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

10
11 BARBRA STREISAND, an individual,
12 Plaintiff,

13 vs.

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

17 Defendants.

CASE NO. SC 077257

[Honorable Allan J. Goodman]

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION TO TAX COSTS SOUGHT BY
DEFENDANT KENNETH ADELMAN;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

**[[Proposed] Order Filed Concurrently
Herewith]**

Date: April 7, 2004
Time: 8:30 a.m.
Dept.: H

1 **TO DEFENDANTS KENNETH ADELMAN, PICTOPIA.COM AND LAYER42.NET AND**
2 **THEIR ATTORNEYS OF RECORD:**


3 **PLEASE TAKE NOTICE** that on April 7, 2004 at 8:30 a.m. in Department H of
4 the Los Angeles Superior Court, located at 1633 Purdue Avenue, Los Angeles, CA 90025-3117
5 plaintiff Barbra Streisand ("Streisand") will move this Court to tax the costs sought by Defendant
6 Kenneth Adelman ("Adelman"):

7 This Motion is made pursuant to California Civil Procedure Code § 1033.5 and
8 California Rule of Court, Rule 870 on the grounds that (1) Adelman may only seek to recover the
9 cost of exhibits provided to the trier of fact; (2) Adelman is not entitled to recover the costs of
10 blowups or models that do not aid the trier of fact; and (3) Adelman should not recover for
11 excessive and unreasonable costs for delivery of court filings and documents to this Court.

12 This Motion is based upon this Notice of Motion, the accompanying Memorandum
13 of Points and Authorities, the pleadings, records and files in this action, such matters of which the
14 Court may take judicial notice, and such further evidence and argument as may be presented by
15 Streisand at or before the hearing on this Motion.

16 DATED: March 1, 2004

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REX D. GLENSY
JONATHAN E. STERN

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20 By 
21 Jonathan E. Stern
22 Attorneys for Plaintiff
23 BARBRA STREISAND
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant Kenneth Adelman’s (“Adelman”) Memorandum of Costs seeks items of
4 costs to which he is not entitled. Specifically, the Memorandum of Costs improperly demands
5 reimbursement for the following items:

- 6 • **Photocopying costs for exhibits other than those given to the Court at**
7 **trial.** Pursuant to Cal Civ. Proc. Code § 1033.5, the cost of additional sets
8 of exhibits that were not provided to the trier of fact is not recoverable.
- 9 • **Cost of creating blowups or models.** Such costs are not recoverable
10 under Cal Civ. Proc. Code § 1033.5 when they are not reasonably helpful
11 to the trier of fact.
- 12 • **Costs incurred in delivering court filings and documents to court.**

13 These costs are not a specified recoverable cost. They also are unnecessary
14 because delivery could have been achieved at significantly less expense.

15 Accordingly, this Court should deny Adelman’s improper requests for costs.

16 **II. ADELMAN IMPROPERLY SEEKS COSTS FOR EXHIBITS NOT PROVIDED**
17 **TO THE TRIER OF FACT**

18 **A. Adelman Is Not Entitled to Recover the Cost of Multiple Photocopies of**
19 **Pleadings Not Used As Exhibits**

20 Item Number 11 on Adelman’s Memorandum of Costs is a claim for \$1,238.44 for
21 “[m]odels, blowups, and photocopies of exhibits.” California Civil Procedure Code §
22 1033.5(a)(12) provides that a party may recover the cost of photocopies of exhibits **only** “if they
23 were reasonably helpful to aid the trier of fact.” California Civil Procedure Code §
24 1033.5(b)(2) **expressly prohibits** photocopying charges that are not for exhibits to aid the trier of
25 fact. Thus, the cost of photocopying exhibits for the parties, as opposed to exhibits for the Court,
26 is not recoverable.

27 Conveniently, Adelman failed to file a Memorandum of Costs Worksheet
28 itemizing the specific photocopies for which he seeks to be reimbursed. Even assuming,

1 however, that every single exhibit Adelman provided to the Court was reasonably helpful to the
2 trier of fact (which Streisand disputes), Adelman's exhibits consisted of a total of 355 pages. At
3 the reasonable rate of 10¢ per page for photocopying, the most Adelman should or could possibly
4 recover is \$35.50

5 **B. Adelman Is Not Entitled to Recover the Cost of Blowups**

6 Adelman cannot contend that any portion of the \$1,238.44 listed in Item Number
7 11 is related to the cost of models or blowups. Code of Civil Procedure Section 1033.5(b)(2)
8 states that: "Allowable costs shall be reasonably necessary to the conduct of the litigation rather
9 than merely convenient or beneficial to its preparation." Code of Civil Procedure Section
10 1033.5(a)(12) further states: "Models and blowups of exhibits and photocopies of exhibits may be
11 allowed if they were reasonably helpful to aid the trier of fact."

12 There is no evidence that the court relied on any model or blowup in rendering its
13 decision. In fact, Adelman attempted to use blowups and exhibits during the hearings but the
14 Court denied their use. Accordingly, there is not any indication that any model or blowup was
15 "reasonably helpful" to this Court. Consequently, Adelman is not entitled to any costs associated
16 with creating any model or blowup.

17 **III. ADELMAN'S REQUESTS FOR COSTS FOR DELIVERY OF COURT FILINGS**
18 **AND DOCUMENTS TO COURT IS UNREASONABLE**

19 Item Number 13 on Adelman's Memorandum of Costs is a claim for \$1,395.80
20 resulting from delivery of court filings and documents to court. To be reimbursable as a cost to a
21 prevailing party, an expense must be reasonably necessary to the litigation and reasonable in
22 amount. Cal. Code Civ. Proc. § 1033.5(c)(3); Thon v. Thompson, 29 Cal. App. 4th 1546 (1994).

23 Fees for delivering court filings and documents to court in the amount of
24 \$1,395.80 is clearly unreasonable and is not a recoverable expense set forth in Code of Civil
25 Procedure Section 1033.5. These expenses would not have been near \$1,395.80 had Adelman
26 used U.S. mail, Federal Express, or personal filing when delivering documents to this court. See
27 Nelson v. Anderson, 72 Cal. App. 4th 111, 132 (1999) (holding that the trial court correctly
28 determined that "messenger filings [were] of doubtful necessity and [were] unreasonable on their

1 face, when compared to the probable cost of alternatives such as mail, Federal Express, or
2 personal filing, in view of the size of the very large firm [Gibson, Dunn, & Crutcher]
3 representing” the defendants). In addition, Adelman does not even itemize these expenses or
4 attempt to describe how he arrived at this outrageous sum. Consequently, this amount is grossly
5 unreasonable and excessive.

6 **IV. CONCLUSION**

7 In his Memorandum of Costs, Adelman seeks more than he is entitled to and which he
8 should not recover.

9 Adelman’s grossly inflated charges for photocopying (which Adelman conveniently fails
10 to itemize) should not be allowed.

11 Moreover, Adelman should not be permitted to recover the cost of blowups or models
12 since none were introduced that were reasonably helpful to the Court.

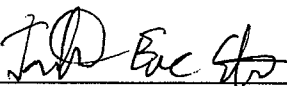
13 Finally, Adelman’s costs for delivery of court filings and documents to this Court are
14 unnecessary and unreasonable.

15 Accordingly, Streisand respectfully requests that the Court tax Streisand’s costs as set
16 forth herein.

17 DATED: March 1, 2004

ALSCHULER GROSSMAN STEIN & KAHAN LLP

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