAIVER OF LAWYER-CLIENT PRIVILEGE and
CONSENT TO LIMITED DISCLOSURE OF PRIVILEGED COMMUNICATIONS

(Evid. Code, § 912)

I, JANET ARVIZO, say:

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

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

THOMAS DAVID ROTHSTEIN, SBN 77965

GEORGE OWEN FELDMAN, SBN 80025

~~WILLIAM DICKERMAN, SBN 76237~~ *ja*

C. MICHAEL ALDER, SBN 170381

~~LARRY ROBERT FELDMAN, SBN 45128~~ *ja*

3. I consulted one or more of those lawyers concerning an incident in which I, Gavin and Star were detained by employees of J.C. Penney Company, and discussed the facts of that incident with them. A civil suit arising out of that incident was filed in the Los Angeles Superior Court on July 22, 1999, captioned "Janet Arvizo, et al. vs. J.C. Penney, Inc., et al.," Case No. KC027876.

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

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

WAIVER OF LAWYER-CLIENT PRIVILEGE AND CONSENT TO DISCLOSURE

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(A) LIST CONTINUATION. (B) DESCRIBE: PHYSICAL EVIDENCE, LOCATION FOUND & DISPOSITION. (C) NARRATIVE. (D) CASE DISPOSITION

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 14, 2003

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JANET ARVIZO

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