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5 Attorneys for Defendant
LAYER42.NET

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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;
PICTOPIA.COM, a California corporation;
14 LAYER42.NET, a California corporation; and
DOE 1 through DOE 20, inclusive,

15 Defendants.
16

Case No.: SC077257

**NOTICE OF MOTION AND MOTION OF
DEFENDANT LAYER42.NET FOR AWARD
OF ATTORNEYS' FEES**

Date: April 20, 2004

Time: 8:30 a.m.

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

Complaint filed: May 20, 2003

17 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

18 PLEASE TAKE NOTICE that on April 20, 2004 at 8:30 a.m. in Department H of the above-
19 entitled Court, located at 1633 Purdue Avenue, Los Angeles, California 90025, Defendant
20 LAYER42.NET's Motion for Award of Attorneys' Fees will be heard. By said Motion, Defendant
21 LAYER42.NET seeks reimbursement of \$23,914.00 pursuant to California Code of Civil Procedure
22 §425.16(c). Said amount includes fees of \$2,620.00 related to enforcing Defendant's right to
23 reimbursement of its attorneys' fees. The Motion will be based on the this Notice, the Memorandum
24 of Points and Authorities, Declaration of Daniel L. Casas, and such oral argument as may presented at
25 the hearing of this matter.


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Dated: March 24, 2004

Respectfully submitted,

REYNOLDS CASAS & RILEY, LLP

By: 
Daniel L. Casas
Attorneys for Defendant
LAYER42.NET

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

10 BARBRA STREISAND, an individual,

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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

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
OF DEFENDANT LAYER42.NET FOR
AWARD OF ATTORNEYS' FEES**

Date: April 20, 2004

Time: 8:30 a.m.

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

Complaint filed: May 20, 2003

17
18 **I. INTRODUCTION**

19 After successfully bringing a motion to strike Plaintiff's complaint pursuant to California Code
20 of Civil Procedure §425.16, Defendant LAYER42.NET brings this motion for reimbursement of
21 \$23,914.00 in attorneys' fees related to the motion to strike. Said fees consist of \$21,294.00 related to
22 the motion to strike plus an additional \$2,620.00 in fees related to this present motion for
23 reimbursement of fees.

24 **II. STATEMENT OF THE CASE**

25 Plaintiff Barbra Streisand filed her Complaint on May 20, 2003, alleging that Defendant Ken
26 Adelman invaded her privacy by publishing pictures of her coastal estate on Defendant Adelman's
27 web-site as part of his project to monitor California's coastline. Plaintiff also named as a defendant
28 LAYER42.NET, which was the internet service provider that hosted Defendant Adelman's web-site.

1 On or about June 18, 2003, Defendant Adelman filed his Motion to Strike pursuant to CCP
2 §425.16. Defendant LAYER42.NET joined the motion on June 24, 2003, and on June 27, 2003,
3 Defendant LAYER42.NET filed its demurrer to the complaint. Plaintiff opposed both motions, and
4 from July 14, 2003 to July 18, 2003, this Court held three days of hearings on the motions. After the
5 Court requested supplemental briefing, a subsequent hearing was held on October 3, 2003. On
6 January 16, 2004, the Court granted the motion to strike and dismissed the complaint against all
7 defendants. Notice of entry of the order was served and filed on January 26, 2004.

8 Defendant LAYER42.NET incurred \$32,350.64 in attorneys' fees defending against Plaintiff's
9 lawsuit. Of that amount, Defendant incurred \$21,294.00 related to the motion to strike, which
10 includes approximately 30 attorney hours in court appearances alone. Further, Defendant anticipates
11 that it will expend an additional \$2,620.00 in fees bringing the current motion, which fees include
12 preparing these moving papers, preparing reply papers, and appearing at the hearing on the present
13 motion. Defendant on January 19, 2004 sent a letter to Plaintiff's counsel requesting reimbursement
14 of \$21,294.00 in fees without the necessity of bringing a motion, but Plaintiff refused.

15 III. ARGUMENT

16 California Code of Civil Procedure §425.16(c) states in pertinent part, "...a prevailing
17 defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs."
18 The statute makes the award of fees to the prevailing party mandatory. (See, for example, *Ketchum v.*
19 *Moses*, 24 Cal.4th 1122, 1131, 104 Cal.Rptr.2d 377 [2001].) The prevailing party is entitled to
20 reimbursement for all hours reasonably spent, including time spent seeking recovery of the fees.
21 *Ketchum v. Moses*, *supra*, at p. 1132. What is reasonable depends on the balancing of the following
22 factors:

23 (T)he nature of the litigation, its difficulty, the amount involved, the skill required
24 and the skill employed in handling the litigation, the attention given, the success
25 of the attorney's efforts, his learning, his age, and his experience in the particular
26 type of work demanded [citation]; the intricacies and importance of the litigation,
the labor and the necessity for skilled legal training and ability in trying the cause,
and the time consumed. [Citations.] *Martino v. Denevi* (1986) 182 Cal.App.3d
553, 558, 227 Cal.Rptr. 354 (Citations omitted.)

27 Evidence in support of a motion for fees should include documentary or oral evidence of the time
28 actually expended by the attorneys, as well as expert opinion testimony, including testimony by the

1 moving attorney, regarding what would be a reasonable rate for the services. *Martino v. Denevi*,
2 *supra*, at p. 558-559.

3 Rule of Court 870.2(b) provides that a motion for fees shall be filed in the same period of time
4 for filing a notice of appeal under Rules 2 and 3. Rule 2 states that an appeal shall be filed within 60
5 days after service of a "Notice of Entry" of judgment. In the present case, Notice of Entry of
6 Judgment was served and filed January 26, 2004.

7 In the present case, Defendant LAYER42.NET has submitted documented billing records
8 showing 74.8 attorney hours spent related to the successful motion to strike. Approximately 30 of
9 these hours consisted of court appearances. These records show that defendant employed its resources
10 judiciously; for instance, no more than one attorney appeared during any of the 30 hours of court
11 hearings. To prepare for the hearings, Defendant's counsel was required to review numerous exhibits
12 as well as research relevant case law. Counsel was also required to familiarize itself with some of the
13 technical aspects of the relationships among the defendants and the plaintiff. In short, given the large
14 amount of time dedicated to court appearances and given the complexity of the case, 74.8 attorney
15 hours is a reasonable amount of time spent successfully dismissing the lawsuit.

16 With respect to the substance of the lawsuit, Plaintiff sought damages in excess of \$10 million.
17 This potentially threatened the viability of Defendant LAYER42.NET, so it was crucial that no stone
18 be left unturned in defending against the lawsuit. Defendant's counsel successfully defeated the
19 lawsuit at a relatively early stage of the proceedings, saving both the parties' resources and the court's
20 resources. The litigation also related to an issue of broad public importance, namely, free speech and
21 Defendant Adelman's project to document the development of California's coast. In short, given the
22 public importance of the case, the successful outcome, and the experience of Defendant
23 LAYER42.NET's counsel, the fees charged are "reasonable" according to the factors articulated in
24 *Martino v. Denevi, supra*.

25 Finally, Defendant LAYER42.NET has submitted sufficient evidence supporting the amount of
26 its fees. First, the work and time spent are detailed in the billing record attached as Exhibit 1 to the
27 Declaration of Daniel L. Casas. Second, the Declaration of Daniel L. Casas confirms that the billing
28 rates charged by Defendant's counsel, ranging from \$165.00 to \$325.00 per hour, are well within the

1 rates charged in Santa Clara County by attorneys of comparable experience and similar practice areas.
2 Finally, Defendants Kenneth Adelman and Pictopia.com submitted a declaration from Scott Edelman,
3 a Los Angeles County attorney, who stated that rates as high as \$675.00 per hour were customary in
4 Los Angeles County. Given the foregoing, Defendant LAYER42.NET does not anticipate that the
5 billing rates of its attorneys will be challenged.

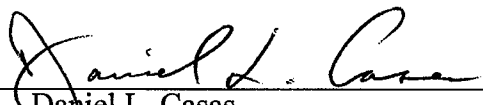
6 **IV. CONCLUSION**

7 Plaintiff filed a lawsuit against Defendant LAYER42.NET alleging damages in excess of \$10
8 million. The lawsuit touched on areas of free speech, as well as the liability of internet service
9 providers for content on web-sites they host. Defendant's counsel reviewed the issues, researched the
10 applicable case law, submitted briefs, and attended approximately 30 hours of court hearings for a total
11 cost of \$21,294.00. Defendant respectfully submits that given the complexity of the issues presented,
12 the importance to the general public, and the large amount of time dedicated to court hearings, the fees
13 incurred by Defendant LAYER42.NET are reasonable and should be reimbursed.

14
15 Dated: March 24, 2004

Respectfully submitted,

16 REYNOLDS CASAS & RILEY, LLP

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18 By: 
19 Daniel L. Casas
20 Attorneys for Defendant
21 LAYER42.NET
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