

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 05/10/04

**DEPT. WEH**

HONORABLE Allan J. Goodman

JUDGE

D. SALISBURY  
B. HALL, CSL.

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

Deputy Sheriff

NONE

Reporter

8:30 am SC077257

Plaintiff  
Counsel

NO APPEARANCES

BARBARA STREISAND  
VS  
KENNETH ADELMAN, ET. AL

Defendant  
Counsel

**NATURE OF PROCEEDINGS:**

RULING ON SUBMITTED MATTERS;

No appearances.

The matters of plaintiff's Motion to Tax Costs and of defendants' Motions for Attorneys' Fees having been argued and submitted, the Court now rules as follows:

The motion is granted in part and denied in part and costs are taxed accordingly and are fully set forth in the Court's ruling filed and incorporated herein.

Clerk to give notice.

CLERK'S CERTIFICATE OF MAILING/  
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 5/10/04 upon each party or counsel named below by depositing in the United States mail at the courthouse in W. Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: May 10, 2004

John A. Clarke, Executive Officer/Clerk

<p align="center"><b>MINUTES ENTERED</b> 05/10/04 <b>COUNTY CLERK</b></p>
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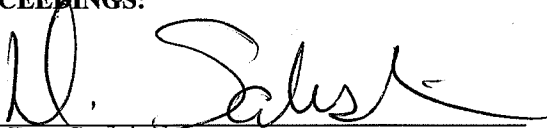
Plaintiff  
Counsel

BARBARA STREISAND  
VS  
KENNETH ADELMAN, ET. AL

NO APPEARANCES

Defendant  
Counsel

NATURE OF PROCEEDINGS:

By:   
D. Salisbury

Alschuler, Grossman, Stein & Kahan  
1620 26th Street, 4th Floor, North Tower  
Santa Monica, CA 90404-4060

~~Irrell & Manella~~  
1800 Avenue of the Stars, Suite 900  
Los Angeles, CA 90067-4276

Reynolds Casas & Riley, LLP  
One First Street, Suite 2  
Los Altos, CA 94022-4109

MINUTES ENTERED  
05/10/04  
COUNTY CLERK

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**ORIGINAL FILED**

MAY 10 2004

LOS ANGELES  
SUPERIOR COURT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
WEST DISTRICT**

**BARBRA STREISAND,**

Plaintiff,

vs.

**KENNETH ADELMAN, et al,**

Defendants.

CASE NO. SC 077 257

**RULING ON SUBMITTED  
MATTERS: MOTION TO TAX  
COSTS AND MOTIONS FOR  
ATTORNEYS' FEES**

The matters of plaintiff's Motion to Tax Costs and of defendants' Motions for Attorneys' Fees having been argued and submitted, the Court now rules as follows:

**MOTION TO TAX COSTS**

This motion is granted in part and denied in part.

Costs are taxed as follows:

///

1           1. Item 11 is taxed by \$211.09 for the exhibit board [showing a portion of a front  
2 page of the Los Angeles Times] that was not admitted; thus \$1,027.35 is allowed. The  
3 Court notes that photocopying was done at the rate of 10 cents per page and this cost  
4 was incurred for copying exhibits as allowed by statute. See CCP 1033.5(b)(3).

5           2. Item 13 is taxed by \$837.20. As counsel for defendant stated at the hearing,  
6 it is a matter of professional courtesy to messenger copies of filings to opposing  
7 counsel. The Court Rules suggest and encourage courtesy in general (see, e.g., Rule  
8 7.12, Los Angeles Superior Court Rules) and there is much to commend defense  
9 counsel for their exemplary courtesy in this case. Nor does the Court wish to  
10 discourage such practices in the future. Nevertheless, the messenger fees in this case  
11 exceed a reasonable amount, particularly when there were less costly options available,  
12 and what is desirable is not always compensable: Conducting oneself in accordance  
13 with a high professional standard is done for its intrinsic value.

14           Defendants seek reimbursement for 18 messenger trips to the courthouse or to  
15 the office of counsel for the plaintiffs. The burden is on defendants to establish the  
16 reasonable nature of a service or charge and the reasonableness of the amount  
17 charged. While defendants established that the use of messengers to make such  
18 deliveries in this case was reasonable, the frequency of trips and the amounts charged  
19 for the various trips are not, as next indicated.

20           Exhibit B to the declaration of principal counsel for defendants Adelman and  
21 Pictopia.com, submitted with the Motion for Award of Fees (filed March 4, 2004), sets  
22 out the detail for line 13 of defendants' Memorandum of Costs. There are 4 entries for  
23 deliveries to the Courthouse on July 14, 2003, totaling \$303.10. This amount is taxed in  
24 the sum of \$253.10 [allowing \$50.00 because one of the deliveries had to include  
25 several large exhibits which could not otherwise be transported] - a single delivery that  
26 date is reasonable; the other deliveries are not reasonable in the context of a motion to  
27 tax. There are 3 entries for deliveries to the courthouse on July 15, 2004, totaling  
28 \$260.50. For the same reasons, this amount is taxed in the sum of \$235.50 [allowing

1 \$25.00 for a single trip that day]. Deliveries on other days to the courthouse are taxed  
2 by the amount each exceeds \$25.00. Deliveries to the firm of counsel for plaintiff are  
3 taxed by the amount each exceeds \$30. The differential is allowed as the distance from  
4 defense counsel's office to the office of plaintiff's counsel is greater than the distance  
5 from the former location to the courthouse.

6 Plaintiff did not raise any other issues with respect to line 13, as was her burden  
7 to do. The total amount taxed on line 13 is \$837.20.

8 All other costs are allowed.

9  
10 **ATTORNEYS' FEES REQUESTED BY**  
11 **DEFENDANTS ADELMAN AND PICTOPIA.COM**  
12

13 Moving parties submitted extensive and detailed documentation to explain the  
14 numbers of hours devoted to each aspect of this matter and to inform the Court of the  
15 levels of expertise of the various persons employed by defendants' firm who devoted  
16 time to the case. Moving parties also filed declarations addressed to the rates charged  
17 in this legal community by persons of skill and experience levels similar to those of the  
18 its lawyers and other staff who devoted time to this case.<sup>1</sup> This Court is fully familiar  
19 with the quality of the legal services rendered in this matter and with the amount of time  
20 devoted to the hearing of this case, and inferentially to the time reasonably required to  
21 prepare the memoranda and exhibits filed and to prepare for and participate in the  
22 hearings in this case. The Court is also familiar with the rates charged in this legal  
23 community for legal services, derived from 33 years of legal and judicial experience.  
24 Further, the Court is mindful of the difficulty in estimating the reasonable amount for  
25 which counsel should be compensated and with appellate decisions on the subject,  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Moving parties did not request a multiplier, thus waiving use of any multiplier  
other than 1.

1 including but not limited to the caution suggested by one appellate court in determining  
2 the propriety of fees based in part on the length of the documents filed:

3 "The length of a document is no gauge of the time needed to prepare it. The  
4 pithy pleadings that are most effective usually require more time to prepare than the  
5 endlessly discursive and digressive documents judges often receive. Moreover, given  
6 the complexities of this case, the precise language of the concise complaint warranted  
7 the exceptional attention counsel devoted to its preparation. Judicial use of the length  
8 of a pleading or brief as a measure of the time necessary to prepare it would reward  
9 verbosity and penalize thoughtful and precise draftsmanship. Given the ponderous  
10 plethora of prolix pleadings that inundate our courts, no trial judge in his or her right  
11 mind would adopt such an approach." *Children's Hosp. and Medical Center v. Bonta*  
12 (2002) 97 Cal.App.4th 740, 783 -784.

13 The evidence of prevailing or reasonable hourly rates submitted by the parties is  
14 supplemented by the Court's experience in such matters as indicated. The Court has  
15 placed lesser weight on the declaration of plaintiff's CPA-expert because the rates he  
16 suggests as reasonable are based on *all* firms of 76 or more lawyers. The court is  
17 aware that that category is too broad to provide data entitled to great weight in  
18 connection with the determination of the proper rates with respect to firms  
19 approximating the size of the firm representing moving parties Adelman and  
20 Pictopia.com. This is not to say that the determination is properly made only if one  
21 limits the comparison of rates to that which is the reasonable prevailing rate for firms of  
22 identical size. Rather, one of the premises of this determination is that firms of over 200  
23 lawyers, as is the firm representing the defendants, are in a different rate category than  
24 firms with fewer lawyers.

25 Further, no adverse inference should be drawn from the determinations made;  
26 these determinations are not negative comment on the skill or devotion to this case by  
27 any defense counsel.

1 With all of the forgoing in mind, the court determines that the reasonable hourly  
 2 rates for the lawyers and others billing time on behalf of defendants' counsel for whom  
 3 compensation is requested in this motion are as set out in the table which follows. The  
 4 Court also sets out its determination of the appropriate number of hours to be allocated  
 5 to each person or category below. This subject will be discussed below these tables.

6  
 7 I. Moving Papers

8 Legal research and analysis

9

10 NAME	HOURLY RATE	HOURS EXPENDED	LODESTAR AMOUNT
11 Newman	\$275	21.75	5,981.25
12 Cooper	\$225	5.5	1,237.50
13 Summer Assocs.	\$75	60.00	4,500.00
14 Rsrch. Librarians	\$135	6.25	843.75
	Totals	93.5	\$12,562.50

15  
 16 Factual Research

17

18 NAME	HOURLY RATE	HOURS EXPENDED	LODESTAR AMOUNT
19 Summer Assoc.	\$75	4.25	318.75
20 Sr. Legal Assistant	\$190	13.25	2,517.50
21 Litigation Clerk	\$50	1.5	75.00
22 Rsrch. Librarians	\$135	5.75	776.25
	Totals	24.75	\$3,687.50

23 Client communication, legal analysis, motion management

24

25 NAME	HOURLY RATE	HOURS EXPENDED	LODESTAR AMOUNT
26 Seigle	\$425	6	2,550
27 Kendall	\$575	17.5	10,062.50
28	Totals	23.5	\$12,612.50

Drafting motion, declarations and accompanying papers

NAME	HOURLY RATE	HOURS EXPENDED	LODESTAR AMOUNT
Newman	275	56	15,400
Seigle	425	33	14,025
Kendall	575	11	6,325
	Totals	100	\$35,750

II. Reply papers

Research, analysis, client communications, motion management

NAME	HOURLY RATE	HOURS EXPENDED	LODESTAR AMOUNT
Rsrch. Librarians	135	2.75	371.25
Sr. Legal Assistant	190	.5	95
Newman	275	9.5	2,612.50
Seigle	425	6	2,550
Kendall	575	3.5	2,012.50
	Totals	22.25	\$7,641.25

Drafting reply, declarations and accompanying papers

NAME	HOURLY RATE	HOURS EXPENDED	LODESTAR AMOUNT
Seigle	425	25	10,625
Kendall	575	2.25	1,293.75
	Totals	27.25	\$11,918.75

/ / /  
 / / /  
 / / /



1 III. Hearing Preparation

2 Preparing objections and responses, preparing for argument,  
3 addressing issues arising during hearings, supplemental brief

4

5 NAME	6 HOURLY RATE	7 HOURS EXPENDED	8 LODESTAR AMOUNT
9 Rsrch. Librarians	135	4.25	573.75
10 Sr. Legal Assistant	190	6	1,140
11 Newman	275	15	4,125
12 Seigle	425	35	14,875
13 Kendall	575	21.1	12,132.50
14 Totals		81.35	\$32,846.25

11 IV. Attending Hearing

12

13 NAME	14 HOURLY RATE	15 HOURS EXPENDED	16 LODESTAR AMOUNT
17 Sr. Legal Assistant	190	0	0
18 Newman	275	22.5	0
19 Seigle	425	22.5	9,562.50
20 Kendall	575	22.5	12,937.50
21 Totals		45	\$22,500

22 The adjustments in hours are as follows:

- 23 1. The number of hours which summer associates devoted to legal research is reduced. The 60 hours allowed represents a reasonable number of hours for the work described.
- 24 2. The total number of hours devoted to drafting the motion, etc. is reduced to 25 100; it is allocated in the same proportion as the hours sought. One hundred hours is 26 two full 50 hour weeks; that is a reasonable amount of time for the drafting of the motion 27 and declarations accompanying the motion.
- 28

1           3. Time allocated to preparation for the hearings has been reduced for certain  
2 timekeepers to amounts which the Court determines to be reasonable based on the  
3 complexity of the issues, the number of persons performing research, the relative levels  
4 of skill and knowledge of the timekeepers and the amount of time reasonably necessary  
5 for that preparation.

6           4. Time for attendance at the hearings of this matter by Mr. Newman and a  
7 senior legal assistant is reduced to zero. While counsel clearly found it convenient to  
8 have persons available to respond to questions immediately during the breaks, there is  
9 nothing that prevented counsel from instructing those persons to be available at the firm  
10 by telephone for the same consultation during the break to which counsel referred at  
11 argument on this motion. That would have allowed them to work on other matters, but  
12 be on call for any telephonic contact with respect to this matter. Moreover, defendants  
13 were represented at the hearing by their two most experienced litigators working on this  
14 case. Had there been an emergency requiring immediate consultation with one of the  
15 persons whose billing is now reduced (e.g., a question the answer to which neither of  
16 the counsel present at a hearing knew), the other could have stepped outside of the  
17 courtroom and made the telephone call to the person available at the firm but otherwise  
18 occupied on other matters.

19           The Court awards a total of \$139,518.75 for this motion for attorneys' fees.

20           Counsel also seek fees for securing the recovery of the fees discussed. This  
21 request is proper. The amount requested, \$15,000, is reasonable under the  
22 circumstances. The motion itself was extensive and included considerable detail. A  
23 motion of this nature takes [and, in this case, took] considerable time to prepare, write  
24 and file. Argument on the motion took more than two hours, and due to technical  
25 problems, took up almost an entire morning. The amount sought is reasonable and  
26 shall be paid with the sum set out earlier in this paragraph.

27           Plaintiff shall pay the total of \$154,518.75 for attorneys' fees and for the motion  
28

1 to collect those fees, and \$1,048.29 for costs, to counsel for defendants by noon on  
2 May 28, 2004.

3  
4 **ATTORNEYS' FEES REQUESTED BY DEFENDANT LAYER42.NET**

5 The Court has reviewed the motion, opposition and reply following the argument  
6 on April 30. The Court concludes that the rates at which services are billed by moving  
7 party's counsel are reasonable; indeed, plaintiff's principal objection is that time has not  
8 been allocated properly, viz., time has been charged to the SLAPP motion that should  
9 have been charged to other functions, e.g., the demurrer. After review of the billing  
10 attached to the moving papers, the Court concludes that some adjustment is necessary  
11 to meet the 'reasonable number of hours' test of the cases.


12 Time for the following dates has been reduced to zero due to lack of relevance  
13 of that time to the SLAPP motion: 5/28, 5/29, 5/30 [slip 71237], 6/26 [this is described as  
14 relating to a property dispute with a neighbor], 9/24, 9/29, and 10/3.

15 Time for the following dates has been decreased, generally by half to represent  
16 a reasonable allocation to the SLAPP motion; the balance is properly allocated to other  
17 work performed for the client: 5/30 [slip 71277], 6/2, 6/3, 6/4, 6/5, 6/6, 6/9, and 6/19.

18 The reduction in the \$21,294.00 claimed is \$2,353.50; the Court determines that  
19 the amount of \$18,940.50 is reasonable and constitutes the amount which plaintiff shall  
20 pay to counsel for this defendant by noon on May 28, 2004.

21 Layer42.net has also sought recovery of \$2,600 for fees incurred in making and  
22 prosecuting this motion. The court finds that amount to be reasonable and it shall be  
23 paid to counsel for this moving party by the same date as the principal sum set out  
24 above is paid.

25  
26 DATED: MAY 10, 2004

27   
28 ALLAN J. GOODMAN  
JUDGE OF THE SUPERIOR COURT