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6 Attorneys for Defendant
LAYER42.NET
7

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

10 BARBRA STREISAND, an individual,

11 Plaintiff,

12 v.

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

16 Defendants.

Case No.: SC077257

**REPLY IN SUPPORT OF MOTION OF
DEFENDANT LAYER42.NET FOR AWARD
OF ATTORNEYS' FEES**

Date: April 30, 2004

Time: 8:25 a.m.

Dept.: H (Hon. Allan J. Goodman)

Complaint filed: May 20, 2003

17
18 **I. INTRODUCTION**

19 According to Plaintiff's opposition to LAYER42.NET's motion for attorneys' fees,
20 LAYER42.NET should have simply relied blindly on the good efforts of their co-defendants in the
21 filing of the motion to strike Plaintiff's \$10 million lawsuit. In Plaintiff's view, instead of retaining
22 independent counsel to assess the merits of the law and evidence marshaled in support of the motion,
23 LAYER42.NET should have simply crossed its fingers and hoped for the best.

24 However, that is not the "reasonableness" standard for awarding attorneys' fees to a prevailing
25 party on a SLAPP motion to strike. LAYER42.NET could have run up its attorneys' fees by having
26 its attorneys draft a duplicative and lengthy motion on its own. Instead, LAYER42.NET's attorneys
27 analyzed the facts related to the case, researched the applicable law, reviewed the facts and argument
28 presented by the co-defendants, and determined that a simple joinder was all that was necessary to

1 protect LAYER42.NET's interests. LAYER42.NET should not be denied recovery of the fees it
2 expended related to the motion to strike simply because its attorneys determined that further briefing
3 would be duplicative and would waste court resources.

4 II. ARGUMENT

5 **A. The attorneys' fees that are the subject of this motion were incurred are directly related to** 6 **the successful motion to strike.**

7 In its current motion, LAYER42.NET excluded from its request for fee reimbursement
8 approximately one-third (more than \$12,000.00) of the total fees it incurred defending itself from the
9 baseless lawsuit brought by Plaintiff. LAYER42.NET excluded these fees on the grounds that these
10 fees were not directly related to the motion to strike. Nevertheless, Plaintiff contends that
11 LAYER42.NET should be reimbursed only for preparing the eight-line joinder to the motion to strike,
12 and not for the 30 hours spent appearing at hearings or the additional time spent assessing the facts and
13 researching the applicable law. However, even Plaintiff includes these kinds of fees in calculating the
14 approximately \$46,000.00 in fees she incurred related to the motion to strike. As discussed briefly
15 below, LAYER42.NET is entitled to reimbursement for fees associated with the motion to strike, and
16 it should not be penalized where its attorneys save judicial resources by avoiding duplicative argument
17 and briefing.

18 Plaintiff contends she incurred \$45,954.00 in fees directly related to the motion to strike, which
19 is more than twice the fees claimed by LAYER42.NET. (See Plaintiff Barbra Streisand's Opposition
20 to Defendants Kenneth Adelman and Pictopia.com's Motion for Attorney's Fees at p. 1:10-14.) These
21 fees include time spent "...communicating with the client and performing research and analysis
22 pertaining to the SLAPP motion." (Declaration of John M. Gatti in Support of Plaintiff Barbra
23 Streisand's Opposition to Defendants Kenneth Adelman and Pictopia.com's Motion for Attorney's
24 Fees at p. 2:8-9.) LAYER42.NET readily concedes that Plaintiff's counsel performed more services
25 than LAYER42.NET's counsel: Plaintiff's counsel prepared a 15-page opposition to the motion to
26 strike, plus a 2-page declaration. However, LAYER42.NET respectfully suggests that the \$25,000.00
27 difference between the fees incurred by Plaintiff and those incurred by LAYER42.NET more than
28 amply covers the reasonable costs to prepare the papers.

1 While there is no dispute that a successful moving party on a SLAPP motion to strike is
2 entitled to reimbursement of fees related only to the motion (as opposed to those incurred for the entire
3 action), those fees are not limited to simply drafting the motion. “The statute is broadly construed so
4 as to effectuate the legislative purpose of reimbursing the prevailing defendant for expenses incurred
5 in extricating herself from a baseless lawsuit.” *Wilkerson v. Sullivan* (2002) 99 Cal.App.4th 443, 446,
6 121 Cal.Rptr.2d 275. The costs associated with extricating oneself from a baseless suit include not
7 only attending hearings and drafting the moving papers, but research, analysis, and client
8 communication, as Plaintiff’s own counsel confirms. LAYER42.NET’s counsel was obligated to
9 research the applicable law, assess the facts, and communicate with its client in order to determine
10 whether any additional briefing was required to supplement co-defendants’ motion to strike. Based on
11 a comparison of the fees incurred by Plaintiff, it appears that the limited amount of fees spent towards
12 these efforts (approximately \$12,000.00) matches or is surpassed by the fees incurred by Plaintiff for
13 similar work. Therefore, LAYER42.NET respectfully submits that the fees incurred for these
14 activities are reasonable and properly reimbursable under CCP §425.16(c).

15 Plaintiff’s contention that LAYER42.NET should not be reimbursed for the 30 hours spent
16 attending hearings is likewise without merit. According to Plaintiff, LAYER42.NET should not be
17 reimbursed these fees because LAYER42.NET’s counsel did not “actively” participate in the hearings.
18 It is absurd to contend that LAYER42.NET should not appear at the hearings on a motion to strike a
19 \$10 million lawsuit. LAYER42.NET was entitled to have counsel appear at the hearings to ensure that
20 LAYER42.NET’s interests were properly represented. Even still, LAYER42.NET limited its costs by
21 sending only one attorney, while the other parties sent multiple attorneys. LAYER42.NET should not
22 be penalized because its attorney chose not to waste the court’s time with duplicative argument. If
23 Plaintiff’s rationale were adopted, courts would need to contend with attorneys taking time to speak
24 just for the sake of being heard, regardless whether their comments added anything to the debate.

25 LAYER42.NET economically defended itself from a baseless lawsuit brought by Plaintiff.
26 LAYER42.NET’s counsel performed the work that was reasonably necessary to ensure that
27 LAYER42.NET’s interests were properly represented in the motion to strike. LAYER42.NET should
28 not be penalized because its attorneys chose not to waste further judicial and attorney resources in

1 preparing duplicative papers or presenting duplicative argument at the hearings. To do so would
2 encourage attorneys to burden the courts with duplicative and wasteful argument simply to ensure
3 reimbursement of attorneys' fees. Therefore, LAYER42.NET respectfully submits that all of its
4 requested fees should be reimbursed.

5 **B. LAYER42.NET has incurred a reasonable amount of fees preparing the present motion for**
6 **fees.**

7 Plaintiff contends that LAYER42.NET should be denied its fees for bringing the present
8 motion because no expense report has been submitted. While expense reports are not mandatory for
9 such motions (*Martino v. Denevi* [1986] 182 Cal.App.3d 553, 559, 227 Cal.Rptr. 354),
10 LAYER42.NET nevertheless submits concurrently herewith an extract from the billing record related
11 to the preparation of the present motion. As set forth in the accompanying Declaration of Matthew E.
12 Coleman, LAYER42.NET incurred in excess of \$2,600.00 in fees related to the current motion.

13 **III. CONCLUSION**

14 LAYER42.NET incurred less than half of the fees that Plaintiff incurred related to the motion
15 to strike and approximately one-tenth of the fees claimed by co-defendants. LAYER42.NET's counsel
16 could not have effectively represented its client more efficiently and economically than it has.
17 LAYER42.NET has submitted all billings related to the claimed fees, and it has met its burden to
18 prove that the fees claimed were reasonable and related to the motion to strike. Therefore,
19 LAYER42.NET respectfully requests that all of its claimed fees be awarded through this motion.

20
21 Dated: April 23, 2004

Respectfully submitted,

22 REYNOLDS CASAS & RILEY, LLP

23
24 By: 

25 Matthew E. Coleman
26 Attorneys for Defendant
27 LAYER42.NET
28

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

16 Defendants.
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Case No.: SC077257

**REPLY DECLARATION OF MATTHEW E.
COLEMAN IN SUPPORT OF MOTION OF
DEFENDANT LAYER42.NET FOR AWARD
OF ATTORNEYS' FEES**

Date: April 30, 2004
Time: 8:25 a.m.
Dept.: H (Hon. Allan J. Goodman)

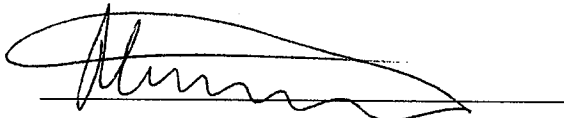
Complaint filed: May 20, 2003

19 I, Matthew E. Coleman, declare as follows:

- 20 1. I am an attorney licensed since 1996 to practice in all of the courts of the State of California. I
21 am an associate in the law firm of Reynolds Casas & Riley, LLP ("RCR"), attorneys of record
22 for Defendant LAYER42.NET in the above-captioned action. I am personally familiar with
23 the facts stated below and, if called as a witness, could testify competently thereto.
- 24 2. RCR uses the computer software program "Timeslips" to record its billing. As RCR's regular
25 business practice, each attorney enters his or her time into the networked program identifying
26 the client, time spent, and a brief description of the services provided. RCR's attorneys enter
27 their time at or near the time that the services were rendered.

- 1 3. Attached as **Exhibit 1** is a true and correct copy of the billing record setting forth the time I
2 expended preparing the present motion for fees. This time included reviewing the file to gain a
3 background of the case, reviewing the billing records, determining which records were related
4 to the motion to strike, assessing applicable law, and drafting the notice of motion, points and
5 authorities, and related declaration.
- 6 4. The time set forth in Exhibit 1 does not include the additional time I have spent reviewing
7 Plaintiff's opposition to the current motion, the authorities cited therein, and Plaintiff's
8 opposition to co-defendants' motion for fees. It also does not include the time spent preparing
9 this reply and this declaration. I estimate I have spent approximately 6.5 hours (at a rate of
10 \$235.00 per hour) related to the foregoing activities.

11
12 I declare under penalty of perjury under the laws of the State of California that the foregoing is
13 true and correct and that this Declaration was entered on April 23, 2004 in Los Altos, California.

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16 Matthew E. Coleman
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EXHIBIT 1

Selection Criteria

Slip.Date 03/01/2004 - 03/31/2004
 Attorney (hand sele Include: MEC
 Client (hand select) Include: LAYER/BS
 Client (hand select) Include: LAYER/BS
 Slip.Classification Open
 Client (hand select) Include: LAYER/BS

Rate Info - identifies rate source and level

Slip ID	Dates and Time	Posting Status	Description	Attorney Activity	Client Reference	Units DNB Time	Est. Time Variance	Rate Rate Info	Bill Status	Slip Value
80783	03/02/2004	TIME		MEC		0.40		235.00		94.00
	Billed	G:65481	03/25/2004	Prof. Serv.	LAYER/BS	0.00		T@1		
	Confer with Dan Casas; attention to fees motion									
81725	03/15/2004	TIME		MEC		1.50		235.00		352.50
	Billed	G:65481	03/25/2004	Prof. Serv.	LAYER/BS	0.00		T@1		
	Attention to fees motion									
81722	03/17/2004	TIME		MEC		1.80		235.00		423.00
	Billed	G:65481	03/25/2004	Prof. Serv.	LAYER/BS	0.00		T@1		
	Attention to fees motion									
81675	03/22/2004	TIME		MEC		3.50		235.00		822.50
	Billed	G:65481	03/25/2004	Prof. Serv.	LAYER/BS	0.00		T@1		
	Attention to fees motion									
81583	03/23/2004	TIME		MEC		0.80		235.00		188.00
	Billed	G:65481	03/25/2004	Prof. Serv.	LAYER/BS	0.00		T@1		
	Attention to fees motion									
81578	03/24/2004	TIME		MEC		1.50		235.00		352.50
	Billed	G:65481	03/25/2004	Prof. Serv.	LAYER/BS	0.00		T@1		
	Finalize moving papers for attorneys' fees motion									
Grand Total										
				Billable		9.50				2232.50
				Unbillable		0.00				0.00
				Total		9.50				2232.50