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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

10  
11 BARBRA STREISAND, an individual,  
12  
13 Plaintiff,

14 vs.

15 KENNETH ADELMAN, an individual;  
16 PICTOPIA.COM, a California corporation;  
LAYER42.NET, a California corporation;  
and DOE 1 through DOE 20, inclusive.

17 Defendants.

CASE NO. SC 077257

[Honorable Allan J. Goodman]

**PLAINTIFF'S NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY  
INJUNCTION; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

**[Filed Concurrently with Declarations of  
Barbra Streisand and John M. Gatti in  
support thereof; [Proposed] Order]**

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Trial Date: None Set

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1 TO DEFENDANT KENNETH ADELMAN AND HIS ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on July 14, 2003, or on the date allocated by the  
3 Court, in Department H of the above-entitled Court, located at 1633 Purdue Ave., Los Angeles,  
4 CA 90025, plaintiff Barbra Streisand ("Streisand") will move this Court pursuant to California  
5 Rules of Court Rule 359(a), and Code of Civil Procedure §§ 526 and 527 for an order  
6 preliminarily enjoining defendant Kenneth Adelman ("Adelman") and all his agents from:

7 (a) displaying the name of "Barbra Streisand" in any shape or form on the website  
8 bearing the address [www.californiacoastline.org](http://www.californiacoastline.org) (the "Website") owned by Adelman to identify  
9 any location, property, home, plot of land, residence, or any other demarked piece of real estate,  
10 whose photographs appear on the Website;

11 (b) identifying any location, property, home, plot of land, residence, or any other  
12 demarked piece of real estate, whose photographs appear on the Website as being in any way  
13 associated with Streisand;

14 (c) using Streisand's name or any other form of identification associated with  
15 Streisand to sell any photograph of any location, property, home, plot of land, residence, or any  
16 other demarked piece of real estate, whose photographs appear on the Website.

17 This motion is made on the grounds that irreparable injury will result to Streisand  
18 if relief is not granted, that the legal remedy is inadequate to redress the ongoing harm that  
19 Streisand is suffering, that Streisand is likely to prevail on her claims against Adelman, that the  
20 balance of the hardships is in Streisand's favor.

21 This motion is based on the accompanying Memorandum of Points and  
22 Authorities, the Declarations of Barbra Streisand and John M. Gatti, the Complaint and exhibits  
23 attached thereto, all pleadings and papers on file in this action, and upon such other and further  
24 evidence and argument as may be presented at the hearing.

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DATED: June 18, 2003

ALSCHULER GROSSMAN STEIN & KAHAN LLP  
JOHN M. GATTI  
REX D. GLENSY

By John Gatti / RG  
John M. Gatti  
Attorneys for Plaintiff  
BARBRA STREISAND

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Plaintiff Barbra Streisand ("Streisand") is entitled to a preliminary injunction to prevent  
4 Defendant Kenneth Adelman ("Adelman"), a multi-millionaire with the penchant for flying his  
5 own helicopter and snapping pictures of people's private homes, from continuing to harm  
6 Streisand through the improper use and exploitation of Streisand's name and information  
7 pertaining to her on the Internet domain, owned by Adelman, www.californiacoastline.org (the  
8 "Website"). In an age where technological advancement has resulted in the increased ability of  
9 attention-seekers to encroach into the most private spheres of an individual's existence,  
10 Adelman's Website epitomizes such invasion. Adelman has published on this Website, without  
11 obtaining any consent from Streisand, the location of her home and photographs of said home  
12 taken through sophisticated optical aids which capture details that are not visible with the naked  
13 eye from any public vantage point. Even though Adelman has taken pictures of literally tens of  
14 thousands of homes and posted them on his Website, he has captioned but a handful of such  
15 photographs (in this case with the caption "Streisand Estate, Malibu,") with an identification that  
16 proclaims the identity of the homeowner. Thus, Adelman has singled out Streisand for  
17 harassment and embarrassment by revealing private details regarding her home. As a result,  
18 Adelman has put Streisand's safety at risk by using Streisand's name to allow internet users to  
19 locate Streisand's home and with pictures that violate Streisand's rights of privacy. He should be  
20 prevented from pursuing such voyeurism and placing Streisand's safety at risk. All Streisand  
21 asks by this Motion is to be treated like everyone else on the Website whose proprietorship of  
22 their home Adelman chooses not to reveal.

23 The purpose of Adelman's Website, according to his own statements contained therein, is  
24 "to create a [sic] aerial photographic survey of the California Coast and update it on a periodic  
25 basis." He entitles this endeavor on the Website as the "California Coastal Records Project." He  
26 also emphasized that the "project was not intended to be art for art's sake; it is intended to create  
27 a permanent record of the California coastline."

28 However, Adelman has not limited himself to his own mission statement. Over the course

1 of approximately two years, through the use of his own private helicopter, and the most  
2 sophisticated cutting edge developments in digital photography technology, Adelman has flown  
3 up and down the California coast, and taken photographs which do much more than create an  
4 aerial photographic survey of the California coast. The pictures on the Website stretch well into  
5 land, sometimes for miles. They also show, with considerable detail, private aspects of peoples'  
6 homes who happen to live close to the coast. One such home is that owned by Streisand. The  
7 pictures of Streisand's home are taken with such a high resolution that the details which are  
8 visible on the Website could never be seen with the naked eye while viewing from a public  
9 vantage point. For example, the access points to Streisand's home, the interior of Streisand's  
10 home, the layout of her pool and grounds, the positioning of her parasols and deck chairs, the  
11 positioning of the windows, the French doors, the balconies, and all aspects of her residence and  
12 guest house that face the coast (and which are not visible with the naked eye while viewing from  
13 public property) are clearly visible. Adelman's pictures provide views into Streisand's residence  
14 that cannot be seen from any public vantage point. But Adelman has not limited himself to the  
15 taking of these photographs and identifying with a street map its location; rather, he has gone a  
16 step further and specifically identified such property and location as belonging to Streisand by  
17 captioning the appropriate pictures with the title "Streisand's estate," and allowing the Website's  
18 internal search engine to take any browser to such pictures and location identification if the term  
19 "Streisand" is entered. Furthermore, Adelman profits from these pictures by selling them through  
20 the Website at (should the purchaser desire) poster-size dimensions.

21 Streisand has gone through great pains and expense to preserve her privacy. She chose  
22 the property on which she lives primarily for its secluded location. She is entitled to this  
23 seclusion. Throughout her life and career, Streisand has been stalked, hounded and harassed by  
24 individuals who have done everything to intrude on her privacy with intents which have ranged  
25 from the desire to profit from the taking of pictures of her to intimidations and threats of violence  
26 that have threatened her personal safety. In light of this experience, Streisand has significant  
27 concerns for her well-being. The pictures of Streisand's property on Adelman's Website, coupled  
28 with the identification of such pictures' location and captioned as being owned by Streisand



1 provide would-be intruders with an "EZ Access Guide" to her property. This is causing Streisand  
2 considerable harm as her personal safety is being jeopardized.

3 The continued publication of this information on the Website violates Streisand's privacy  
4 rights as found in the common law doctrines of intrusion upon seclusion and publication of  
5 private facts, as well as being enshrined in Article I, Section 1 of the California Constitution, and  
6 in Section 1708.8 of the Civil Code (the Anti-Paparazzi Act). Moreover, the selling of the  
7 pictures of her home through her name is a misappropriation of the right to publicity. An  
8 injunction that precludes Adelman from using Streisand's name or any other form of  
9 identification that would link the photographs and location information that Adelman has  
10 published on the Website, to her, is the only remedy that will curtail the irreparable damage that is  
11 being perpetrated on her and will ensure that she is treated like every other homeowner on the  
12 Website whose private property Adelman chose to photograph and publish.

## 13 **II. FACTUAL BACKGROUND**

14 Streisand owns a plot of land located within the City of Malibu on which her primary  
15 place of residence is situated. Declaration of Barbra Streisand ("Streisand Decl.") ¶2. This  
16 property is secluded. Id. The side of the property facing the road entrance is protected by a large  
17 gate and a perimeter fence. Declaration of John M. Gatti ("Gatti Decl."), exhibit ("Exh.") 1.  
18 Thick foliage planted along the perimeter fence shields the property from view by anyone looking  
19 in from the road. Id. The back of the property abuts a cliff overlooking the beach. Id., Exhs. 2-4.  
20 The steepness and highness of the cliff combined with thick shrubbery growth prevents anyone  
21 standing at the bottom of the cliff or on the beach from viewing the back of the property. Id.  
22 Streisand's property is located between two other private properties with trees and other plants  
23 shielding her property from being viewed by either such properties. Id., Exhs. 5 and 6.

24 Streisand purchased this property to satisfy her desire for seclusion and safety, and to  
25 protect herself against physical and/or visual intrusions into her private life. Streisand Decl., ¶2.  
26 This is because she has been pursued by many people for numerous reasons, both licit and illicit.  
27 Id., ¶3. With reference to the latter category, she has been stalked by obsessed personalities who  
28 possess an unnatural urge to stake her out at all times and paparazzi who hang around her

1 whereabouts lying in wait to capture any possible image of her. Id. Moreover, she has also been  
2 the recipient of threats to her personal safety and has to deal on an ongoing basis with individuals  
3 who have stalked her with the intent of inflicting personal injury on her. Id.

4 In light of this experience Streisand has adopted measures to shield her private life from  
5 public view. For example, her home telephone number is unlisted. Id., ¶4. Also, the records of  
6 real property that she owns, such as her home, do not list her as the owner, but rather show that  
7 the property is owned by an entity which cannot be traced, with any certainty, back to her. Id.  
8 The purchase of the secluded property on which she resides is also one such measure. Id., ¶2.

9 In late 2002, Streisand discovered that detailed photographs of her property were being  
10 disseminated on the internet on the Website. Id., ¶5. The home page of the Website offers the  
11 browser the possibility of locating the picture of a desired spot close to the California coast by  
12 entering: (1) a longitudinal or latitudinal coordinate (or both); (2) a famous coastal landmark; (3)  
13 an image caption (such as the name of a celebrity); or (4) the number of the requested  
14 photograph. Gatti Decl., Exh. 7. The Website also allows the user to link his computer to a  
15 particular image such as the photographs of Streisand's property. Id., Exh. 8.

16 By entering the term "Streisand" on the image caption locator on the home page of the  
17 Website, a viewer is transported to a page which contains a view of Streisand's property  
18 identified as "Streisand Estate, Malibu", its longitudinal and latitudinal coordinates, its location  
19 on a map, the number of the photograph, and when such photograph was taken. Id., Exh. 9. By  
20 clicking on the picture of Streisand's property, a new page appears which contains the same  
21 information as the previous page only now the photograph is considerably larger and more  
22 detailed, and the map is similarly enhanced to show the street location of Streisand's residence as  
23 if one were looking at a Thomas Guide. Id., Exh. 10. In addition, this page gives the viewer the  
24 option of downloading the image of Streisand's property to one's personal computer and to  
25 purchase such image. Id. By clicking again on the picture containing Streisand's property, the  
26 picture is blown up to poster-size dimensions (about 40" x 24"). Id., Exh. 11. The purchase and  
27 download options are still present on the page even with photographs so enlarged. Id. Because  
28 the photographs can be downloaded, or saved, they can be further enlarged through digital means.

1 The photographs of Streisand's property are taken from a helicopter overflying the Pacific  
2 Ocean. Id., Exh. 12. Thus, the side being shot is the back of Streisand's property, or its most  
3 secluded side. Streisand Decl., ¶2. The photographs extend approximately one half of a mile  
4 inland from the coastline. Gatti Decl., Exh. 13. Every detail of the back of Streisand's property  
5 including views into her home (as well as some details of the front of the property) can be  
6 gleaned from the photographs on Adelman's Website: the public and private access routes leading  
7 into, and inside, the property; the plant arrangements in her garden; the positioning of the deck  
8 chairs and parasols around her pool; the positioning of the deck chairs and parasols in the lanai of  
9 her guest house; the window layout of her residence and guest house; the location of the balconies  
10 and verandas of the main residence and guest house; the location of the sky-roofs; the location of  
11 the garden furniture; the location and size of the fences surrounding the property; the location of  
12 the property vis-à-vis the coastline and street; etc. . . Id., Exh. 11. In fact, all those secluded  
13 areas of Streisand's property which would not be visible from any public vantage point with the  
14 naked eye are displayed in meticulous detail in Adelman's photographs. Id.

15 Not only are these photographs disseminated world wide through the internet, but, as  
16 noted above, Adelman's service allows anyone to download the images to one's computer, to link  
17 one's web browser to the pictures, or to purchase these photographs. Id., Exhs. 8 & 10. By  
18 clicking on the "purchase photograph" icon which appears on the screen in connection with the  
19 picture of Streisand's property, one is taken to the section where it is explained that one can chose  
20 the size of the picture being purchased ranging from 8" x 12.3" (costing \$50) to 20" x 30.7"  
21 (costing \$120). Id., Exhs. 14-16.

22 Adelman is aware of the mass dissemination of the images contained on his Website. He  
23 boasts on his Website that "the public support for this site has been overwhelming, 200,000  
24 visitors in [the site's] first three weeks of operation is a testimony to this." Id., Exh. 17. Adelman  
25 is similarly aware that visitors to the site have expressed some privacy concerns that they have  
26 with the content of the photographs shown on the site. Adelman is nonchalant about such  
27 concerns brushing aside any such expression. On his site, under the subsection "Privacy  
28 Concerns" (contained in the section "Public Response to this Site,") Adelman states that he is

1 “aware that [he] has photographed a number of homes in the process of documenting the  
2 California Coast. The California Coast is a unique and beautiful place, and those people who  
3 have chosen to live on it have made the coast a part of their lives, and their lives a part of the  
4 coast. It should come as no surprise that the public-at-large would be attracted to view this  
5 beautiful place some call home. We have little sympathy for those who would feel that in order  
6 to enjoy the beauty of the coast that they must deny others access to it.” Id. In that light,  
7 Adelman, through this comment on his Website belies the notion that there are any legitimate  
8 privacy concerns pertaining to his endeavors. Moreover, Adelman derides those people who  
9 expressed their concerns by publicly mocking them on his Website (calling them delusional), and  
10 by publishing some of their correspondence to him under the heading “Rants.” Id. Finally, to  
11 reduce the magnitude of his accomplishment (the thousands of dollars and the years spent to take  
12 all the pictures), Adelman claims that anyone can take these pictures by chartering a plane (for a  
13 few hundred dollars) and using an ordinary 35mm camera. Id. Adelman also promises future  
14 updates: “This project will never be complete. We plan on finishing the remainder of the coast  
15 as soon as the weather will allow. We will re-photograph portions of the coastline every few  
16 years, so that historical data is available for research and enforcement purposes. We are looking  
17 forward to advances in digital camera technologies up into the 12-20 megapixel range, as these  
18 cameras will provide even higher resolution.” Id., Exh. 12.

19 Since Streisand became aware of the posting of detailed pictures of her property on the  
20 Website she has experienced considerable anxiety. Streisand Decl., ¶5. Her past experiences  
21 with threats to her personal safety make such anxiety well-founded. She has attempted to reach a  
22 resolution with Adelman on the matter but to no avail. Gatti Decl., ¶17. Adelman has  
23 compounded that anxiety by gratuitously seeking publicity from the fact that he has singled out  
24 Streisand for harassment and exploitation. One day after Defendants were served with the  
25 Complaint, Adelman changed the Website so now the homepage trumpets the fact of this lawsuit  
26 and parades the offending photograph for all to see without a search. Id., ¶18-19. In a further  
27 exhibition of total disrespect towards anyone who disagrees with him, Adelman has posted the  
28 Complaint in this action and the private correspondence between his counsel and counsel for

1 Streisand even though such letters were explicitly denoted as private and included instructions  
2 that such letters not be published. Id., ¶18 -20. Adelman has also provided a link to Streisand's  
3 counsel's (Mr. Gatti) e-mail address which has resulted in a large quantity of vituperative and  
4 vicious e-mails and links to hard-core pornographic websites being directed to Mr. Gatti's work  
5 e-mail, thus creating serious disruption to Mr. Gatti's work environment. Id., ¶18.

6 Throughout his Website, Adelman has promised that he will continue to take photographs  
7 and looks forward to the day when the improvements in visual technology will empower him to  
8 take pictures of a much greater resolution. Id., Exh. 12. The invasion of Streisand's privacy is  
9 compounded with every passing day by the photographs, as exhibited on Adelman's site, which  
10 not only identify and disseminate to all and sundry private information regarding her, such as the  
11 location of her home, but allow anyone to intrude into this most private of spheres of her life.

### 12 **III. ARGUMENT**

#### 13 **A. Preliminary Injunction Standards**

14 "An injunction is a writ or order requiring a person to refrain from a particular act." Civ.  
15 Proc. C. § 525. Generally, a plaintiff is entitled to a preliminary injunction if: (1) it is reasonably  
16 probable that she will prevail on the merits of her claim, see San Francisco Newspaper Printing  
17 Co. v. Superior Court, 170 Cal. App. 3d 438, 442 (1985), Civ. Proc. C. § 526(a)(1); (2) there is a  
18 threat of irreparable harm to the plaintiff's rights, see Civ. Proc. C. § 526(a)(2); (3) there is no  
19 adequate legal remedy, see Civ. Proc. C. § 526(a)(4); and (4) the balancing of the equities weighs  
20 in favor of the plaintiff, see Youngblood v. Wilcox, 207 Cal. App. 3d 1368, 1372 (1989). All of  
21 these four factors strongly weigh in Streisand's favor.

#### 22 **B. Nature of the Relief Requested**

23 It is the substance of an injunction, and not its form, which controls whether the injunction  
24 is classified as mandatory (compelling an action) or prohibitory (preventing an action). See  
25 Jaynes v. Weickman, 51 Cal. App. 696, 698 (1921). Thus, incidental mandatory provisions of an  
26 essentially prohibitory injunction do not a mandatory injunction make. See United Railroads v.  
27 Superior Court, 172 Cal. 80, 88 (1916). As explained in the Jaynes decision, "an order or decree  
28 restraining for further continuance of an existing condition does not take on the character of a

1 mandatory injunction merely because it enjoins the defendants from continuing to do the  
2 forbidden acts.” Jaynes, 51 Cal. App. at 699.

3 Through this motion, Streisand seeks to prevent Adelman from using Streisand’s name on  
4 his Website to identify the property of Streisand and publishing on his Website any features that  
5 identify the photographs and location of her home with her. In other words, the substance of the  
6 order being sought would prevent Adelman from displaying photographs of Streisand’s home and  
7 using the caption “Streisand Estate, Malibu” on the Website to locate and identify Streisand’s  
8 home. In addition, the order would stop Adelman from using any other identifying factors that  
9 would link his photograph of Streisand’s property and the pinpointing of its location with her.  
10 Therefore, the substance of the injunction being sought in this Motion is prohibitory.

11 **C. Likelihood of Success on the Merits**

12 An injunction may be granted “when it appears by the complaint that the plaintiff is  
13 entitled to the relief demanded, and the relief, or any part thereof, consists in restraining the  
14 commission or continuance of the act complained of, either for a limited period or perpetually.”  
15 Civ. Proc. C. § 526(a)(1). It is likely that Streisand will prevail on the merits of her claim.

16 **1. PUBLICATION OF PRIVATE FACTS**

17 The tort of disclosure of private facts has been recognized as a cause of action in  
18 California courts to enforce an individual’s right to privacy. See Forsher v. Bugliosi, 26 Cal. 3d  
19 792, 808 (1980). It exists in conjunction with the California Constitutional guarantee to privacy.  
20 See Shulman v. Group W Productions, Inc., 18 Cal. 4<sup>th</sup> 200, 227 (1998). To prevail on a cause of  
21 action for publication of private facts, a plaintiff must show a (1) public disclosure (2) of a private  
22 fact (3) which would be offensive and objectionable to the reasonable person, and (4) which is not  
23 of legitimate public concern.” Diaz v. Oakland Tribune, Inc., 139 Cal. App. 3d 118, 126 (1983).

24 Adelman’s Website publishes the location of Streisand’s home address by identifying her  
25 home pictured in his photographs as hers via the caption “Streisand Estate, Malibu” and showing  
26 such photographs location through its identification on a street map and longitudinal/latitudinal  
27 coordinates. Gatti Decl., Exhs. 9 & 10. California courts have frequently recognized that  
28 individuals have a substantial interest in the privacy of their home. See Lorig v. Medical Board,

1 78 Cal. App. 4<sup>th</sup> 462, 468 (2000). This interest encompasses a protection from the public  
2 dissemination of the location of a particular individual's address and telephone number. See  
3 Denari v. Superior Court, 215 Cal. App. 3d 1488, 1493 (names and addresses of individuals who  
4 were arrested or booked at a county jail were protected by privacy interests); Paul P. v. Verniero,  
5 170 F.3d 396, 398 (3d Cir. 1998) (even sex offenders have privacy interests in their home  
6 addresses). This privacy interest has also been repeatedly recognized by the United States  
7 Supreme Court. See e.g. Hill v. Colorado, 530 U.S. 703, 716 (2000). In fact, the United States  
8 Supreme Court has stated that an individual's privacy interest in her home address and telephone  
9 number is not insubstantial. See Department of Defense v. FLRA, 510 U.S. 487, 489 (1994)  
10 (holding that federal agencies cannot disclose the home addresses of their employees to the  
11 employees' collective-bargaining representatives).

12 The importance of the privacy interest in the home increases when "the consequences of  
13 disclosure of the private information are profound." Planned Parenthood Golden Gate v. Superior  
14 Court, 83 Cal. App. 4<sup>th</sup> 347, 360 (2000). "Human experience compels us to conclude that  
15 disclosure carries with it serious risks which include, but are not limited to: the nationwide  
16 dissemination of the individual's private information . . . , and the infliction of threats, force and  
17 violence." Id. Moreover, "an individual's interest in controlling the dissemination of information  
18 regarding personal matters does not dissolve simply because that information may be available to  
19 the public in some form." Department of Defense, 510 U.S. at 500. In fact, just because the same  
20 private information can be, or has been, disseminated before, is no defense to a publication cause  
21 of action. See e.g. Ali v. Playgirl, Inc., 447 F. Supp. 723, 729 (S.D.N.Y. 1978) (recalling and  
22 preventing further publication of a magazine issue that had already hit the newsstands). In sum,  
23 courts that have examined issues pertaining to the disclosure of names and home addresses  
24 *contained in public records*, have always done so with the acceptance of the axiom that  
25 "individuals have a substantial privacy interest in their home addresses." City of San Jose v.  
26 Superior Court, 74 Cal. App. 4<sup>th</sup> 1008, 1019 (1999).

27 It is undeniable that private information pertaining to Streisand's home has been published  
28 on Adelman's Website. Thus, the first two elements of the tort of publication of private facts are

1 established. To determine whether the publication of private facts rises to the level of “offensive”  
2 for the purposes of meeting the third element of the cause of action, courts generally look to the  
3 degree of privacy of the information being disseminated. See Briscoe v. Reader’s Digest Ass’n,  
4 Inc., 4 Cal. 3d 529, 542 (1971). Thus, the more private the information revealed, the more likely  
5 that its revelation would be offensive. See id. (explaining that the disclosure of the existence of  
6 business debts would meet the “offensiveness” requirement, while the revelation of someone’s  
7 status as a former hostage would not). For example, the linking of the identity of a particular  
8 individual with private facts concerning such individual establishes that the dissemination of such  
9 link is objectionable and offensive enough to meet the third element of the tort of publication.  
10 See Melvin v. Reid, 112 Cal. App. 285, 292 (1931) (holding that the depiction in a movie of the  
11 plaintiff’s prior life as a prostitute, identifying her by name, was offensive and objectionable and  
12 gave rise to an action of publication of private facts). The revelation of the location of one’s  
13 home is similarly offensive, particularly when the person is one who has repeatedly had to  
14 contend with threats to her safety. Therefore, because Streisand has gone to great lengths to  
15 shield from public knowledge the location of her home to protect her seclusion and safety,  
16 (Streisand Decl., ¶2), a reasonable person would find offensive and objectionable that such  
17 information would be disseminated world wide (coupled with a photographic display), to be  
18 recalled with a simple click of a button.

19       Lastly, there is nothing newsworthy in the location of Streisand’s private residence.  
20 Adelman concedes as much by noting on his Website that the purpose of his project is to  
21 document in photographs the details of the California coast. Gatti Decl., Exh. 7. Nowhere does  
22 he explain why or how identifying Streisand’s property as hers serves this purpose. The  
23 California Supreme Court has repeatedly explained that newsworthiness depends on context, and  
24 there must be a nexus between the information being disseminated and the reason for its  
25 dissemination. See Briscoe, 4 Cal. 3d at 537 (explaining that there is no newsworthiness in the  
26 publication of the identity of the perpetrator of an eleven-year old crime and that “curiosity” is  
27 not enough to establish newsworthiness). In fact, the California Supreme Court has admonished  
28 that to hold otherwise, i.e., to declare that certain information is per se newsworthy “could



1 indirectly expose everyone's private life to public view." Shulman, 18 Cal. 4<sup>th</sup> at 223. "In  
2 determining what is a matter of legitimate public interest, account must be taken of the customs  
3 and conventions of the community, . . . the line is to be drawn when the publicity ceases to be the  
4 giving of information to which the public is entitled." Wasser v. San Diego Union, 191 Cal. App.  
5 3d 1455, 1461 (1987). "The fact that a person has become a public figure, voluntarily or  
6 involuntarily, does not thereby render every aspect of his or her life subject to public scrutiny."  
7 Restatement (2d) of Torts, § 652D, cmt. b (1977). There is no doubt that Streisand is a celebrity.  
8 This fact does not entitle the public to know where she lives, and what the secluded portions of  
9 her home, including the inside, look like. If it is deemed that the location of Streisand's private  
10 address is newsworthy just because she is a celebrity, then that would mean that the home  
11 addresses of all public figures are newsworthy, including elected officials, police chiefs,  
12 prominent CEO's etc. This is clearly not the case. Therefore, because the location of Streisand's  
13 home address is not newsworthy, she has met all four of the elements of the cause of action for  
14 publication and has shown that she is likely to prevail on the merits of this claim.

## 15 2. INTRUSION INTO SECLUSION

16 "The tort of intrusion into private places is perhaps the one that best captures the common  
17 understanding of an 'invasion of privacy.'" Shulman, 18 Cal. 4<sup>th</sup> at 230. "It is in the intrusion  
18 cases that invasion of privacy is most clearly seen as an affront to the individual dignity." Id.

19 The tort of intrusion has been recognized as another of the privacy torts that is  
20 encompassed within the California Constitution's privacy guarantee. See Forsher, 26 Cal. 3d at  
21 808. The action for intrusion has two elements: (1) intrusion into a private place, conversation or  
22 matter, (2) in a manner highly offensive to a reasonable person. See Miller v. National  
23 Broadcasting Co., 187 Cal. App. 3d 1463, 1482 (1986). These two elements are met in this case.

24 The inquiry for the first element is whether defendants "intentionally intruded, physically  
25 or otherwise, upon the solitude or seclusion of another," that is, into a place or conversation  
26 private to Streisand. See Shulman, 18 Cal. 4<sup>th</sup> at 231. Thus, to prove actionable intrusion, "the  
27 plaintiff must show the defendant penetrated some zone of physical or sensory privacy  
28 surrounding . . . the plaintiff. The tort is proven only if the plaintiff had an objectively reasonable

1 expectation of seclusion or solitude in the place.” Id., at 232. An individual has a reasonable  
2 expectation of privacy when in a location that can only be observed through an optical aid, such  
3 as high-powered binoculars. See People v. Arno, 90 Cal. App. 3d 505, 511 (1979).

4 The home is considered an area in which a heightened expectation of privacy exists. The  
5 United States Supreme Court has noted that it is reluctant “to disparage the privacy of the home,  
6 which is accorded special consideration in our Constitution, laws, and traditions.” Department of  
7 Defense, 510 U.S. at 501. Moreover, the privacy interest is enhanced by the individual’s  
8 possession, ownership or control of the property upon which the intrusion is being committed.  
9 See Shulman, 18 Cal. 4<sup>th</sup> at 232. In fact, even areas which are semi-public, such as an open office  
10 cubicle, give rise to an expectation of privacy which can be violated by an unwanted intrusion.  
11 See Sanders v. American Broadcasting Cos., Inc., 20 Cal. 4<sup>th</sup> 907, 923 (1999).

12 Streisand has a reasonable objective expectation of privacy in the secluded portions of her  
13 own home without having to wonder whether at any time someone is snapping pictures of her  
14 home with a powerful photographic lens. Even though the photographs published on Adelman’s  
15 Website capture mostly the outside of Streisand’s property, they depict a multitude of areas that  
16 cannot be seen with the naked eye from any public vantage point. Gatti Decl., Exhs. 1 & 2-4.  
17 The enlarged pictures allow one to peer into Streisand’s home through windows and doors, a  
18 view that can only be captured through a high-powered optical aid. All that can be seen of  
19 Streisand’s property from the main road is the large gate, a sliver of the roof, and the thick  
20 foliage. Id., Exh. 1. From the beach underneath the property, the view is even more secluded,  
21 with sheer cliffs and overhanging shrubbery being the only visible landmarks. Id., Exhs. 2-4. On  
22 the other hand, Adelman’s photographs reveal the private access routes within the property, the  
23 plant arrangements in the gardens, the layout of the pool, the positioning of the room and  
24 balconies of the house, views inside the doors and windows of the home, etc. Id., Exh. 11.  
25 Indeed, Adelman relies on enhanced optical aids to produce the images published on his Website.  
26 Id., Exh. 12. Thus, the first element of intrusion is met.

27 The determination of offensiveness, the second element of the intrusion tort, requires  
28 consideration of all the circumstances of the intrusion, including its degree and setting and the

1 intruder's motives and objectives. See Sacramento County deputy Sheriff's Ass'n v. County of  
2 Sacramento, 51 Cal. App. 4<sup>th</sup> 1468, 1487 (1996). Here the degree of the intrusion is self-evident:  
3 every detail of the secluded portions of Streisand's property is paraded for all to see in Adelman's  
4 pictures. Gatti Decl., Exh. 11. His stated motives for taking and displaying the pictures, to create  
5 a photographic record of the California coast, and to ensure compliance with environmental laws,  
6 do not gel with the details exhibited pertaining to Streisand's home, and the identification of such  
7 home as being hers. Streisand is not engaging in any activity that would violate any such laws.  
8 The offensiveness is further enhanced by Adelman using Streisand's name to sell photographs of  
9 her home. His nonchalant attitude towards the privacy concerns represented to him by concerned  
10 citizens, (including Streisand), also speaks volumes about Adelman's motives. Id., Exh. 17. He  
11 has clearly stated on his Website that he does not believe that anyone living by the coast has a  
12 privacy right because by choosing to live in such location, "they have chosen to make their lives  
13 part of the coast." Id. In fact, such "a cavalier disregard for ordinary citizens' rights of privacy"  
14 has been enough for courts to deem the invasion to be "highly offensive" in satisfaction of the  
15 second element of the tort. See e.g. Miller, 187 Cal. App. 3d at 1484. Thus, the second element  
16 is also met, and Streisand is likely to prevail on her cause of action for intrusion.<sup>1</sup>

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17  
18 <sup>1</sup> The Complaint also contains a cause of action for violation of Constitutional privacy. Article I,  
19 section 1 of the California Constitution provides: "All people are by nature free and independent  
20 and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring,  
21 possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."  
22 The right of privacy codified in the California Constitution creates a right of action against private  
23 as well as government entities. Hill v. NCAA, 7 Cal. 4<sup>th</sup> 1, 15-20 (1994). In other words, "the  
24 constitutional provision is self-executing; hence it confers a judicial right of action on all  
25 Californians. . . . Privacy is protected not merely against state action; it is considered an  
26 inalienable right which may not be violated by anyone." Porten v. University of San Francisco,  
27 64 Cal. App. 3d 825, 829 (1976). The California Constitutional guarantee of an individual's right  
28 to privacy encompasses an individual's right to preclude the dissemination or misuse of sensitive  
and confidential information. See Ortiz v. Los Angeles Police Relief Ass'n, 98 Cal. App. 4<sup>th</sup>  
1288, 1300-03 (2002). As this cause of action encompasses elements of both publication and  
intrusion, because Streisand is likely to prevail on the merits of these two causes of action, she is  
also likely to prevail on the merits of her violation of Constitutional privacy cause of action.  
Streisand is also likely to prevail on her cause of action for misappropriation of the right to  
publicity. Courts have suggested that even though damages can be economically quantified in  
such circumstances, "the injury to a plaintiff's right of publicity is not limited to present or future  
economic loss, but may include humiliation, embarrassment, and mental distress." Abdul-Jabbar

1           **D. Irreparable Harm**

2           The function of a preliminary injunction is not merely to contain ongoing damage but to  
3 prevent prospective damage. See Nutro Products, Inc. v. Cole Grain, Co., 3 Cal. App. 4<sup>th</sup> 860,  
4 867 (1992). Irreparable harm is shown when the plaintiff is damaged in a way that cannot be later  
5 repaired. People v. Mitchell Brothers' Santa Ana Theater, 118 Cal. App. 3d 863, 870-71 (1981).  
6 It is axiomatic that when a private fact gets disclosed, it cannot be undisclosed. Adelman has  
7 boasted that hundreds of thousands of people have already visited his Website. Gatti Decl., Exh.  
8 17. Everyone who has followed the caption "Streisand Estate, Malibu" to the photographs of  
9 such property has learned of the location and layout of private facts concerning Streisand.  
10 However, there are millions of people around the world who have not yet learned about this  
11 information. Preventing these people from getting acquainted with Streisand's private  
12 information will preclude further prospective damage and will curtail the possibility that people  
13 who intend harm to Streisand will have access to this information. The damage that would be  
14 done if such people gained access to this information in the future cannot be later repaired.

15           **E. Inadequate Legal Remedy**

16           In the context of injunctions, courts have held that no legal remedy can restore the privacy  
17 shattered by an improper disclosure. See Blair v. Pitchess, 5 Cal. 3d 258, 284 (1971) (approving  
18 an injunction in the context of a search). As noted above, the ongoing and future disclosure of  
19 private information relating to Streisand cannot be fully redressed by a damages award on its  
20 own. It will be impossible for the future millions of people to unlearn the information that  
21 Adelman would provide to them concerning Streisand on a silver platter. Thus the legal remedy  
22 is inadequate to compensate Streisand for the loss of her privacy rights.

23           **F. Balancing of the Equities**

24           In deciding whether to grant a preliminary injunction, the court must exercise its  
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26 v. General Motors, 85 F.3d 407, 415 (9<sup>th</sup> Cir. 1996). California courts have thus granted  
27 injunctions to stop such misappropriation of name for a commercial purpose. See e.g. Lugosi v.  
28 Universal Pictures, 25 Cal. 3d 813, 819 (1979); Eastwood v. Superior Court, 149 Cal. App. 3d  
409, 415 (1983). Similarly, her cause of action under Civil C. §1708.8 specifically entitles  
Streisand to injunctive relief. See id., sub (g).

1 discretion "in favor of the party most likely to be injured . . . If denial of an injunction would  
2 result in great harm to the plaintiff, and the defendants would suffer little harm if it were granted,  
3 then it is an abuse of discretion to fail to grant the preliminary injunction." Robbins v. Superior  
4 Court, 38 Cal. 3d 199, 205 (1985). In making this equitable consideration, first, the court must  
5 consider who will suffer the greater injury from the granting or denial of the injunction. See  
6 Shoemaker v. County of Los Angeles, 37 Cal. App. 4<sup>th</sup> 618, 633 (1995). Second, the court must  
7 evaluate who is likely to prevail on the merits of the case. See Robbins, 38 Cal. App. 3d at 206.

8         Streisand has shown a high likelihood of success on the merits. Moreover, the balance of  
9 the hardships clearly tips in her favor. If the injunction is not granted, her private information  
10 remains disseminated on the Website for millions more to see and continues to provide stalkers  
11 and persons who have made threats of physical violence against Streisand with an easy access  
12 guide to locate Streisand's home. This identification continues to breach Streisand's security at  
13 home. If the injunction is granted, Adelman has to remove and is prevented from selling a few  
14 photographs out of tens of thousands of pictures published on his Website (which remains up and  
15 running throughout). He also has to remove a caption from such Website. This will not affect his  
16 operations in any significant way.

17 **IV. CONCLUSION**

18         For the foregoing reasons, Streisand respectfully requests that the motion for preliminary  
19 injunction be granted.

20 DATED: June 18, 2003

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