

CONFIRMATION
COPY

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KENNETH ADELMAN and
7 PICTOPIA.COM
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CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAR 26 2004

John A. Clarke, Executive Officer/Clerk
By C. Quintana, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES

12 BARBRA STREISAND,)

13 Plaintiff,)

14 vs.)

15 KENNETH ADELMAN, an individual;)
16 PICTOPIA.COM, a California corporation;)
17 LAYERNET42.NET, a California corporation;)
and DOE 1 through DOE 20, inclusive,)

18 Defendants.)

Case No. SC077257

[Honorable Allan J. Goodman]

**DEFENDANTS KENNETH ADELMAN
AND PICTOPIA.COM'S OPPOSITION
TO PLAINTIFF'S MOTION TO TAX
COSTS; DECLARATION OF LAURA A.
SEIGLE**

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

1 I. INTRODUCTION

2 Defendants Kenneth Adelman and Pictopia.com ("Defendants") seek to be reimbursed for
3 costs that were necessitated by the instant litigation and that are recoverable under section 1033.5
4 of the California Code of Civil Procedure. The first category of costs challenged by Streisand –
5 those costs incurred in making exhibits and exhibit boards – are recoverable under section
6 1033.5(a)(12) and (c) as the exhibits and exhibit boards were reasonably helpful to the Court. The
7 second category of costs – the costs of delivering and filing documents with the Court through
8 messenger services – are recoverable under sections 1033.5(a)(1) and (c) as such messenger
9 services were necessary to the filing of papers and were a reasonable method of delivery.
10 Therefore, Defendants Adelman and Pictopia.com ask the court to award it the full \$2731.54 they
11 seek as recoverable costs pursuant to section 1033.5.

12 II. DISCUSSION

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

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

- 17 • Creation of three 36"x48" color exhibit boards \$633.26
- 18 • Copying and collating of exhibits \$605.18

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

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

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

16 Streisand also asserts that Defendants are overcharging for the cost of copying the exhibits.
17 Plaintiff claims that a reasonable rate for photocopying is 10 cents per page. *See* Motion at 4.
18 However, the attached receipts from Westside Reprographics show that 10 cents is exactly the rate
19 charged per page for non-color photocopies. Seigle Dec., ¶ 2 (Ex. A). A rate of 99 cents was
20 charged for color photocopies. *Id.* Particularly because of the nature of this case (involving the
21 posting of color photographs on a website) and the fact that Streisand is a world-wide celebrity
22 (who is discussed in colorful websites and magazine articles, which were admitted into evidence),
23 many of the exhibits submitted to the Court were the more expensive color copies. Seigle Decl.,
24 ¶ 3.

25 **The Use Of Messengers To Deliver Materials To And File Documents Was**
26 **Reasonably Necessary To The Litigation And Reasonable In Amount**

27 Defendants' use of messengers to deliver materials to and file documents with the Court
28 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 *Ladas* 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.

15 **III. CONCLUSION**

16 For the foregoing reasons, Defendants Adelman and Pictopia.com ask the court to award it
17 the full \$2731.54 that Defendants identified in their Cost Memorandum as costs recoverable under
18 Code of Civil Procedure section 1033.5.

19 Dated: April 26, 2004

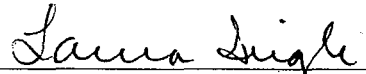
IRELL & MANELLA LLP
Richard B. Kendall
Laura A. Seigle
Christopher M. Newman
Sandy S. Chung

23 By: Richard B. Kendall sc.
24 Richard B. Kendall
25 Attorneys for Defendants Adelman and
26 Pictopia.com
27
28

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

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

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

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7 _____
8 Laura Steigle
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Westside Reprographics



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Phone 310 / 552.3252 • Fax 310 / 552.9252

Invoice

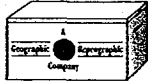
BILL TO
Irell & Manella 1800 Avenue of the Stars, 7th Floor Los Angeles, California 90067 Attn: Mary Bender-Arteaga

DATE	INVOICE #
7/18/2003	34492

CLIENT BILLING NO.	TERMS	JOB NO.	LABEL PREFIX										
158166.0002	Due on receipt	33954											
QUANTITY	DESCRIPTION	RATE	AMOUNT										
7	Color Copies (11x17)	2.25	15.75T										
1	Labor Hours	25.00	25.00T										
	Sales Tax-8.25%	8.25%	3.36										
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AMOUNT \$	<u>44.11</u>												
DESCRIPTION	<u>color copies</u>												
G/L/OFFICE/DEPT.	<u>158166.0002</u>												
ATTY CODE	<u>RTGA</u>												
APPROVED BY	<u>Ernesto Casas</u>												
Thank you for your business.		Total	\$44.11										

Federal Tax ID 95-4692793

Westside Reprographics



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BILL TO
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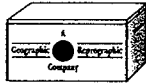
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6/26/2003	34038

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9	Acco Fasteners	1.00	9.00T										
171	Tabs	0.25	42.75T										
27	Custom Tabs	0.50	13.50T										
414	Color Copies	0.99	409.86T										
	Sales Tax-8.25%	8.25%	42.76										
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AMOUNT \$	<u>561.07</u>												
DESCRIPTION	<u>color copies</u>												
BA/OFFICE/DEPT.	<u>158166-0002</u>												
ATTY CODE	<u>RTGA</u>												
APPROVED BY	<u>Ernesto Casas</u>												
Thank you for your business.		Total	\$561.07										

Federal Tax ID 95-4692793

21

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BILL TO
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DATE	INVOICE #
7/17/2003	34391

CLIENT BILLING NO.	TERMS	JOB NO.	LABEL PREFIX
158166.0002	Due on receipt	33833	
QUANTITY	DESCRIPTION	RATE	AMOUNT
3	Exhibit Boards (36"x48" - Color) Sales Tax-8.25%	195.00 8.25%	585.00T 48.26
Thank you for your business.		Total	\$633.26

AMOUNT \$	633.26
DESCRIPTION	Oversized - Color
PL/OFFICE/DEPT	158166-0002
CITY CODE	RT6A
APPROVED BY	Ernesto Casas

Federal Tax ID 95-4692793