

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

BLYTHE BROWN,) **Civil Action No. 218-2020-CV-0067**
)
) *Plaintiff,*
)
)
v.)
)
DANIEL GERHARD BROWN,)
)
) *Defendant.*
)
)
)

**DEFENDANT DANIEL G. BROWN’S MOTION FOR APPOINTMENT OF
DISCOVERY MASTER**

Defendant/Counterclaim-Plaintiff Daniel G. Brown (“Defendant” or “Dan Brown”) moves for the appointment of a Discovery Master to address all disputes relating to discovery in this case. As grounds for this Motion, Defendant says the following:

1. Discovery in this case has been unusually contentious and difficult. Neither party has been content with the discovery efforts of the other. Defendant’s costs to respond to written discovery, principally for the collection, review, and production of documents to Plaintiff, amounted to several hundred thousand dollars.¹ The discovery burden and cost to Defendant is already disproportionate to the appropriate parameters of the case, before depositions have even commenced.

2. New Hampshire courts may appoint Discovery Masters when discovery disputes otherwise threaten to overburden the Court, prejudice one or both parties, and slow the efficient

¹ The undersigned counsel by signing this motion avers to the accuracy of this statement.

progression of the case. Under the Court’s “powers of . . . equity in . . . discovery,” RSA 498:1, “the Court might properly appoint . . . a special master.” *New Castle v. Rand*, 102 N.H. 16, 21 (1959). Appointment of such a Master is appropriate here given the great expense of discovery thus far, and the parties’ frequent disagreements on the parameters of discovery and the resulting impasses. *See, e.g.*, Def.’s Motions to Compel further interrogatory responses and document production, filed on Aug. 10, 2021. The requested appointment is particularly appropriate given the burden otherwise placed on the Court during these unprecedented times, when the judicial system struggles along with much of the rest of society to recover from the effects of the pandemic.

3. A key discovery issue has already arisen that is highlighted by the Document Schedule to Plaintiff’s subpoena *duces tecum* to Defendant’s publisher Bertelsmann, Inc./Penguin/Random House (“PRH”), *see* **Ex. 1**,² in relation to which Defendant is seeking a protective order. The genesis of the issue is this: This Court entered an Order on June 11, 2021, in which it said the following:

For the reasons stated above, Plaintiff’s motion for reconsideration is **DENIED**. The Court clarifies that the correct date of disclosure and valuation was the date of the final hearing, October 24, 2019. Plaintiff may introduce evidence of the existence of allegedly undisclosed projects “anticipated or in the works” as of October 24, 2019 but is limited to presenting evidence of the prospective valuation of those assets as of that date.

Order on Plaintiff’s Motion for Clarification (June 11, 2021), at 6. Notwithstanding this limitation to evidence of prospective valuation as of October 24, 2019, Plaintiff has demanded documents from Defendant’s publisher, “referring or relating to potential, possible, or contemplated novels, books or literary works, including but not limited to works that include the

² The full notice of deposition and subpoena *duces tecum* is, or will shortly be, on file as Ex. A to Defendant’s Motion for a Protective Order relating to that deposition.

character Robert Langdon, from January 1, 2018 **through the present.**” Ex. 1, at 13 (emphasis added). Similarly, Plaintiff demands “[a]ll Documents and Communications reflecting . . . advances, royalties, payments, or Compensation made or owed to Defendant, or anticipated to be made or owed to Defendant, in connection with any potential, possible or contemplated novels . . . from January 1, 2018 **through the present.**” *Id.* (emphasis added). The issue as to what discovery is relevant and reasonably calculated to lead to the discovery of evidence of the prospective valuation of undisclosed assets as of October 24, 2019 could by itself require a hearing—possibly evidentiary—of a full day’s duration.

4. Because such a case-specific burden on the judiciary is inappropriate, particularly in these times, Defendant moves for the appointment of a Discovery Master, with the cost to be borne equally by the parties, unless and until the Master recommends a fee shifting on the basis of fault or responsibility. While Defendant has located no reported New Hampshire decision on the allocation of costs, trial courts in New Hampshire’s neighbor to the south have employed this approach where appropriate, and even necessary. *See Joseph Constr. Servs. v. Aminpour*, 2011 Mass. Super. LEXIS 110, at *2 (June 27, 2011) (appointing a Discovery Master whose payment was to “be shared in equally by both parties”); *Casey v. Sweeney*, 95 Mass. App. Ct. 1122, at *8–9 (2019) (ordering a party to pay 75% of a Discovery Master’s costs because of that party’s “dilatory conduct in the discovery process”).

5. Defendant hopes that the various discovery issues in this case can be taken off the Court’s already over-laden plate and placed in the hands of a Discovery Master selected by the Court, who indicates her or his availability to move forward expeditiously, so that deposition discovery can proceed on a fully informed basis before the relatively imminent deadline (Oct. 15, 2021).

Rule 11(c) Certification

Counsel conferred on August 9 and in emails thereafter on the evening of August 9 and August 10, with regard to this Motion. Plaintiff does not assent to the relief sought.

HEARING REQUESTED

Pursuant to Super. Ct. Civ. R. 13(b), Defendant requests oral argument on this Motion. Given the complexity of these issues, Defendant believes oral argument will assist the Court.

DATED: August 10, 2021

Respectfully submitted,

/s/ Joan A. Lukey
Joan A. Lukey, Bar No. 16246
CHOATE HALL & STEWART LLP
2 International Place
Boston, MA 02110
(617) 248-5000
joan.lukey@choate.com

CERTIFICATE OF SERVICE

I, Joan A. Lukey, state that on this date I am sending a copy of this document as required by the rules of the court. I am electronically sending this document through the court's electronic filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case. I am mailing or hand-delivering copies to all other interested parties.

Harvey J. Wolkoff
Alik Sofis
Kathleen Marini
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
111 Huntington Avenue, Suite 520
Boston, MA 02199
(617) 712-7100
harveywolkoff@quinnemanuel.com
aliki Sofis@quinnemanuel.com
kathleenmarini@quinnemanuel.com

Joseph D. Steinfield
130 Court Street
Keene, NH 03431
(617) 285-3937
joe@joesteinfield.com

/s/ Joan A. Lukey
Joan A. Lukey, Bar No. 16246
CHOATE HALL & STEWART LLP
2 International Place
Boston, MA 02110
(617) 248-5000
joan.lukey@choate.com

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

BLYTHE BROWN,	)	For a civil action pending in New
	)	Hampshire Superior Court, Rockingham
<i>Plaintiff,</i>	)	County
)	
v.	)	Civil Action No. <u>218-2020-CV-00673</u>
)	
DANIEL GERHARD BROWN,	)	Pursuant to the Uniform Interstate
	)	Depositions and Discovery Act, CPLR
<i>Defendant.</i>	)	3119
)	
)	
	)	<u>NOTICE OF DEPOSITION AND</u>
	)	<u>SUBPOENA DUCES TECUM</u>

THE PEOPLE OF THE STATE OF NEW YORK

To: Bertelsmann, Inc./Penguin Random House
C/O: Custodian of Records
1745 Broadway
New York, NY, 10019

YOU ARE HEREBY COMMANDED, pursuant to New York Civil Practice Law and Rules Articles 23 and 31 and the Uniform Interstate Depositions and Discovery Act, to appear for deposition at **9:00 AM on September 1, 2021**, at the offices of Quinn Emanuel Urquhart & Sullivan, LLP, 51 Madison Avenue, 22nd Floor, New York, NY 10010, or such other location (including by video teleconferencing services, pursuant to New Hampshire Superior Court Rule 26(1)) or date as may be agreed upon.

Additionally, pursuant to New York Civil Practice Law and Rules Articles 23 and 31 and the Uniform Interstate Depositions and Discovery Act, you are commanded to produce the books,

records, papers, data, documents, evidences, writings, and all other tangible things as described more fully in the attached **Exhibit 1** and **Schedule A** at the offices of Quinn Emanuel Urquhart & Sullivan, LLP, 51 Madison Avenue, 22nd Floor, New York, NY 10010, or such other location as may be agreed upon. You are also instructed to execute the attached Certification included as **Schedule B**.

The above-captioned case is now pending in New Hampshire Superior Court, Rockingham County. The documents requested for discovery and inspection are to be produced according to the definitions and instructions described in **Schedule A**. These documents are material and necessary to the resolution of the issues in the above-captioned action.

You may contact Aliki Sofis, Esq., at (617) 712-7110 or alikusofis@quinnemanuel.com, to make arrangements for your production. See **Schedule C** for contact information for all Counsel in this action.

FAILURE TO COMPLY with this subpoena is punishable as a contempt of Court, and shall make you liable to the entity on whose behalf this subpoena was issued for a penalty not to exceed fifty dollars plus all damages sustained by reason of your failure to comply.

Dated: August 6, 2021

Counsel for Plaintiff Blythe Brown

/s/ Harvey Wolkoff

Harvey J. Wolkoff (NY Bar No. 5250683)

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

51 Madison Avenue, 22nd Floor, New York,
NY 10010

Tel: (617) 712-7100

harveywolkoff@quinnemanuel.com

EXHIBIT 1

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

_____)	
BLYTHE BROWN,)	
)	
<i>Plaintiff,</i>)	
	)	Civil Action No. <u>218-2020-CV-00673</u>
v.)	
)	
)	
DANIEL GERHARD BROWN,)	
)	
<i>Defendant.</i>)	
)	
)	
_____)	

NOTICE OF DEPOSITION AND SUBPOENA DUCES TECUM

To: Bertelsmann, Inc./Penguin Random House
C/O: Custodian of Records
1745 Broadway
New York, NY, 10019

PLEASE TAKE NOTICE that, pursuant to New Hampshire Superior Court Rule 26, at **9:00 AM on September 1, 2021**, at the offices of Quinn Emanuel Urquhart & Sullivan LLP, 51 Madison Avenue, 22nd Floor, New York, NY 10010, or such other location (including by video teleconferencing services, pursuant to New Hampshire Superior Court Rule 26(l)) or date as may be agreed upon, Plaintiff Blythe Brown will take the deposition upon oral examination of the Custodian of Records of Bertelsmann, Inc./Penguin Random House. TSG Reporting, Inc. shall serve as the stenographer for the deposition.

Pursuant to New Hampshire Superior Court Rule 26(d), Bertelsmann, Inc./Penguin Random House is also hereby commanded to produce and permit inspection and copying of the

documents described in **Schedule A** attached hereto at time of such deposition, to the offices of Quinn Emanuel Urquhart & Sullivan LLP, 51 Madison Avenue, 22nd Floor, New York, NY 10010, or such other location or date as may be agreed upon. You are also instructed to execute the attached Certification included as **Schedule B**.

Please be further advised that, pursuant to New Hampshire Superior Court Rule 26(m), the deposition shall relate to the authentication of the documents produced by Bertelsmann, Inc./Penguin Random House pursuant to the *Subpoena Duces Tecum* attached hereto as **Schedule A**; and Bertelsmann, Inc./Penguin Random House must designate one or more of its officers, directors, managing agents, or other person who are most qualified, knowledgeable, and competent to testify on its behalf as to the authenticity of the documents produced.

You may contact Aliki Sofis, Esq., at (617) 712-7110 or aliki Sofis@quinnemanuel.com, to make arrangements for your production. See **Schedule C** for contact information for all Counsel in this action.

Counsel for Plaintiff Blythe Brown

Dated: August 6, 2021

/s/


~~Harvey J. Wolkoff*~~

Aliki Sofis*

Kathleen Marini*

QUINN EMANUEL URQUHART &
SULLIVAN, LLP

111 Huntington Avenue, Suite 520

Boston, MA 02199

Tel: (617) 712-7100

harveywolkoff@quinnemanuel.com

aliki Sofis@quinnemanuel.com

kathleenmarini@quinnemanuel.com

* Admitted *pro hac vice*

Joseph D. Steinfield (NH Bar No. 18721)

130 Court Street

Keene, NH 03431

Tel: (617) 285-3937

joe@joesteinfield.com

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

Before me, the undersigned officer, personally appeared on this 6 day of August 2021 the said Harvey Wolkoff, proved to me through satisfactory evidence of identification, which was my personal knowledge of her identity, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.



Mary Anne Lore

Notary Public/Justice of the Peace
My Comm. Expires: Oct. 5, 2023

SCHEDULE A
DEFINITIONS

The following definitions shall apply to each of the Requests contained herein:

1. “You” or “Your” shall mean and refer to Bertelsmann, Inc./Penguin Random House, each and every one of its divisions, subsidiaries and other corporate affiliates, predecessors, and successors, all present and former officers, directors, agents, attorneys, employees, and all persons acting or purporting to act on behalf of any of them, including but not limited to Knopf Doubleday, Rodale Kids, Random House Children’s Books, and/or Jason Kaufman.

2. “Defendant” means Daniel G. Brown, and where applicable, Daniel G. Brown’s representatives, agents, attorneys, administrative assistants, or any person or entity acting, purporting to act, or having acted or purported to act, directly or indirectly, on behalf of Daniel G. Brown, including but not limited to Franklin, Weinrib, Ruddell & Vassallo, P.C., Michael Ruddell, Rose Schwartz, Sanford J. Greenburger Associates, Inc., Heide Lange, or Shelley Seward.

3. “Plaintiff” means Blythe Brown, and where applicable, Blythe Brown’s representatives, agents, attorneys, or any person or entity acting, purporting to act, or having acted or purported to act, directly or indirectly on behalf of Blythe Brown.

4. “Action” means the civil action maintained in New Hampshire Superior Court, Rockingham County, captioned *Blythe Brown v. Daniel G. Brown*, Case No. 218-2020-CV-00673.

5. “Complaint” means the Complaint filed by Plaintiff against Defendant, dated June 29, 2020, and updated on January 5, 2021, pursuant to the Court’s order dated December 30, 2020, in the above-captioned action.

6. “Defendant’s Answer” means the Answer to Plaintiff’s Complaint, filed by Defendant on July 30, 2020, and as amended on February 16, 2021 and June 1, 2021, in the above-captioned action.

7. “Counterclaims” means the Counterclaims filed by Defendant against Plaintiff, dated July 30, 2020, and as amended on February 16, 2021 and June 1, 2021, in the above-captioned action.

8. “Compensation” means any revenue, payment, salary, bonus, advance, profits, income, royalty, commission, or other remuneration of any kind of nature.

9. “Document(s)” means hard-copy documents or electronically stored information and shall include, without limitation, any communication, writing, negotiation, note, research, contract, agreement, bank statement, income statement, drawing, graph, chart, spreadsheet, photograph, sound recording, image, videotape, email, electronic file, data or data compilation, meeting or calendar invitation, outline, manuscript, script, drafts, music, musical score, sheet music, pitch material, presentation, license, royalty statement, copyright, trademark or other item containing information of any kind or nature, however produced or reproduced, whether an original or a duplicate, whatever its origin or location, and regardless of the form in which such information exists or is maintained. A draft or non-identical copy is a separate document within the meaning of this term.

10. “Communication(s)” shall include any communication, whether electronic or hard-copy, to or from any individual, entity or account used in whole or in part to communicate, including but not limited to emails, text messages, Facebook messages, Instagram messages, WhatsApp messages, Viber messages, Google Chat messages, Skype messages, Microsoft Teams or Zoom messages, Cisco Jabber messages, phone calls or phone logs, voicemail messages, phone

logs, or any other type of communication, whatever its origin or location, and regardless of the form in which such information exists or is maintained. Each of these is within the meaning of Document or Communication as defined and used herein.

11. “All,” “any” and “each” shall each be construed as encompassing any and all.

INSTRUCTIONS

1. You are required to furnish all responsive, non-privileged documents, including, but not limited to, hard copy documents, electronic media, text messages, voicemails, or any other audio or visual recording, in his possession, custody or control that are known or available to him. You must make a diligent search of Your records and of other papers and materials in Your possession or available to You or Your attorneys or other representatives.

2. You are required to respond in writing and state as to each Request:

- i. That there are Documents or Communications responsive to the Request, and that they will be produced;
- ii. That there are Documents or Communications responsive to the Request, but that You refuse to produce them, providing the specific grounds for such refusal or objection; or
- iii. That there are no Documents or Communications responsive to the Request. If no Documents or Communications exist that are responsive to a particular Request, then that fact should be stated in the response to such Request.

3. As to any Document or Communication called for by the Requests which no longer exists, but which You are aware existed at one time, please identify such Document(s) or Communication(s) and, in addition, identify the last known location and the reason such Document(s) or Communication (s) is no longer in existence.

4. If You claim that certain responsive Documents or Communications may exist but are not reasonably accessible, please advise as soon as possible which Documents or Communications You claim are not reasonably accessible and the basis for such claim.

5. In the event You object to any Request set forth below on the basis of a contention that it is overbroad for any reason, please respond to that Request as narrowed in such a way as to render it not overbroad and state the extent You have narrowed that Request for purposes of the response. Please identify any Documents or Communications being withheld pursuant to any such objections.

6. The Requests contained herein shall be deemed to be continuing; that is, You must supplement Your responses if You obtain any new or additional Documents or Communications between the time the responses to these Requests are served and the time of trial. Such additional responses shall be served and additional Documents or Communications produced from time to time, but no later than twenty (20) days after such additional Documents or Communications are discovered, obtained or received.

7. Unless otherwise specified, the Documents and Communications to be produced in response to the Requests include any and all information that was generated or received or otherwise came into existence at any time prior to and including the date of responding.

8. If You believe that any of the Requests calls for an assertion of a claim of privilege, then produce so much of the Document(s) or Communication(s) as is not objected to the asserted privilege, state the part of each Request as to which You raise objection, set forth the basis of Your claim of privilege with respect to such information as You refuse to give. Specifically, for each Document or Communication as to which You claim privilege or protection, identify:

- i. (A) the type of Document or Communication, *e.g.*, email, meeting, letter, or memorandum; (B) the general subject matter of the Document or Communication; (C) the date of the Document or Communication; (D) all persons or entities who are senders or recipients (including CC and BCC), and/or to whom the Document or Communication was shown, made available or given; (E) such other information as is sufficient to identify the Document or Communication in a subpoena *duces tecum*, including, where appropriate, the author of the document, the addressees of the document and any other recipients shown in the document, and where not apparent, the relationship of the author, addressees and recipients to each other; and (F) the basis and description of Your claim of privilege.

9. Unless otherwise indicated, the Documents and Communications requested herein include all Documents and Communications in Your possession, custody, or control. Without limiting the meaning or generality of the terms “possession, custody, or control” as used in the preceding sentence, a Document or Communications is in Your possession, custody, or control if You have actual possession or custody of the Document, or You have the right to obtain the Document or Communication or a copy thereof upon demand from one or more of Your subsidiaries, affiliates, partners, co-venturers, employees, representatives, relatives, friends, agents, independent contractors, consultants, attorneys, accountants, auditors, or any other person or public or private entity that has actual possession thereof.

10. On June 21, 2021, the Court overseeing the Action entered a Stipulated Protective Order, attached hereto as **Schedule D**. You may invoke the provisions of that Order in responding

to the subpoena in the event the subpoena calls for the production of any documents or information that You have a good faith belief to be Confidential or Highly Confidential as defined therein.

DOCUMENTS TO BE PRODUCED

1. All Documents and Communications referring or relating to potential, possible or contemplated projects, or projects under discussion or negotiation, with Defendant (as defined above), including but not limited to any novels, books or literary works, from January 1, 2018 to the present.

2. All Documents and Communications referring or relating to potential, possible, or contemplated novels, books or literary works, including but not limited to works that include the character Robert Langdon, from January 1, 2018 through the present.

3. All final or draft contracts, offer memos, deal memos, or any other type of agreements or proposals, referring or relating to any potential, possible or contemplated novels, books or literary works, including but not limited to projects that include the character Robert Langdon, from January 1, 2018 through the present.

4. All Documents and Communications reflecting, referring or relating to advances, royalties, payments, or Compensation made or owed to Defendant, or anticipated to be made or owed to Defendant, in connection with any potential, possible or contemplated novels, books or literary works, including but not limited to projects that include the character Robert Langdon, from January 1, 2018 through the present.

5. All Documents and Communications reflecting, referring or relating to advances, royalties, payments, or Compensation made or owed to Defendant, or anticipated to be made or owed to Defendant, in connection with *Wild Symphony* from January 1, 2018 through the present.

6. Documents sufficient to show sales of and payments made to Defendant in connection with the following works, from the time of publication through the present:

- a. *Angels & Demons*
- b. *The Da Vinci Code*
- c. *The Lost Symbol*
- d. *Inferno*
- e. *Origin*

7. All Documents and Communications relating or referring to any harm, damage, benefit, or positive impact, whether monetary, reputational or otherwise, to Defendant directly or indirectly arising out of any statements purportedly made by Plaintiff as alleged in the Counterclaims, from March 1, 2020 to the present.

8. All Documents and Communications referring or relating to Plaintiff's allegations in the Complaint having a beneficial or positive impact on Defendant's sales, reputation, or public image, including statements to the effect that "everyone thinks [Defendant] is the most boring guy in the world... [REDACTED] as Defendant was quoted in the *NYP*ost and the *Sunday Times of London* on or about September 27, 2020 and September 28, 2020 (attached hereto as **Schedules E & F**).

9. All Documents and Communications with Jason Kaufman relating or referring to Defendant's Commonwealth Financial account ending in -077, from January 1, 2014 to the present.

10. All Documents and Communications, regardless of whether Defendant is a sender or recipient, about Defendant and (i) Plaintiff; and/or (ii) Judith Pietersen from March 1, 2020 to the present.

11. All 1099 form(s) and/or W-9 form(s) issued or generated by You for Defendant.

SCHEDULE B

STATE OF NEW HAMPSHIRE
ROCKINGHAM, SS

SUPERIOR COURT

BLYTHE BROWN,)	
)	
<i>Plaintiff,</i>)	
)	
v.	)	Civil Action No. <u>218-2020-CV-00673</u>
)	
)	
DANIEL GERHARD BROWN,)	
)	
<i>Defendant.</i>)	
)	
)	
)	
)	
)	

CERTIFICATION

The undersigned does depose and say under the penalty of perjury that I am an authorized custodian of records for Bertelsmann, Inc./Penguin Random House and that the enclosed documents represent all documents and items called for in the attached subpoena, no records or items having been withheld. All such records were (A) made at or near the time by - or from information transmitted by - someone with knowledge; (B) kept in the course of a regularly conducted activity; and (C) making the record was a regular practice of that activity.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS ___ DAY OF _____, 2021.

Signature

Title

SCHEDULE C

Counsel for Plaintiff Blythe Brown

Harvey J. Wolkoff*
Aliki Sofis*
Kathleen Marini*
QUINN EMANUEL URQUHART & SULLIVAN, LLP
111 Huntington Avenue, Suite 520
Boston, MA 02199
Tel: (617) 712-7100
harveywolkoff@quinnemanuel.com
aliki Sofis@quinnemanuel.com
kathleenmarini@quinnemanuel.com
* Admitted *pro hac vice*

Joseph D. Steinfield (NH Bar No. 18721)
130 Court Street
Keene, NH 03431
Tel: (617) 285-3937
joe@joesteinfield.com

Counsel for Defendant Daniel G. Brown

Joan A. Lukey (NH Bar No. 16246)
John C. Calhoun*
Marina Pullerits*
Justin J. Wolosz*
CHOATE HALL & STEWART LLP
2 International Place
Boston, MA 02110
(617) 248-5000
joan.lukey@choate.com
jcalhoun@choate.com
jwolosz@choate.com
mpullerits@choate.com

* Admitted *pro hac vice*

SCHEDULE D

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

BLYTHE BROWN,
Plaintiff,

v.

DANIEL GERHARD BROWN,
Defendant.

Case No. 218-2020-CV-00673

Granted



Clerk's Notice of Decision
Document Sent to Parties
on 06/22/2021

Honorable Marguerite L. Wageling
June 21, 2021

**DEFENDANT DANIEL G. BROWN'S
ASSENTED-TO MOTION FOR PROTECTIVE ORDER**

Defendant Daniel G. Brown ("Defendant"), with Plaintiff Blythe Brown's ("Plaintiff") assent, hereby moves for entry of a stipulated protective order under Superior Court Rule 29(a)(g) that would govern the procedures that the parties shall follow with respect to document discovery in this case. *See* N.H. SUPER. CT. R. 29(a)(g) ("for good cause shown, the court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . that . . . confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way"). The Proposed Stipulated Protective Order is attached as Exhibit A.

In response to Plaintiff's recent document requests, Defendant intends to produce to Plaintiff a number of Defendant's commercial contracts, as well as correspondence, that may contain confidential, competitive business information relating to Defendant's contracts and contractual arrangements. It is Defendant's position that these documents contain highly

sensitive commercial information about payments, fees, royalties, advance amounts, and similar terms. Defendant further contends that some of these documents contain explicit contractual provisions requiring that Defendant keep certain key terms confidential, and that he may be accused of breaching these provisions if this confidential information is disclosed. It is Defendant's position that because the revelation of one author's advance and royalty arrangements in comparison to another can cause issues and embarrassment within a publishing house, publishers take such confidentiality terms very seriously.

In addition to the contemplated document production, the parties may wish to refer to certain of the referenced confidential information in interrogatory responses, or in depositions conducted in this litigation.

For the avoidance of doubt, by assenting to this Motion, Plaintiff does not agree or concede that any of Defendant's referenced contracts or other documents produced by Defendant—which neither she nor her counsel have yet seen—are subject to any confidentiality, protection or sealing. Plaintiff expressly reserves the right to object to any such designation or position by Defendant, pursuant to the terms of the Stipulated Protective Order.

Defendant respectfully moves for entry of an Order, in the form of the Proposed Stipulated Protective Order attached as Exhibit A, that will govern document discovery in this case.

WHEREFORE, Defendant respectfully requests that the Court sign and enter the Proposed Stipulated Protective Order, attached hereto as Exhibit A.

CONFERRAL PURSUANT TO SUPERIOR COURT RULE 11

Defendant's and Plaintiff's counsel conferred pursuant to Super. Ct. Civ. R. 11(c) on June 17, 2021. Plaintiff assents to the relief sought in this motion, as specifically described herein.

DATED: June 17, 2021

Respectfully submitted,

/s/ Joan A. Lukey
Joan A. Lukey, Bar No. 16246
CHOATE HALL & STEWART LLP
2 International Place
Boston, MA 02110
(617) 248-5000
joan.lukey@choate.com

CERTIFICATE OF SERVICE

I, Joan A. Lukey, state that on this date I am sending a copy of this document as required by the rules of the Court. I am electronically sending this document through the Court's electronic filing system to all attorneys and to all other parties who have entered electronic service contacts (email addresses) in this case. I am mailing or hand-delivering copies to all other interested parties.

Harvey J. Wolkoff
Alik Sofis
Kathleen Marini
QUINN EMANUEL URQUHART &
SULLIVAN, LLP
111 Huntington Avenue, Suite 520
Boston, MA 02199
(617) 712-7100
harveywolkoff@quinnemanuel.com
aliki Sofis@quinnemanuel.com
kathleenmarini@quinnemanuel.com

Joseph D. Steinfield
130 Court Street
Keene, NH 03431
(617) 285-3937
joe@joesteinfield.com

/s/ Joan A. Lukey
Joan A. Lukey, Bar No. 16246
CHOATE HALL & STEWART LLP
2 International Place
Boston, MA 02110
(617) 248-5000
joan.lukey@choate.com

EXHIBIT A
[Proposed]
Stipulated
Protective
Order

information with the words “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” or for documents previously produced, by identifying in writing, served upon the other party, the Bates number designation or other description of any such documents.

2. Information disclosed or discussed in a deposition, interrogatory response, or any other form or manner may be designated “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” by making a statement to that effect on the record at the time of a deposition, by submitting a written designation to counsel for all parties within thirty (30) days after receipt of the deposition transcript (or, if later, within thirty (30) days after execution of this Order by counsel for the parties), or by so indicating in a written interrogatory response. Information disclosed or discussed in a deposition, interrogatory response, or any other form or manner shall be treated as “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” until the expiration of thirty (30) days following the receipt of the deposition transcript, interrogatory response, or information disclosed or discussed in any other form or manner (or, if later, until the expiration of thirty (30) days following the execution of this Order by the parties) unless earlier designated. In the event that any person fails, at the time or in the manner set forth in this Paragraph, to designate any document or information as “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” that it later determines ought to be so designated, such person may later so designate any document or information unless the Court, upon motion by the opposing party, denies the designation of the documents as “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

3. The inadvertent or mistaken disclosure by a producing party of discovery material containing or constituting information that constitutes “HIGHLY CONFIDENTIAL – SUBJECT

TO PROTECTIVE ORDER” information without the designation required under this Order shall not constitute a waiver of any claim of confidentiality, provided that such inadvertence or mistake is brought to the attention of the receiving party promptly upon discovery. Upon notice of inadvertent or mistaken disclosure, the producing party shall provide properly marked documents. Upon notice, the receiving party shall return said unmarked documents and things to the extent practicable, shall not retain copies thereof, and shall treat information contained in said documents and things and any summaries or notes thereof as discovery material designated “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER.”

4. All materials marked “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” shall be used for purposes of this litigation only and for no other purpose, and shall be retained by the parties’ counsel of record.

5. All materials or information produced in this litigation that are designated “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” shall not be disclosed by the receiving party or his/her counsel to any person other than:

- (a) Plaintiff and Defendant;
- (b) counsel of record and their members, associates, and employees;
- (c) the Court and Court personnel, including court reporters and stenographers employed in connection with this Action;
- (d) experts or consultants retained or employed in good faith to assist a party in the valuation, prosecution, or defense of the Action, provided that each such expert or consultant agrees to be bound by the terms of this Order and evidences his or her consent by executing the Certificate attached to this Order before receiving materials marked “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”;
- (e) any witness or deponent who is asked at his or her deposition or at trial to testify about materials marked “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” provided that each such person agrees to be bound by the terms of this Order and evidences his or her consent by executing the

Certificate attached to this Order before receiving materials marked
“HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”;

- (f) Any person called to testify as a witness either at deposition or court proceeding in this litigation to whom disclosure is reasonably necessary to prepare for depositions or testimony in this action, provided that each such person agrees to be bound by the terms of this Order and evidences his or her consent by executing the Certificate attached to this Order before receiving materials marked “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER”;
- (g) The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and
- (h) any other person to whom producing parties agree.

6. Each party agrees that absent written permission from the other party, they will not file with the Court any document or other information (or part thereof) that comprises, is derived from, or incorporates any materials designated by the other party as “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” without first conferring to attempt to redact the confidential information. If the party seeking to use the information believes in good faith that the confidential terms are required for purposes of the litigation, the parties will confer regarding a proposed, joint motion to file the un-redacted version under seal. If the parties are unable to reach agreement, the party seeking to use the information will allow three (3) business days for the party claiming confidential treatment to submit to the Court a request that the un-redacted document be filed under seal.

7. If counsel for a receiving party objects in good faith to the designation by the producing party of any document, testimony, or other information as “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER,” counsel for the receiving party shall so notify counsel for the producing party, which notice shall: identify the document, testimony, or other information; set forth the reasons for the objection; and identify the person, Court or entity to whom disclosure is proposed. If the parties are unable to resolve the

disagreement to their mutual satisfaction, they may either individually or jointly seek relief from the Court upon at least three (3) business days' notice to the other parties with the burden of proving the need for confidential treatment falling on the party claiming confidential treatment, and all parties will cooperate in obtaining a prompt hearing concerning the same. Until the Court rules on the party's application or the disagreement is otherwise resolved, the document, testimony, or other information shall continue to be treated as "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER."

8. Nothing in this Order shall be construed to constitute a waiver of any party's right: (a) to oppose discovery on any ground; or (b) to object on any ground to the admission of any document, testimony, or other information in evidence at the trial of this Action. By stipulating to the entry of this Order, no party waives any right it otherwise has to object to any party's designations, and each party reserves the right to object to or challenge any party's designation in good faith.

9. Within thirty (30) days after conclusion of the Action, including the expiration of all periods for appeal from any judgment herein, all materials marked "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER" shall be disposed of by any mutually agreeable method (except documents in the files of the Court and documents prepared by counsel for the other party which contain or refer to such materials marked "HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER").

10. If any party seeks discovery from a third party, that third party shall be entitled to all of the benefits that a producing party has under the terms of this Order.

11. This Order shall not prejudice a party's right to seek to amend, modify, or change the terms of this Order by written agreement between the parties (and relevant third parties, to the extent that their interests are affected), or by Order from the Court.

12. This Order is effective immediately and shall continue to remain in effect as a valid and binding contract after conclusion of the Action.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: June 17, 2021

Respectfully submitted,


/s/ Harvey J. Wolkoff
Harvey J. Wolkoff*
Aliki Sofis*
Kathleen Marini*
QUINN EMANUEL URQUHART &
SULLIVAN LLP
111 Huntington Avenue, Suite 520
Boston, MA 02119
(617) 712-7100
harveywolkoff@quinnemanuel.com
alikusofis@quinnemanuel.com
kathleenmarini@quinnemanuel.com

/s/ Joan A. Lukey
Joan A. Lukey, Bar No. 16246
CHOATE HALL & STEWART LLP
2 International Place
Boston, MA 02110
(617) 248-5000
joan.lukey@choate.com

* Admitted *pro hac vice*
/s/ Joseph D. Steinfield
Joseph D. Steinfield (NH Bar. No. 18721)
130 Court Street
Keene, NH 03431
(617) 285-3937
joe@joesteinfield.com

IT IS HEREBY SO ORDERED.

Date: June 21, 2021



The Honorable Marguerite Wageling

STATE OF NEW HAMPSHIRE

ROCKINGHAM, SS

SUPERIOR COURT

_____)	
BLYTHE BROWN,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	
	)	Case No. 218-2020-CV-00673
DANIEL GERHARD BROWN,)	
)	
<i>Defendant.</i>)	
)	
)	
_____)	

CERTIFICATE OF COMPLIANCE WITH STIPULATED PROTECTIVE ORDER

The undersigned, on oath, deposes and states as follows:

I, _____, hereby acknowledge that I have been informed of the provisions of the Stipulated Protective Order (the “Order”) entered into between the parties in this case. I understand that the parties may designate information as “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” under the terms of the Order. I further understand and agree that any summaries or other documents containing knowledge or information obtained from documents marked “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” furnished to me shall also be treated by me in accordance with the Order. I agree that I will not divulge such “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” information to any other person except as provided in the Order and that I will not use such confidential information for any other purpose other than that allowed by the Order. I also agree to dispose of all such “HIGHLY CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” information or other documents containing knowledge or information

obtained therefrom in such manner as I may be instructed after completing my services and/or testimony.

Signed under pains and penalties of perjury this ____ day of _____, 2021.

(Signature)

(Print name)

SCHEDULE E

OMITTED

SCHEDULE F

OMITTED