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12 LARKIN

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **CITY AND COUNTY OF SAN FRANCISCO**
15 **UNLIMITED JURISDICTION**

16 BAY GUARDIAN COMPANY, INC.,

17 Plaintiff,

18 v.

19 NEW TIMES MEDIA LLC, SF WEEKLY LP,
20 EAST BAY EXPRESS PUBLISHING LP,
21 TROY LARKIN, DOES ONE through 10,
22 inclusive,

23 Defendants.

Case No. 04-435584

**DECLARATION OF JOSEPH KALT IN
SUPPORT OF MOTIONS FOR
SUMMARY ADJUDICATION OF
SECTION 17043 AND SECTION 17045
CLAIMS**

Case Filed: October 19, 2004

Date: September 14, 2007

Time: 11:00 a.m.

Courtroom: 304

Trial: October 15, 2007

HON. RICHARD A. KRAMER

1 **DECLARATION OF JOSEPH KALT**

2 I, Joseph Kalt, hereby declare:

3 1. I have personal knowledge of the facts set forth in this declaration and, if called as
4 a witness, could and would testify competently to them.

5 2. Attached hereto as **Exhibit A**, and incorporated fully as if stated herein, is a true
6 and correct copy of the report I prepared as a retained expert in this case.

7 3. As a general description and without limitation to any further analysis I may
8 conduct, I was asked by attorneys for New Times Media LLC, SF Weekly LP, East Bay Express
9 Publishing LP, and Troy Larkin (collectively, “Defendants”) to examine the economics of the
10 marketplace for advertising in the San Francisco Bay Area (“Bay Area”). I was also asked to
11 evaluate the economic underpinnings of the allegations put forth by the Bay Guardian Company,
12 Inc. (“Plaintiffs”).

13 4. In addition, I was asked to analyze and comment, as appropriate, on any
14 declarations, reports, depositions, or other opinions rendered on behalf of Plaintiff where those
15 opinions address matters pertaining to the economics of the marketplace and allegations at issue.

16 5. In that regard, my task included application of the principles of economics to the
17 facts and evidence available to analyze the dispute at hand.

18 6. The analysis included, among other things, consideration of the marketplace
19 setting in which providers of advertising space in the Bay Area compete; existence (or lack
20 thereof) of market power held by the parties to this dispute; harm (or lack thereof) to competition
21 arising from actions taken by parties to this dispute; and the economically rational unilateral
22 interests of the participants in the marketplace.

23 7. In conducting my analysis and forming my conclusions contained herein and in
24 my report, I have relied on my professional training, my teaching and research, and my prior
25 consulting experience, and in addition I have examined materials and evidence (gathered by me
26 and my staff working under my direction) in the course of my engagement in the matter at hand.
27 Those materials are of the type of material commonly and reasonably relied upon by experts in
28 my field in forming their opinions. These items have included:

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a. Legal filings and other documents submitted on behalf of the various parties involved in this dispute and/or received from the Court.

b. Publicly available data and other information regarding various aspects of the marketplace, especially those pertaining to the analytic issues raised by the parties in this lawsuit.

c. A more complete listing of the data and documents reviewed is attached as Appendix B to the report.

8. My analysis and conclusions (again, without limitation of any further analysis I may conduct or conclusions I may reach) are set out in further detail in my report. In summary, I have concluded:

a. Plaintiffs allegations are without merit:

b. I find that no plausible economic inference of predation can be inferred from the pricing conduct of Defendants. The pricing of advertising space by Defendants has been wholly in accord with market conditions and fair market pricing. In addition, I find that even if, for the sake of argument, *Defendants' pricing were assumed to be predatory*, Defendants' pricing has not and does not portend injury to competitors or destruction of marketplace competition. With or without Plaintiff, or Defendants, present as competitors in the marketplace, the Bay Area market for advertising space is highly competitive. The consumers' interest would be harmed by preventing, through this litigation, parties such as Defendants from responding to this competition.

c. I find Plaintiffs labeling of negotiated price discounts as "discriminatory" devoid of economic meaning. Whereas questions of predation address issues of one seller harming another seller, the economics of price discrimination appropriately focus on a seller treating similarly situated *buyers* differently. In the case at hand, rates differ to differing advertisers because not all customers are similarly situated and not all customers undertake the same negotiations. It is not economic discrimination to treat unlike parties differently.

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I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on this ____ day of June, 2007, in _____.

Joseph Kalt