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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10 WEST DISTRICT

11
12 BARBRA STREISAND, an individual,

13 Plaintiff,

14 vs.

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

17 Defendants.
18

CASE NO. SC 077257

[Assigned to the Honorable Allan J. Goodman,
Dept. H]

**PLAINTIFF BARBRA STREISAND'S
OPPOSITION TO DEFENDANTS
KENNETH ADELMAN AND
PICTOPIA.COM'S MOTION FOR
ATTORNEY'S FEES PURSUANT TO
CALIFORNIA CODE OF CIVIL
PROCEDURE § 425.16(c)**

**[Filed Concurrently with Declaration of John
M. Gatti; Declaration of David Roberts; and
Appendix of Non-California Authorities in
Support Thereof]**

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Judge: Hon. Allan J. Goodman

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1 **I. INTRODUCTION AND BACKGROUND**

2 Defendant Kenneth Adelman's ("Adelman") and Pictopia.com's (collectively, the
3 "Defendants") Detailed Time and Expense Report ("Expense Report") demanding \$204,069.50
4 and an additional award of \$15,000 in fees is outrageous by any standard in determining the
5 reasonableness of attorney's fees and costs. See Declaration of Richard B. Kendall in Support of
6 Defendants' Attorney's Fee Motion ("Kendall Decl."), Exh. B ("Expense Report"). Defendants
7 seek an order of this Court that over \$220,000 in fees is reasonable to prepare a C.C.P. § 425.16
8 motion, a reply brief, and attend hearings on the motion. On its face, the fees sought are
9 unreasonable and reflect the inefficiency of assigning 13 different time billers to the matter,
10 including two partners. In contrast, Plaintiff's counsel assigned to the matter three attorneys; a
11 first year associate, a fifth year associate, and a partner. Plaintiff was billed a total of \$45,954 for
12 all work performed in connection with the Defendants' anti-SLAPP motion. Declaration of John
13 M. Gatti in Support of Plaintiff's Opposition to Defendants' Attorney's Fees Motion ("Gatti
14 Decl."), at ¶ 4. *Defendants seek 5 times that amount for handling the same work.*

15 Defendants also seek recovery of fees based on hourly fee charges that exceed by
16 hundreds of dollars per hour the average billing rates charged in the relevant legal community. It
17 is patently unreasonable to bill out a paralegal at \$285 per hour, law school clerks at \$ 190 per
18 hour and partners at \$620 per hour. Additionally, Defendants have repeatedly failed to justify by
19 substantial evidence that they are entitled to the overwhelming majority of the fees they request.

20 The amount of hours Defendants seek reimbursement for is absurd. The most
21 egregious examples of this unreasonableness are the charges of: (a) \$1,842 for an attorney an
22 \$712.50 for a paralegal (for a total of \$2,554.50) to sit in the audience at scheduled court hearings
23 and not participate at the hearing; (b) \$31,100 to conduct 139 hours of "research;" (c) \$13,790 to
24 spend over 23 hours "managing" the motion, conducting "client communications" and
25 performing "legal analysis"; and (d) \$63,520 to expend an additional 152.5 hours drafting a
26 motion. Defendants cannot satisfy their burden and establish that these charges are reasonable.
27 Attorney's Fees Motion, Appendix A ("Condensed Expense Report").

28 Prior to their Attorney's Fees Motion, Defendants have made no effort,

1 whatsoever, to demonstrate the reasonableness of their fee request. Beginning on December 19,
2 2003, Defendants' counsel, Irell & Manella ("Irell") sent Barbra Streisand's ("Streisand") counsel,
3 Alschuler, Grossman, Stein & Kahan LLP ("AGS&K") its Expense Report following this Court's
4 opinion granting Defendants' motion pursuant to Cal. Civ. Proc. Code § 425.16 ("anti-SLAPP
5 motion.") In a letter accompanying the Expense Report, Laura A Seigle, Esq. ("Seigle") asserted
6 that Defendants had incurred fees of \$204,210 and an additional \$2,159.50 in costs. Declaration
7 of Laura A. Seigle in Support of Defendants' Attorney's Fee Motion (Seigle Decl.), Exh. A.
8 Seigle also claimed, contrary to established law, that Defendants were permitted under §
9 425.16(c) to be reimbursed for all costs and fees incurred in connection with the entire litigation.
10 Id., Exh. A.

11 AGS&K attorney, John M. Gatti ("Gatti") replied on January 5, 2004 explaining
12 that the Expense Report was woefully incomplete, thereby making it impossible to fairly and fully
13 assess the reasonableness of the Expense Report. Id., Exh. B. The Expense Report did not
14 properly describe the work performed or the individual who performed the work. The Expense
15 Report also appeared to seek reimbursement for all fees; not just those incurred in connection
16 with the anti-SLAPP motion. In addition to describing other problems with the Expense Report,
17 Gatti further explained that Irell failed to properly submit an Expense Report that reflected
18 reasonable attorney fees under the lodestar adjustment method. Id., Exh. E.

19 Further communications between Seigle and Gatti followed in which Seigle did
20 not satisfactorily respond to Gatti's repeated calls for a more complete and thorough billing
21 statement. Seigle Decl, at Exhs. C, E, and F. Defendants further pressed for fees and costs
22 exceeding \$206,000 and ultimately filed a motion with this Court asking for attorney's fees in the
23 amount of approximately \$220,000.

24 In short, Defendants seek over \$204,000 for filing a total of three briefs in
25 furtherance of its motion to strike. On June 23, 2003 Kenneth Adelman and Pictopia.com each
26 filed separate anti-SLAPP motions that were strikingly similar in text. On July 9, 2003
27 Defendants filed a joint reply in support of their anti-SLAPP motions ("Reply Brief").

28 Kenneth Adelman's Motion to Strike totaled 15 pages.

1 Pictopia.com's Motion to Strike totaled 7 pages.
2 Laura A. Seigle's Declaration in Support of Defendants' Motion to Strike totaled 3
3 pages.

4 Kenneth Adelman's Declaration in Support of Defendants' Motion to Strike
5 totaled 2 pages.

6 Mark Liebman's Declaration in Support of Defendants' Motion to Strike totaled 2
7 pages.

8 Defendants' Reply in Support of their Motion to Strike totaled 10 pages.

9 Laura S. Seigle's Supplemental Declaration in Support of the Motion to Strike
10 totaled 2 pages.

11 In sum, Defendants ask for \$204,069.50 for authoring 41 pages. In other words,
12 *Defendants believe that it is reasonable to charge approximately \$4,305 to draft a single page.*
13 Moreover, less than 33 of these pages authored by Defendants' counsel actually contained any
14 substantive legal or factual analysis.

15 *By contrast, the fees incurred by Streisand in drafting its opposition papers—*
16 *including all factual and legal research that was applied to the anti-SLAPP motion and to*
17 *attend all the hearings scheduled by the Court for the anti-SLAPP motion or preliminary*
18 *injunction—cost a total of \$45,954.00.*

19 Defendants' counsel cannot provide any reasonable justification to support its
20 astronomical fees or the 519.35 hours it spent incurring them. Defendants' counsel maintains that
21 its hourly billing rates are warranted, in part, by both the unique expertise provided by its
22 attorneys and the efficient billing practices that result from staffing a case with thirteen attorneys.
23 Attorney's Fees Motion, at 6:24-8:9. However, not only do these billing rates far exceed that
24 which is generally accepted within the community but it is clear that Irell's staffing of this case
25 was anything but efficient. Moreover, probably as a result of the inefficiency of assigning 13
26 different billing individuals on the matter, Irell seeks recovery of 46 hours of time billed for the
27 ambiguous category of "motion management." See Condensed Expense Report.

28 Were Irell's alleged expertise properly applied, the law firm would not have

1 needed to spend 364.5 hours researching and drafting the 41 pages that constituted Defendants'
2 anti-SLAPP motions, reply brief, and attached declarations. Condensed Expense Report. .
3 Presumably, the number of hours spent drafting these motions would have been dramatically
4 reduced by the accumulated knowledge of the Irell attorneys who have been engaged in those
5 areas of law relevant to this litigation. Yet, whereby Streisand's counsel spent a total of 165.95
6 hours working on everything relating to the motion (including all client communications,
7 research, drafting, attendance at hearings, etc.), Irell's "legal research" and "factual research"
8 (which Irell inexplicably reports as excluding *all* legal analysis and research conducted in
9 preparing Defendants' reply papers) totaled over 139 hours while the drafting of their motion and
10 reply brief required *another* 179.25 hours of work. See Expense Report; Gatti Decl., at ¶ 4.

11 In addition, Defendants' counsel plainly attempts to make Streisand foot the bill
12 for activities that were (a) duplicative of work already performed, (b) unnecessary, (c) not
13 performed for purposes of the anti-SLAPP motion, and altogether (d) useless to Defendants'
14 counsel.

15 Defendants have seriously failed to justify their fees contained in the Expense
16 Report. Consequently, Defendants' fees must be **dramatically** reduced.

17 **II. THE COSTS AND FEES DEFENDANTS REQUEST IN THEIR EXPENSE**
18 **REPORT ARE UNREASONABLE, EXCESSIVE, AND UNNECESSARY**

19 Section 425.16 states that a prevailing defendant on a special motion to strike shall
20 only be entitled to recover attorney's fees and costs that a court deems are reasonable. Civ. Proc.
21 Code § 425.16(c); Robertson v. Rodriguez, 36 Cal. App. 4th 347, 362 (1995); Dove Audio, Inc.
22 v. Rosenfeld, Meyer & Susman, 47 Cal. App. 4th 777, 785 (1996). The proper method for
23 calculating attorney's fees in California is the lodestar method. See e.g., Ketchum v. Moses, 24
24 Cal. 4th 1122, 1136 (2001). In assessing attorney's fees under this method, however, a Court
25 must exclude those fees that are "excessive, redundant, [and] otherwise unnecessary." Hensley v.
26 Eckerhart, 461 U.S. 424, 434 (1983); see also Serrano v Priest, 20 Cal 3d 25, 48 (1997)
27 (explaining that a court assessing attorney fees begins with a lodestar figure that is based on the
28 "careful compilation of the time spent and reasonable hourly compensation of each attorney . . .

1 involved in the presentation of the case.”) Thus, “[h]ours that are not properly billed to one’s
2 client also are not properly billed to one’s adversary pursuant to statutory authority.” Copeland v.
3 Marshall, 641 F.2d 880, 891 (D.C. Cir. 1980).

4 Since the Court’s “role is not merely to rubber stamp the defendant’s request, but
5 to ascertain whether the amount sought is reasonable,” Robertson, 36 Cal. App. 4th at 361, any
6 fee award must be established by “substantial evidence” supporting the award. Macias v.
7 Hartwell, 55 Cal. App. 4th 669, 676 (1997). Therefore, the Court is “not bound by the amount
8 sought by defendants and [has the] discretion to award them a lesser sum.” Robertson, 36 Cal.
9 App. 4th at 362. Because Defendants request an award that is unreasonable and excessive,
10 Defendants’ request for attorney’s fees and costs must be substantially reduced.

11 **A. A Substantial Portion of the Fees and Costs Submitted By Irell is Not**
12 **Recoverable Under § 425.16(c)**

13 Lafayette Morehouse, Inc. v. Chronicle Publishing Company, 39 Cal. App. 4th
14 1379, 1383 (1995) explicitly provides that the attorney fees provision contained in § 425.16(c)
15 “applies only to the motion to strike, and not to the entire action.” Streisand, therefore, is not
16 responsible to pay any fees that are applicable to non-SLAPP motion matters or both the anti-
17 SLAPP motion *and* other aspects of the litigation since Lafayette limits recovery to costs and fees
18 that apply “*only* to the motion to strike.” This is clearly a rule of reason insofar as the purpose of
19 an attorney’s fees award under § 425.16(c) is to compensate defendants for the additional cost of
20 litigating the anti-SLAPP motion. Insofar, as research would necessarily have to be performed
21 were the anti-SLAPP motion never filed, Defendants should not be able to recover those fees.
22 Nonetheless, Defendants attempt to subsume all research relevant to both the SLAPP motion and
23 other aspects of the litigation even though that research would have needed to be performed
24 regardless of whether the anti-SLAPP motion had been filed.

25 Indeed, Defendants’ counsel, Richard Kendall, admits that when “legal or factual
26 research was relevant both to the anti-SLAPP motion and to other aspects of the case, we took the
27 position that our clients are entitled to reimbursement for any work that would have been
28 necessitated by the anti-SLAPP motion alone.” Kendall Decl., at 2:11-14. Kendall’s statement

1 suggests that work performed in the first instance for purposes not related to the anti-SLAPP suit
2 was assessed against Streisand simply because the research is believed to be rationally related to
3 anti-SLAPP issues. It would be legally obtuse to require Streisand to reimburse Defendants for
4 those fees simply because it is argued that they may be logically relevant. Yet, to require
5 Streisand to pay those fees would certainly extend the attorney's fees provision under the anti-
6 SLAPP statute beyond the scope for which it was intended. See, e.g., Macias, 55 Cal. App. 4th at
7 676 (holding that attorney fees award was proper since the trial court "limited the award for fees
8 to the anti-SLAPP motion.")

9 Because Defendants make no attempt to apportion their (a) legal research, (b)
10 factual analysis, (c) hearing preparation, (d) or client communications between the anti-SLAPP
11 motion and other issues related to this lawsuit, Defendants have failed to provide substantial
12 evidence to justify *any* recovery of these fees. As a result, Defendants' recovery must be limited
13 to the clearly delineated (and reasonable) portion of time spent drafting the anti-SLAPP motions
14 and the reply brief to Streisand's opposition to Defendants' motions.

15 **B. The Expense Report is Replete with Incomplete and Ambiguous Information**

16 Attorneys are required to "maintain accurate records of work done and time spent
17 in preparing each client's case" as "a detailed billing record gains the advantage of being able to
18 evaluate the worth of the services provided." Martino v. Denevi, 182 Cal. App. 3d 553, 558
19 (1986). Even though testimony by any attorney regarding the number of hours worked is
20 sufficient to justify that it is appropriate to grant attorney's fees, the reasonable value of the
21 services rendered is still at the discretion of the Court. Id. at 558-59; see also Wilkerson v.
22 Sullivan, 99 Cal. App. 4th 443, 448 (2002) (explaining that "[t]he reasonableness of attorney fees
23 is within the discretion of the trial court.") Defendants have failed to provide sufficient
24 information to determine whether the time spent and billed for various activities was, or was not,
25 reasonable.

26 Defendants' Expense Report is filled with incomplete and ambiguous information
27 such that it is impossible to determine whether or not a particular expense is for purposes of the
28 anti-SLAPP motion. These descriptions do not provide any guidance whatsoever in determining

1 whether (a) a reasonable amount of time was spent on that activity or (b) whether the expenses
2 are altogether related to the anti-SLAPP motion. For example, there are numerous expenses titled
3 “research re anti-SLAPP motion” and “researching for anti-SLAPP motion.” Other descriptions
4 include activities titled “researching,” “researching memo,” “editing memo,” “meeting with
5 partner,” “writing memo,” “anti-SLAPP motion,” and other non-descript narratives. Indeed,
6 Defendants’ counsel admits that these ambiguities exist but maintains that the entries “amount to
7 little more than \$7,000.” Seigle Decl., Exh. C. In fact, however, these ambiguities total at least
8 five times that amount. See generally Expense Report. Moreover, rather than admit the mistake
9 and deduct this amount from the Expense Report, Seigle ironically advises that, because the
10 amount is “relatively small,” *Streisand* should continue to bear this cost. *Id.* Otherwise, Seigle
11 maintains, correcting the failure of Irell’s employees to accurately describe their time “would be a
12 regrettable waste of resources.” *Id.*

13 Because the non-descript or ambiguous billing expenses make it impossible to
14 determine whether the time spent on those activities is reasonable, Streisand cannot be obligated
15 to pay for those expenses.

16 **C. Irell’s Hourly Billing Rate is Unreasonable**

17 In determining the reasonableness of Defendants’ counsel’s fees, this Court must
18 weigh several factors including the attorney’s skill required and employed in handling the matter,
19 the attorney’s learning, and the attorney’s experience in the particular type of work. Clejan v.
20 Reisman, 5 Cal. App. 3d 224, 241 (1970). The lodestar approach begins by multiplying “the
21 numbers of hours reasonably expended [with the] reasonable hourly rate.” PLCM Group, Inc v.
22 Drexler, 22 Cal. 4th 1084, 1095 (2000) (emphasis added). In so doing, a court should use the
23 prevailing rates of comparable private attorneys as the “touchstone” for determining a reasonable
24 rate for an attorney. International Longshoremen’s Warehousemen’s Union v. Los Angeles
25 Export Terminal, Inc., 69 Cal. App. 4th 287, 303 (1999). Notwithstanding Defendants’ claims to
26 the contrary, Irell’s hourly billing rate for its attorneys and support staff is outrageous.

27 Irell staffed this case with thirteen individuals representing eight different billing
28 rates: Litigation Clerk Caitlan Chamberlin (\$110 an hour); Research librarians Adrian Orozco,

1 Debra Hogan, Richard Pruitt, and Veronis Forte (\$175 an hour); Summer Associates Gregory
2 Fayer, Rebecca Dickinson, and Kelly Yang (\$190 an hour); Senior Legal Assistant, Mary Bender-
3 Arteaga (\$285 an hour); Third Year Associate Lara Cooper (\$295 an hour); Fourth Year
4 Associate Christopher Newman (\$335 an hour); Litigation Partner Laura Seigle (\$490 an hour);
5 and Litigation Partner Richard Kendall (\$620 an hour). See, e.g., Expense Report & Condensed
6 Expense Report. All of these billing rates are in excess of the normal prevailing rate for attorneys
7 practicing in Southern California, including Beverly Hills and Century City, with similar
8 experience and similar expertise in this type of litigation. Declaration of David Roberts in
9 Support of Plaintiff's Opposition to Defendants' Attorney's Fees Motion ("Roberts Decl."), at ¶
10 8.

11 The following are the average billing rates for Southern California law firms
12 containing 76 or more attorneys:

13 *Non-equity partners:* \$ 259

14 *Equity Partners:* \$ 400

15 *Fourth Year Associate:* \$224

16 *Third Year Associate:* \$ 212

17 *Senior Legal Assistant* (at a law firm located in Century City): \$128

18 *Summer Associate:* \$156

19 Roberts Decl., at ¶ 8.

20 Defendants do not describe what the role of a litigation clerk is nor is there any
21 industry-wide standard that would allow Streisand or this Court to ascertain what the clerk's
22 function is. However, according to the Expense Report, it cost \$165 for Irell's Litigation Clerk to
23 "[r]esearch and copy Thomas Guide maps of Malibu." Like most firms, Plaintiff's counsel does
24 not charge for such secretarial duties and does not charge for the hourly services of its clerk or
25 copy staff. Gatti Decl., at ¶ 5. Certainly this is outrageous since it is an activity that a secretary—
26 whose time is not billed to the client—could easily have performed. Id.

27 Furthermore, the senior partner representing Streisand, John M. Gatti, charges
28 \$440 per hour, and he has been practicing in litigation for sixteen years. The billing rate for a

1 fourth year attorney in the law firm representing Streisand is \$285. Id. The average billing rate at
2 Streisand's law firm for a partner with Seigle's experience is \$385. Id. The billing rate for an
3 attorney practicing for three years is \$240 per hour. Id. The billing rate for a paralegal at
4 Streisand's law firm ranges from \$150 per hour to \$175 per hour. Id. The billing rate for a
5 research librarian at Streisand's law firm is \$160. Streisand's law firm does not bill for the
6 services of "litigation" or file clerks. Id.

7 **D. The Number of Hours Spent by Irell is Clearly Excessive**

8 Counsel for defendants are obligated to "make a good faith effort" to deduct from
9 its Expense Report all "hours that are excessive, redundant, or otherwise unnecessary, just as a
10 lawyer in private practice ethically is obligated to exclude such hours from his fee submission."
11 Hensley, 461 U.S. at 434; see also Ketchum, 24 Cal. 4th at 1132 (holding that "'padding' in the
12 form of inefficient or duplicative efforts is not subject to compensation.") By Irell's own
13 admission, Defendants' counsel has not done so.

14 Kendall's declaration states that Irell included in its Expense Report "all time
15 spent researching the substantive causes of action raised in the complaint and the legal defense
16 thereto, and all time spent developing the factual record . . ." Kendall Decl., at 2:15-18
17 (emphasis added). Irell does not indicate that it has made any good faith attempt to identify any
18 hours that may have been excessive or redundant. However, despite the vague descriptions of
19 many of the activities that are contained in the Expense Report, it is evident that the Expense
20 Report suffers from inefficient, redundant, and unnecessary legal fees.

21 **1. Time Spent Drafting the Anti-SLAPP Motion and Reply Papers was**
22 **Excessive**

23 The time that Irell spent drafting the anti-SLAPP motion is absurd. Irell has held
24 itself to be a law firm with "significant expertise directly related to the present matter, having
25 litigated many cases involving free speech, right of privacy, and right of publicity claims, and
26 having made many anti-SLAPP motions." Kendall Decl., at 5:4-6. Yet, for a firm with such
27 extensive expertise, the 152.5 hours that it spent drafting the anti-SLAPP motion and
28 accompanying declarations is outrageous. See Condensed Expense Report.

1 It would stand to reason that a firm possessing such expertise in these areas would
2 have been capable of efficiently drafting an anti-SLAPP motion in fewer than 152.5 hours and at
3 a price far below \$63,520. Id. Likewise, it would have been unnecessary to spend an additional
4 114.25 hours on “legal research and analysis;” 24.75 hours performing “factual research;” 23.5
5 hours conducting “client communications,” yet more “legal analysis,” and the ambiguously titled
6 “motion management.” Id.

7 Given all of the time spent conducting legal research, it is also unreasonable for
8 Irell to have spent 49.5 hours drafting its Reply Brief, engaging in client communications, and
9 conducting further research and analysis. Id. These numbers are shocking in light of the fact that
10 these hundreds and hundreds of hours were spent in order to write three briefs and a few
11 declarations that totaled 41 pages! It is particularly appalling given that there was no discovery
12 conducted in this action and only an extremely small universe of documents were referenced.

13 By comparison, the total time spent by Streisand’s law firm conducting client
14 communications, performing all legal and factual research regarding the anti-SLAPP issues, and
15 drafting Streisand’s opposition to the anti-SLAPP motion totaled \$45,954.00. Gatti Decl., at ¶ 4.

16 **2. It was Unnecessary and Inefficient to Staff Thirteen Individuals on this**
17 **Case**

18 Irell maintains that it was necessary to have a staff of thirteen billing individuals
19 work on this case because doing so is “cost efficient” and “reduce[s] the overall costs.” Seigle
20 Decl., Exh. D. A review of the Expense Report shows that staffing the case with thirteen
21 individuals created inefficiencies, redundancies, and unnecessary expense.

22 First, it is inefficient to staff a case with thirteen individuals when fewer are
23 required. Any added reduction in cost by assigning tasks at a lower billing rate is entirely lost by
24 (a) the increase in time spent supervising those individuals; (b) the inefficiencies created by
25 assigning tasks that could be completed in much shorter time by a more senior and capable
26 individual; and (c) the redundancies that will necessarily be created by those tasked with similar
27 assignments. Because of the many incomplete and ambiguous descriptions in the expense report,
28 it is impossible to tell the extent of these inefficiencies and redundancies. Some of those

1 redundancies are, however, identifiable.

2 For example, billing for the time spent by summer associates is inherently
3 inefficient. First, summer associates are law students who lack the expertise and sophistication of
4 a member of the state bar. Nonetheless, Kendall asserts that each summer associate was given an
5 assignment “that would otherwise be performed by junior associates.” Kendall Decl., at 4:16-19.
6 One example—which was not made apparent until Laura Seigle, Esq., (“Seigle”) responded to
7 Gatti’s request that Irell clarify one of the many ambiguities contained in the Expense Report—is
8 the expenses incurred by summer associate Kelly Yang (“Yang”). Per Seigle, the only
9 assignment given to summer associate Yang relating to this litigation was to “research and write a
10 memo analyzing possible defenses to the anti-paparazzi claim.” Seigle Decl., Exh. C. A review
11 of the Expense Report indicates that Yang spent 27 hours researching and writing a memo
12 regarding a straightforward statute for which there is not a single reported decision. See Expense
13 Report. Thus, it cost \$5,130 to write a memorandum about an issue that would require a minimal
14 amount of research. Certainly a junior associate would likely be capable of performing this
15 analysis in an hour and at significantly less expense.

16 That Yang’s research was of no value to this case is evident from the briefs filed
17 by Irell. In Adelman’s Motion to Strike, only two paragraphs are dedicated to discussing the anti-
18 paparazzi statute. The first paragraph merely restates the anti-paparazzi statute, Civil Code
19 section 1708.8, while the second paragraph recites factual reasons culled from Adelman’s
20 declaration in support of the motion, to justify why Adelman is not liable under the section.
21 Adelman’s Motion to Strike, at 13:14-14:4. Pictopia.com’s motion does not even address this
22 issue. Pictopia.com’s Motion to Strike. Meanwhile, Defendants’ discussion in their Reply Brief
23 contains only one paragraph in which the entirety of the argument consists of reciting the plain
24 language of the statute. Defendants’ Reply Brief, at 8:20-26. These briefs do not contain any
25 legal discussion of the anti-paparazzi statute other than recitation of the statute’s plain language.
26 Yang’s research clearly was for naught.

27 Because the descriptions given by summer associates Gregory Fayer (“Fayer”) and
28 Rebecca Dickinson (“Dickinson”) are also vague and non-descript it is also impossible to

1 determine whether the time spent executing their assignments was reasonable. Fayer, for
2 example, spent 4.25 hours conducting on-line research on statements made by Streisand on the
3 environment and 13.5 hours engaged in the non-descript activity of conducting “research for anti-
4 SLAPP motion.” Not only did Fayer not write a memo about either issue but he spent all of 15
5 minutes speaking with Seigle and Newman about the fruits of his anti-SLAPP research.
6 Moreover, he did not have any communication with any attorney regarding his Internet searches.
7 See Expense Report. It is evident that the research that he performed was not helpful to this
8 litigation.

9 Summer associate Dickinson also spent an unreasonable amount of time
10 performing research on the right to privacy. According to the Expense Report, she spent 44.75
11 hours researching this issue and writing a memo on the topic of the “right to privacy legal
12 framework and [the] effect of celebrity on analysis.” Id. Meanwhile, during the exact same time
13 period, Newman performed 21 hours of research on a topic simply described as “anti-SLAPP
14 motion” and an additional 85.5 hours drafting the anti-SLAPP motion. Id. Presumably, not only
15 did Newman’s research overlap with Dickinson’s but it should not require an associate, however
16 junior, to spend almost 45 hours to research the “right to privacy legal framework and [the] effect
17 of celebrity on analysis,” particularly for a firm that prides itself on expertise in this area.

18 Likewise, given the enormous and unreasonable amount of time that Newman
19 spent drafting less than 22 pages (i.e. the combined page totals between Adelman’s and
20 Pictopia.com’s Motions to Strike Pursuant to Civ. Proc. Code § 425.16), it is absurd to suggest—
21 nor have Defendants established—that the time spent by either Newman, the summer associates,
22 or remaining support staff was reasonable or even necessary.

23 3. **No Court Has Ever Granted An Award that is Remotely Similar to the**
24 **Amount Requested by Defendants**

25 A review of reported decisions in California suggests that Defendants’ request for
26 attorney’s fees and costs is facially unreasonable. These decisions indicate that movants are
27 rarely granted more than \$60,000 pursuant to the anti-SLAPP statute. Furthermore, these cases
28 were just as complex, if not more so, than the current litigation. Below is a list of awards of

1 attorney's fees *and* costs that have been deemed reasonable by the California Court of Appeal or
2 the California Supreme Court since 2000:

- 3 • \$77,835.25: Bernardo v. Planned Parenthood Federation of America, 115
4 Cal. App. 4th 322 (2004) (affirming award of reasonable attorney's fees to
5 a national charitable organization annually serving over four million people
6 in suit regarding controversial scientific and medical issues that were of
7 public importance and required expert input, scientific data, and worldwide
8 studies)
- 9 • \$55,900: Tuchscher Development Enterprises, Inc. v. San Diego Unified
10 Port Dist., 106 Cal. App. 4th 1219 (2003) (lawsuit against a port district for
11 breach of contract and numerous business tort claims based on alleged
12 conspiracy to disrupt agreement to develop commercial property)
- 13 • \$7,296.15: Kashian v. Harriman, 98 Cal. App. 4th 892 (2002) (lawsuit
14 against an environmental organization and its attorney alleging causes of
15 action for unfair competition and for defamation following newspaper's
16 report on defendant lawyer's request that Attorney General conduct an
17 investigation into the plaintiff's business dealings)
- 18 • \$45,000: Schroeder v. Irvine City Council, 97 Cal. App. 4th 174 (2002)
19 (lawsuit against the City of Irvine, its city council, and individual council
20 members seeking injunctive and declaratory relief on the grounds that
21 defendants' "Vote 2000" program was an illegal expenditure of public
22 funds)
- 23 • \$65,386.61: Rosenaur v. Scherer, 88 Cal. App. 4th 260 (2001) (affirming
24 trial court's award of attorneys fees for \$65,386 in action for defamation
25 and slander stemming from comments made during a bitterly fought local
26 initiative campaign concerning the commercial development of real
27 property)
- 28 • \$9,300: Dowling v. Zimmerman, 85 Cal. App. 4th 1400 (2001) (reduction

1 of attorney's fees from an original request of \$61,862.50 in case stemming
2 from numerous unlawful detainer actions, petitions for restraining orders,
3 and a suit alleging almost a dozen causes of action.

4 The only reported decision in which the court reported on the reasonableness of a
5 fee award obtained by Defendants' counsel is Dove Audio, Inc. v. Rosenfeld, Meyer & Susman,
6 47 Cal. App. 4th 777 (1996). In Dove Audio, the son of famed actress Audrey Hepburn hired the
7 law firm of Rosenfeld, Meyer & Susman ("Rosenfeld") to contact other parties that had been
8 bilked out of royalty payments in anticipation of filing a complaint with the Attorney General. Id.
9 at 780. The plaintiff, Dove Audio, then sued the law firm for libel and interference with
10 economic relationship. Id. Rosenfeld, represented by Defendants' counsel, then successfully
11 demurred and was granted their motion to strike pursuant to § 425.16. Id. at 780-81. On appeal,
12 Dove Audio challenged the award of attorney's fees in the amount of \$28,296. Id. at 785. The
13 court of appeal upheld the award on the grounds that although the award was "*generous*," the
14 court's determination did not "exceed[] the bounds of reason." Id. (emphasis added).

15 Here, Defendants' counsel's Expense Report absolutely exceeds the bounds of
16 reason and exceeds its own request for fees and costs in Dove Audio. The decision in Dove
17 Audio was more complex than the present litigation. Dove Audio involved multiple celebrities;
18 understanding of the sophisticated way in which music royalties are calculated; due diligence in
19 identifying, and communicating with, potential celebrity plaintiffs; correspondence with a
20 governmental agency to initiate an investigation; and complex legal issues. Id. at 779-784. In the
21 present case, however, not only has Irell already briefed issues related to § 425.16 for other cases
22 but Streisand's litigation only involved one plaintiff, the subject matter of the dispute was in the
23 possession of the Defendants, and due diligence and discovery was not required to locate
24 additional parties. If \$28,296 were considered generous in Dove Audio, certainly a similar
25 amount would be considered generous in this case as well.

26 **E. Defendants Are Not Entitled to Attorneys Fees for their Attorney's Fees**
27 **Motion**

28 Defendants are not entitled to their attorney's fees incurred in litigating their fee

1 motion because they have not provided any evidence whatsoever to document those fees or
2 establish their reasonableness by substantial evidence. They have neither attached an Expense
3 Report or any other form of itemization that would indicate how Defendants incurred \$15,000 in
4 attorney's fees. Notwithstanding the fact that Defendants have not provided any evidence
5 documenting the so-called \$15,000 in fees that Defendants have supposedly incurred, the amount
6 requested is facially unreasonable in light of the minimal amount of work that Defendants client's
7 have performed since this Court's entry of judgment.

8 Given that Defendants have not provided any documentary evidence, let alone
9 substantial evidence, Defendants' request for fees incurred in litigating this motion must be
10 denied. See, e.g., Macias, 55 Cal. App. 4th at 676 (holding that defendants must provide
11 "substantial evidence" in order to supporting a reasonable attorney's fee award).

12 **III. CONCLUSION**

13 Defendants claim it is reasonable to spend 519.35 hours and charge over \$204,000
14 to author 41 pages and attend a series of hearings. Having failed to provide substantial evidence
15 to justify the overwhelming portion of their fee request, Defendants' claim is unreasonable.
16 Therefore, and for the reasons set forth above, Streisand respectfully requests that this Court deny
17 Defendants' motion for attorney's fees.

18 DATED: March 26, 2004

ALSCHULER GROSSMAN STEIN & KAHAN LLP

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20
21 By 

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