

2. I am an attorney and shareholder with the law firm of Graves, Dougherty, Hearon & Moody, P.C. ("Graves, Dougherty"). I and Graves, Dougherty were retained as defense counsel by the Defendants in this lawsuit. I am lead counsel with primary responsibility for all aspects of this litigation, including formulating strategy, legal research, factual investigation, drafting and filing pleadings, and appearing in court. I have personal knowledge of all work done in representing the Defendants. I provide this Affidavit to support the Defendants' application for an award of court costs, reasonable attorney's fees and other expenses incurred in defending this lawsuit pursuant to Section 27.009(a)(1), Tex. Civ. Prac. & Rem. Code.

3. Court costs. As of the date of this Affidavit, the Defendants have incurred \$95.00 in court costs in defending against this lawsuit, as shown in the attached Exhibit A.

4. Expenses. As of the date of this Affidavit, the Defendants have incurred \$484.10 other expenses in defending against this lawsuit, as shown in the attached Exhibit A.

5. Attorney's fees to date. As of the date of this Affidavit, the Defendants have incurred \$22,708 in reasonable and necessary attorney's fees in defending against this lawsuit, as shown in the attached Exhibit A.

6. Anticipated fees to prepare for and present motion. An additional \$4,200.

7. Attorney's fees on appeal. As described in Paragraph 15, below.

8. Reasonableness of incurred and future attorney's fees. It is my opinion that the attorney's fees incurred in defending this lawsuit were reasonable and necessary, and that the estimate of anticipated attorney's fees is accurate and reflects reasonable and necessary additional work. The grounds for these opinions follow.

9. I am a 1988 graduate of the University of Chicago School of Law and have been licensed to practice law in Texas since November of 1988. After graduation, I served as law clerk to Thomas A Fairchild, Senior Judge, U.S. Court of Appeals for the Seventh Circuit for two years. I have practiced civil trial and appellate litigation in Austin, Texas since November 1990, first as an associate at Graves, Dougherty, then as an associate and partner at George & Donaldson, LLC, and now as a shareholder with Graves, Dougherty since February 2004.

10. I have represented media and private defendants in libel, defamation, privacy and other publication-related lawsuits throughout my career. I have defended dozens of such cases in Texas and in other states, including recently handling the Texas Supreme Court briefing and argument in *Burbage v. Burbage*, – S.W.3d –, 2014 WL 4252274 (Tex. August 29, 2014) and *Salinas*

v. Salinas, 355 S.W.3d 318 (Tex. 2012) (per curiam). I am Board Certified in Civil Appellate Law by the Texas Board of Legal Specialization. I have been listed in *Best Lawyers®* for First Amendment Law – Litigation since 2005, for Commercial Litigation since 2009, and for Litigation – Intellectual Property since 2013.

11. In rendering my opinion regarding the reasonableness of attorney's fees incurred and anticipated, I have considered all the factors set forth in Texas Rule of Disciplinary Conduct 1.04 and incorporated by the Texas Supreme Court in *Arthur Andersen & Co. v. Perry Equipment Corp.*, 945 S.W.2d 812 (Tex. 1997). Those factors are:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent on results obtained or uncertainty of collection before the legal services have been rendered.

12. In this case, my billing rate is \$420 an hour. This is my usual rate for civil litigation work, including media and First Amendment cases. I am familiar with rates charged for such work in the Austin area, and my hourly billing rate is consistent with fees customarily charged by attorneys with comparable experience and expertise in this field. This is the first time that I have represented these Defendants, but I have represented numerous media

defendants, large and small, including The Associated Press, *Forbes*, Home Box Office, *The Austin American Statesman*, *The Austin Chronicle*, *The Houston Chinese Press*, *Korea News*, and *The Daily Korea*.

13. As of the date and time of filing this affidavit, I have spent approximately 58 hours in defending this lawsuit. This number of hours is reasonable and necessary for the tasks it has encompassed, including initial evaluation of the case; strategic planning; legal research; communication with the client; communication with opposing counsel; review of relevant documents; drafting and filing an Original Answer; researching, drafting and filing a Motion to Dismiss under Chapter 27, Civil Practice & Remedies Code; reviewing the Plaintiff's response; drafting a reply in support of the motion to dismiss; and preparing for the hearing on that motion.

14. The specific details of the work performed, the time spent, and the fees incurred are contained in Exhibit A, attached. Exhibit A consists of true and correct copies of records obtained from Graves, Dougherty's billing system. These contemporaneously-kept records contain entries describing my work on this case. These records were made at or near the time of the activity by me, a personal with personal knowledge. These records were kept in the course of a regularly-conducted business activity. It is the regular practice of Graves, Dougherty to keep such records. The amount of time spent and the billing for those tasks was reasonable and necessary. I have carefully reviewed each entry, and I have marked by hand and removed all time spent on this litigation that may possibly be considered redundant, unnecessary or not directly related to the defense of the lawsuit. The total hours and attorney's fees sought reflects this review and editing.

15. In the event of an appeal of the Court's ruling on the Motion to Dismiss (either side may appeal the Court's ruling), I estimate, based on my experience, that the Defendants will incur, at minimum, the following additional reasonable and necessary attorneys' fees:

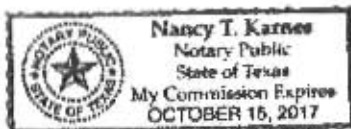
- In the event of an appeal to the Court of Appeals requiring briefing: an additional \$20,000;
- In the event of oral argument in the Court of Appeals: an additional \$5,000;
- In the event of a Petition for Review to the Texas Supreme Court filed by the Defendants: an additional \$10,000;
- In the event of a request for a Response to a Petition for Review to the Texas Supreme Court filed by the Plaintiffs: an additional \$10,000;
- In the event of merits briefing in the Texas Supreme Court: an additional \$20,000;
- In the event of oral argument in the Texas Supreme Court: an additional \$10,000.

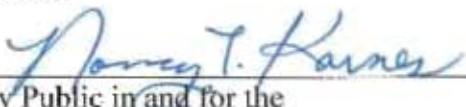
FURTHER AFFIANT SAYETH NOT.


Peter D. Kennedy

SUBSCRIBED AND SWORN TO BEFORE ME on the 9th day of December,

2014, to certify which witness my hand and official seal.




Notary Public in and for the
State of Texas

Nancy T. Karnes
Typed/Printed Name of Notary
My Commission Expires: 10-15-17

CERTIFICATE OF SERVICE

I certify that on December 9, 2014, a true and correct copy of the foregoing was served as follows:

Stephen Casey
CASEY LAW OFFICE, P.C.
595 Round Rock West Drive, Suite 102
Round Rock, Texas 78681
(via Fax: 512-853-4098)

/s/ Peter D. Kennedy
Peter D. Kennedy

BILLING PROFESSIONAL

CLIENT A28608

Austin Bulldog

Peter D. Kennedy

MATTER A28608.1

Zimmerman

EXHIBIT

A

PROFESSIONAL CHARGES

Date		Description	Hours	Amount
10/14/14	Peter D. Kennedy	Telephone conference with B. Aleshire regarding case; Initial review of story and related documents;	1.00	\$672.00
10/15/14	Peter D. Kennedy	Communicate with client and co-counsel; Review online materials; Review report of filing of lawsuit and coordinate with client and co-counsel;	1.00	\$420.00
10/16/14	Peter D. Kennedy	Receipt and review of original petition; Review language of anti-SLAPP statute; Analyze claims of defamation; Communicate with client and co-counsel;	.70	\$294.00
10/17/14	Peter D. Kennedy	Receipt and review of original petition; Communicate with client and co-counsel regarding petition; Confer with J. Hemphill regarding anti-SLAPP motion practice; Review form anti-SLAPP motions;	1.00	\$420.00
10/19/14	Peter D. Kennedy	Review petition; Review documents from divorce proceeding; Emails with client and co-counsel; Identify portions of divorce proceedings that support article;	1.10	\$462.00
10/22/14	Peter D. Kennedy	Prepare for and meet with client and co-counsel to discuss lawsuit, motion to dismiss, and discovery issues; Call counsel for mother in custody proceeding; Email opposing counsel to notify of willingness to accept service of process; Communications with client regarding status of suit;	3.00	\$1,260.00
10/23/14	Peter D. Kennedy	Receipt and review of email from client regarding information on Zimmerman; Prepare retention agreement terms and transmit to client;	.40	\$168.00
10/24/14	Peter D. Kennedy	Begin outline and draft of motion to dismiss; Draft Answer;	3.10	\$1,302.00
10/27/14	Peter D. Kennedy	Draft fact section of motion to dismiss and outline argument section; Communicate with client regarding status of case;	2.90	\$1,218.00
10/28/14	Peter D. Kennedy	Draft Motion to Dismiss; Communicate with client regarding investigation;	2.20	\$924.00
11/03/14	Peter D. Kennedy	Communications with client about status of filing, service, and communication with counsel;	.20	\$84.00
11/05/14	Peter D. Kennedy	Review press report on story and confer with client regarding status of lawsuit;	.20	\$126.00

BILLING MEMO #

BILLING PROFESSIONAL

CLIENT A28608 Austin Bulldog

Peter D. Kennedy

MATTER A28608.1 Zimmerman

Date	Description	Hours	Amount
11/06/14 Peter D. Kennedy	Telephone conference with L. DeLong regarding file from Zimmerman divorce proceeding; Order certified copies of court records; Update client on status of preparation of defense of case;	1.10	\$462.00
11/07/14 Peter D. Kennedy	Draft anti-SLAPP motion;	2.90	\$1,218.00
11/10/14 Peter D. Kennedy	Obtain certified copy of divorce decree; Review certified copies for exhibits; Review and revise statement of fact section of motion to dismiss; Communicate with client about strategy;	.70	\$294.00
11/11/14 Peter D. Kennedy	Communicate with client regarding status of litigation;	.10	\$42.00
11/12/14 Peter D. Kennedy	Email to client to research information regarding	.30	\$126.00
11/14/14 Peter D. Kennedy	Communicate with client regarding	.20	\$84.00
11/17/14 Peter D. Kennedy	Research and review recent case law on judicial proceeding privilege;	1.20	\$504.00
11/18/14 Peter D. Kennedy	Research privilege and draft anti-SLAPP motion;	2.60	\$1,092.00
11/19/14 Peter D. Kennedy	Draft anti-SLAPP motion; Organize and review exhibits in support;	5.30	\$2,226.00
11/20/14 Peter D. Kennedy	Research, draft, review and revise motion to dismiss; Review and assemble exhibits in support;	7.10	\$2,982.00
11/21/14 Peter D. Kennedy	Complete full draft of motion to dismiss and circulate for review and comment;	6.60	\$2,772.00
11/22/14 Peter D. Kennedy	Draft K. Martin affidavit; Review and edit Motion to Dismiss and related materials;	2.00	\$840.00
11/24/14 Peter D. Kennedy	Edit motion to incorporate comments from counsel and client; Finalize affidavit and prepare for filing; Assemble, mark and prepare exhibits for filing; Prepare motion with exhibits for filing; Correspond with client and counsel regarding motion, setting, and affidavit;	4.50	\$1,890.00
11/24/14 William G. Christian	Review and comment on draft motion to dismiss;	.70	\$280.00
11/25/14 Peter D. Kennedy	Review, revise, assemble and file motion to dismiss with exhibits; Contact opposing counsel regarding setting hearing on motion; Communicate with client and opposing counsel regarding hearing date;	2.90	\$1,218.00

DATE PRINTED 12/02/2014
BILL THRU DATE 11/30/14

PAGE 5

BILLING MEMO #

BILLING PROFESSIONAL

CLIENT A28608

Austin Bulldog

Peter D. Kennedy

MATTER A28608.1

Zimmerman

Date	Description	Hours	Amount
11/26/14	Peter D. Kennedy		
	Wait to hear from opposing counsel regarding setting on hearing; Set and issue notice of hearing for December 18, 2014; Communicate with client regarding motion and communications regarding motion and content of motion;	2.90	\$1,218.00
	Total	58.60	\$24,898.00

54.1 \$22,708

DATE PRINTED 12/02/2014
BILL THRU DATE 11/30/14

BILLING MEMO #

PAGE 6

BILLING PROFESSIONAL

CLIENT

A28608

Austin Bulldog

Peter D. Kennedy

MATTER

A28608.1

Zimmerman

DISBURSEMENTS

Date	Description	Total
10/29/14	Postage	\$1.19
11/17/14	Computer Research	\$72.95
11/18/14	Delivery Charges	\$3.50
11/18/14	Delivery Charges	\$7.00
11/18/14	Computer Research	\$144.52
11/19/14	Computer Research	\$213.38
11/20/14	Computer Research	\$22.98
11/21/14	Fees 11/21 - Travis County District Clerk	\$25.00
11/21/14	Fees 11/10 - Travis County District Clerk	\$55.00
11/24/14	Delivery Charges	\$3.50
11/25/14	Photocopy Charges	\$11.80
11/25/14	Photocopy Charges	\$0.20
11/25/14	Postage	\$3.08
11/26/14	Fee for copies 11/21 - Travis County District Clerk	\$15.00
Total		\$579.10