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

DEC 03 2004

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

*\* unsealed pursuant  
to 1/16/05 court  
order*

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

18 THE PEOPLE OF THE STATE OF  
CALIFORNIA,

19 Plaintiff,

20 vs.

21 MICHAEL JOSEPH JACKSON

22 Defendant.

CASE NO. 1133603

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

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27  
28  
TIME: ~~8:30 a.m.~~ 1:30 PM  
DATE: December 22, 2004  
PLACE: Department SM-2

**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. 4<sup>th</sup> 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. 4<sup>th</sup> 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. 4<sup>th</sup> 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. 4<sup>th</sup> 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

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

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

(Evid. Code, § 912)

3  
 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. KC027876.

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.

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

22  
 23   
 24 \_\_\_\_\_  
 25 JANET ARVIZO

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