CONFIRMATION

1 2 3 4 5 6 7	IRELL & MANELLA LLP Richard B. Kendall (State Bar No. 090072) Laura A. Seigle (State Bar No. 171358) Christopher M. Newman (State Bar No 211934) Sandy S. Chung (State Bar No. 226071) 1800 Avenue of the Stars, Suite 900 Los Angeles, California 90067-4276 Telephone: (310) 277-1010 Facsimile: (310) 203-7199 Attorneys for Defendants KENNETH ADELMAN and PICTOPIA.COM	CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court MAR 2 6 2004 John A. Clarke, Executive Officer/Clark
8		By C. Quintana, Deputy
9		E STATE OF CALIFORNIA
11	FOR THE COUNTY	OF LOS ANGELES
12		
13	BARBRA STREISAND,)	Case No. SC077257
14	Plaintiff,	[Honorable Allan J. Goodman]
15	vs.	DEFENDANTS KENNETH ADELMAN AND PICTOPIA.COM'S OPPOSITION
	KENNETH ADELMAN, an individual;) PICTOPIA.COM, a California corporation;) LAYERNET42.NET, a California corporation;)	TO PLAINTIFF'S MOTION TO TAX COSTS; DECLARATION OF LAURA A. SEIGLE
17	and DOE 1 through DOE 20, inclusive,	Date: April 7, 2004
18	Defendants.)	Time: 8:30 a.m. Dept: H
19		- · · · · ·
20		
21	·	
22		·
23		
24		
25		
26		
27		
28	·	
A LLP		

IRELL & MANELLA LLP
A Registered Limited Liability
Law Partnership Including
Professional Corporations

1106016

DEFENDANTS KENNETH ADELMAN AND PICTOPIA.COM'S OPPOSITION TO PLAINTIFF'S MOTION TO TAX COSTS

I. INTRODUCTION

Defendants Kenneth Adelman and Pictopia.com ("Defendants") seek to be reimbursed for costs that were necessitated by the instant litigation and that are recoverable under section 1033.5 of the California Code of Civil Procedure. The first category of costs challenged by Streisand – those costs incurred in making exhibits and exhibit boards – are recoverable under section 1033.5(a)(12) and (c) as the exhibits and exhibit boards were reasonably helpful to the Court. The second category of costs – the costs of delivering and filing documents with the Court through messenger services – are recoverable under sections 1033.5(a)(1) and (c) as such messenger services were necessary to the filing of papers and were a reasonable method of delivery. Therefore, Defendants Adelman and Pictopia.com ask the court to award it the full \$2731.54 they seek as recoverable costs pursuant to section 1033.5.

II. **DISCUSSION**

Defendants Properly Seek Costs For Exhibits And Exhibit Boards That Were A. Reasonably Helpful To The Court

Defendants are claiming \$1,238.44 in exhibit and exhibit board costs, comprised as follows:

Creation of three 36"x48" color exhibit boards

\$633.26

Copying and collating of exhibits

\$605.18

Seigle Decl., ¶ 2. Code of Civil Procedure section 1033.5(a)(12) states that costs for "[m]odels and blowups of exhibits and photocopies of exhibits may be allowed if they were reasonably helpful to aid the trier of fact." Section 1033.5(c)(4), which allows the court in its discretion to allow costs not mentioned in the section, also is a basis for the awarding of costs not expressly mentioned in subsections (a) and (b) of section 1033.5. See Applegate v. St. Francis Lutheran Church, 23 Cal. App. 4th 361, 364 (1994) (awarding costs for photographs and copies of blueprints under subsection (c)). At trial, the Court demonstrated that the exhibit boards and exhibits were helpful by repeatedly referring to many of them. Indeed, one of the exhibits boards, a blow-up of the photograph at issue – remained in a prominent position in the courtroom throughout the several days of hearing so that all of the parties and the Court could refer to it. In

1

2

3

4

5

7

8

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

22 | 23 |

-20

addition, the Court admitted for relevant purposes 19 of the 22 exhibits offered by Defendants. Seigle Decl., ¶ 3.

Streisand argues that the cost of copying the exhibits for Defendants' counsel cannot be recovered. Contrary to Streisand's argument, there is no language in section 1033.5(b)(2) or any other part of section 1033.5 for that matter (including subsection (b)(3)) that prohibits a party from recouping the costs incurred in making a copy of exhibits for itself and the other parties for use at a court hearing. *See also Heppler v. J.M. Peters Co.*, 73 Cal. App. 4th 1265, 1298 (1999) (it was the trial court's discretion to award \$1,965.68 in photocopying costs); *Applegate*, 23 Cal. App. 4th at 364 (1994) (finding it was trial court's discretion to allow cost recovery for photographs and blueprints that were prepared but not used because case was dismissed by other party). If the parties' counsel had not had a parallel set of exhibits before them during the hearings, the exchange between the Court and the parties regarding the admissibility, relevance and significance of the exhibits would have been very difficult. Thus, the copies of the exhibits aided the Court in the evidentiary portion of the hearing and in making the decision to admit 19 of 22 proffered exhibits.

Streisand also asserts that Defendants are overcharging for the cost of copying the exhibits. Plaintiff claims that a reasonable rate for photocopying is 10 cents per page. *See* Motion at 4. However, the attached receipts from Westside Reprographics show that 10 cents is exactly the rate charged per page for non-color photocopies. Seigle Dec., ¶ 2 (Ex. A). A rate of 99 cents was charged for color photocopies. *Id.* Particularly because of the nature of this case (involving the posting of color photographs on a website) and the fact that Streisand is a world-wide celebrity (who is discussed in colorful websites and magazine articles, which were admitted into evidence), many of the exhibits submitted to the Court were the more expensive color copies. Seigle Decl., ¶ 3.

B. The Use Of Messengers To Deliver Materials To And File Documents Was Reasonably Necessary To The Litigation And Reasonable In Amount

Defendants' use of messengers to deliver materials to and file documents with the Court was both reasonably necessary to the litigation and reasonable in amount. A prevailing party may

1	recover courier and messenger costs incurred for the purpose of filing documents with the court				
2	pursuant to Code of Civil Procedure section 1033.5. See Ladas v. Cal. State Auto Assn., 19 Cal.				
3	App. 4th 761, 776 (1993). Although Plaintiff contends that the \$1,395.80 expended by				
4	Defendants in messenger costs is unnecessarily high, the <i>Ladas</i> court found that \$2,518.91 in				
5	courier and messenger costs (an amount incurred more than a decade ago in 1993) was not				
6	unreasonable and could be recovered. Id. Plaintiffs' use of the messengers was reasonable given				
7	that the courthouse is less than five miles from Irell & Manella LLP's office and because the large				
8	number of exhibits and color documents made filing by fax impossible. Seigle Decl., ¶ 4. Mailing				
9	the documents to the court would not have guaranteed a timely filing and Federal Expressing the				
10	documents would have cost the Defendants' counsel an entire day of time to prepare the filings.				
11	Finally, Streisand seems to suggest that Irell & Manella attorneys or staff should have				
12	"personally" filed the documents. See Motion 4. Considering the hourly rate of attorneys and				
13	other timekeepers in this case, as set forth in Defendants' Motion for Attorneys' Fees, it was much				
14	more reasonable to use a messenger service instead of sending an attorney or staff to do the filings.				
	more reasonable to use a messenger service instead of sending an attorney or staff to do the fillings. III. CONCLUSION				
15					
15 16	III. CONCLUSION				
15 16 17	III. CONCLUSION For the foregoing reasons, Defendants Adelman and Pictopia.com ask the court to award it				
15 16 17	III. CONCLUSION For the foregoing reasons, Defendants Adelman and Pictopia.com ask the court to award it the full \$2731.54 that Defendants identified in their Cost Memorandum as costs recoverable under Code of Civil Procedure section 1033.5. Dated: April 26, 2004 IRELL & MANELLA LLP				
15 16 17 18	III. CONCLUSION For the foregoing reasons, Defendants Adelman and Pictopia.com ask the court to award it the full \$2731.54 that Defendants identified in their Cost Memorandum as costs recoverable under Code of Civil Procedure section 1033.5. Dated: April 26, 2004 IRELL & MANELLA LLP Richard B. Kendall Laura A. Seigle				
115 116 117 118 119 220	III. CONCLUSION For the foregoing reasons, Defendants Adelman and Pictopia.com ask the court to award it the full \$2731.54 that Defendants identified in their Cost Memorandum as costs recoverable under Code of Civil Procedure section 1033.5. Dated: April 26, 2004 IRELL & MANELLA LLP Richard B. Kendall				
15 16 17 18 19 20 21	III. CONCLUSION For the foregoing reasons, Defendants Adelman and Pictopia.com ask the court to award it the full \$2731.54 that Defendants identified in their Cost Memorandum as costs recoverable under Code of Civil Procedure section 1033.5. Dated: April 26, 2004 IRELL & MANELLA LLP Richard B. Kendall Laura A. Seigle Christopher M. Newman				
15 16 17 18	For the foregoing reasons, Defendants Adelman and Pictopia.com ask the court to award it the full \$2731.54 that Defendants identified in their Cost Memorandum as costs recoverable under Code of Civil Procedure section 1033.5. Dated: April 26, 2004 IRELL & MANELLA LLP Richard B. Kendall Laura A. Seigle Christopher M. Newman Sandy S. Chung				
15 16 17 18 19 20 21	For the foregoing reasons, Defendants Adelman and Pictopia.com ask the court to award it the full \$2731.54 that Defendants identified in their Cost Memorandum as costs recoverable under Code of Civil Procedure section 1033.5. Dated: April 26, 2004 IRELL & MANELLA LLP Richard B. Kendall Laura A. Seigle Christopher M. Newman Sandy S. Chung By: Radwa b Rendall Richard B. Kendall				
15 16 17 18 19 20 21 22 23 24	III. CONCLUSION For the foregoing reasons, Defendants Adelman and Pictopia.com ask the court to award it the full \$2731.54 that Defendants identified in their Cost Memorandum as costs recoverable under Code of Civil Procedure section 1033.5. Dated: April 26, 2004 IRELL & MANELLA LLP Richard B. Kendall Laura A. Seigle Christopher M. Newman Sandy S. Chung By: RAMWA B. Kendall & & & & & & & & & & & & & & & & & &				
15 16 17 18 18 19 20 21 22 23	For the foregoing reasons, Defendants Adelman and Pictopia.com ask the court to award it the full \$2731.54 that Defendants identified in their Cost Memorandum as costs recoverable under Code of Civil Procedure section 1033.5. Dated: April 26, 2004 IRELL & MANELLA LLP Richard B. Kendall Laura A. Seigle Christopher M. Newman Sandy S. Chung By: Radwa b Rendall Attorneys for Defendants Adelman and				

IRELL & MANELLA LLP
A Registered Limited Liability
Law Partnership Including
Professional Corporations

28

I, Laura Seigle, declare as follows:

2

3

4 5

6

7

8

9 10

11 12

13

14 15

16

17 18

19

20

21

23

24 25

26

- 1. I am an attorney at the law firm of Irell & Manella LLP, counsel of record for the above-captioned action. I am a member in good standing of the State Bar of California. I have personal knowledge of the facts set forth in this Declaration and, if called as a witness, could and would testify competently to such facts under oath.
- 2. Attached as Exhibit A hereto are three invoices from Westside Reprographics, a legal copying service used by Irell & Manella LLP. Invoice no. 34391 is an invoice for 3 exhibit boards that were created in order to aid the Court at the anti-SLAPP court hearings held in the instant matter; the invoice shows a total cost of \$633.26. Invoices no. 34038 and 34492 are invoices for the copying and collating of exhibits that were provided to the Court and parties in order to help the Court in deciding Defendants' anti-SLAPP motion; invoice 34038 shows a total cost of \$561.07 and invoice 34492 shows a total cost of \$44.11.
- 3. Because of the nature of the litigation and the parties involved in the instant action, many of the exhibits proffered to and admitted by the Court were constituted by color documents. For example, in the exhibits appended to Defendants' anti-SLAPP motion, the following exhibits contained documents that were in color: Exhibits A-C, E, G, I, K, L, Q and S. All of these color exhibits, except for Exhibit B, were admitted by the Court. Exhibit K contained color copies of the relevant pages of the March 9, 1998 People Magazine Article that included an aerial photograph of Streisand's residence similar to the photograph that was at issue in this case. The Court referred to Exhibit K repeatedly in its decision. Statement of Decision at 7:8-8:17, 36:16-23, 39:9-25. In all, Defendants proffered 22 exhibits, containing color and non-color, to the Court, and 19 were admitted for relevant purposes.
- The messenger service we utilized charged from \$16 to \$198 depending on the type 4. and quantity of delivery and filing. These amounts generally are far less than the hourly rates charged by attorneys and other timekeeping staff at Irell & Manella. Also, the use of a messenger

1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	

was reasonable because the courthouse is less than five miles from Irell & Manella LLP 's office and because the large number of exhibits and color documents made filing by fax impossible.

Executed on March 26, 2004, at Los Angeles, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Laura Stigle



103 AGO -1 A10:23

2020 Avenue of the Stars, Suite P-156 • Los Angeles, CA 90067

Phone $310 / 552.3252 \cdot Fax 310 / 552.9252$

BILL TO

Irell & Manella

1800 Avenue of the Stars, 7th Floor

Los Angeles, California 90067

Attn: Mary Bender-Arteaga

Invoice

DATE INVOICE # 7/18/2003 34492

	ATTY CC	Ex	esas	
	1 :	PTION <u>COLOR COP</u> ICE/DEPT/58/66.00	202	
		T\$ 44.11		
	Labor Hours Sales Tax-8.25%		25.00 8.25%	25.00° 3.36
	Color Copies (11x17)		2.25	15.75
QUANTITY	QUANTITY DESCRIPTI		RATE	AMOUNT
OLI:	ENT BILLING NO.	TERMS Due on receipt	JOB NO. 33954	LABEL PREFIX

Federal Tax ID 95-4692793



10:8A 1-1 JUL 80

2020 Avenue of the Stars, Suite P-156 \bullet Los Angeles, CA 90067

Phone 310 / 552.3252 • Fax 310 / 552.9252

BILL TO

Irell & Manella

1800 Avenue of the Stars, 7th Floor

Los Angeles, California 90067

Attn: Mary Bender-Arteaga

8				•	
ł	n	1/	1	ı	ce
ļ	1 1	V	V	ı	CC

DATE	INVOICE#	
6/26/2003	34038	

CLIE	ENT BILLING NO.	TERMS	JOB NO.	LABEL PREFIX
158166.0002 Due on rec		Due on receipt	33486	
QUANTITY	QUANTITY DESCRIPTION			AMOUNT
432 Litigation Copies (light) 9 Acco Fasteners 171 Tabs 27 Custom Tabs Color Copies Sales Tax-8.25% AMOUNT\$ 561.07			0.10 1.00 0.25 0.50 0.99 8.25%	43.207 9.007 42,757 13.507 409.867 42.76
AMOUNT\$ 561.07 DESCRIPTION				
hank you for your	r business.		Total	\$561.07

Federal Tax ID 95-4692793





103 JL 18 A9:31

2020 Avenue of the Stars, Suite P-156 • Los Angeles, CA 90067

Phone $310 / 552.3252 \cdot Fax 310 / 552.9252$

BILL TO

Irell & Manella 1800 Avenue of the Stars, 7th Floor Los Angeles, California 90067

Attn: Mary Bender-Arteaga

Invoice

DATE	INVOICE#		
7/17/2003	34391		

CLIE	ENT BILLING NO.	TERMS	JOB NO.	LABEL PREFIX
158166.0002		Due on receipt	33833	
QUANTITY	DESCRIPTION	DN	RATE	AMOUNT
3	Exhibit Boards (36"x48" - Colo Sales Tax-8.25%		195.00 8.25%	585.00 48.26
		DESCRIPTION	033.26 Oversized - 158166 000 RTGA Enesto Casa	Color
ank you for you	r business.		Total	\$633.26