

1 Tony S. Sadri [CBN:185418]
2 FELDMAN & ROTHSTEIN
3 790 East Colorado Blvd. Suite 800
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

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 0116105 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 CASE NO.: 1133603
17 Assigned to Hon. Rodney S. Melville

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

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

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

29 TO DEFENDANT JACKSON AND TO HIS ATTORNEYS OF RECORD:

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

33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

GEORGE O. FELDMAN & THOMAS D. ROTHSTEIN'S MOTION TO QUASH SUBPOENA AND FOR A
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.

3
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.

10
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

14
15 

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.
9
10

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.
28

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.

12
13
14 **B. F & R HAS THE LEGAL AND ETHICAL OBLIGATION TO PROTECT THE**
15 **ATTORNEY-CLIENT PRIVILEGE HELD BY THE ARVIZOS**
16

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
29 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.
4

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.

24 ///

25 ///

26 ///

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.
5

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.
19
20

21 Dated: November 9, 2004

FELDMAN & ROTHSTEIN



22
23
24 TONY S. SADRI

Attorneys for George O. Feldman & Thomas D.
Rothstein
25
26
27
28

1 **DECLARATION OF TONY S. SADRI**

2 **In Support of Opposition to Motion to Compel Subpoenaed Documents**

3 1. I am an Attorney at Law, duly licensed to practice before all of the courts of
4 California. I am an associate attorney at Feldman & Rothstein. I know the following to be true
5 of my own personal knowledge and if called as a witness I would and could competently testify
6 thereto. If called upon to testify to the matters hereinafter related, I could and would
7 competently do so based upon my review of the litigation filed herein and my personal
8 participation as one of the attorneys of record herein.
9
10

11 2. Feldman & Rothstein and the Law Offices of Michael Alder represented Mr.
12 Arvizo, Ms. Arvizo, and their two minor children Gavin and Star Arvizo in the case against J.C.
13 Penny, et al. The case settled. F & R is in possession of the original file.
14

15 3. George O. Feldman of F & R is no longer a partner and does not possess any
16 portion of the file. Mr. Feldman performed no work in the case and was never involved in the
17 case.
18

19 4. In the past year multiple parties have requested the civil file from F & R. The
20 requesting parties have included defendant Jackson, District Attorney Tom Sneddon, Ms.
21 Arvizo and David Arvizo. Mr. Rothstein of F & R has refused to give the file to any of the
22 aforementioned based on the attorney-client privilege and attorney work-product privilege
23

24 5. Since the file is so intertwined, it is practically impossible to separate the
25 privileged documents solely belonging to Ms. Arvizo from those solely belonging to Mr. Arvizo.
26

27 6. The file was previously subpoenaed by Mr. Arvizo in a family law action against
28 Ms. Arvizo. F & R refused to turn the file over without Ms. Arvizo's consent. Consequently,
29

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.

11
12 _____
13 TONY S. SADRI, Declarant
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28