

JUDGE BUCHWALD

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARTHA GRIMES,

Plaintiff,

v.

PENGUIN GROUP (USA) INC.,

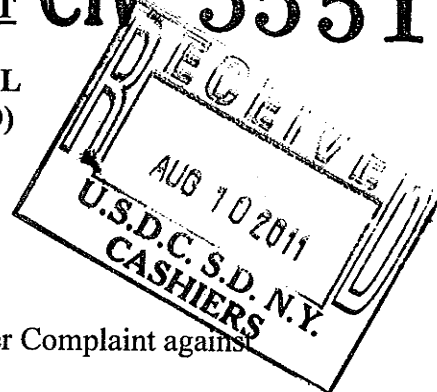
Defendant.

Civil Action No.

**11 CIV 5551**

COMPLAINT

(JURY TRIAL  
DEMANDED)



Plaintiff Martha Grimes, by her undersigned counsel, for her Complaint against defendant Penguin Group USA Inc., alleges as follows:

**PARTIES**

1. Plaintiff Martha Grimes ("Grimes") is an individual residing in the State of Maryland.
2. Defendant Penguin Group (USA) Inc. ("Penguin") is, upon information and belief, a corporation organized and existing under the laws of the State of New York, with its principal place of business located in New York, N.Y.

**JURISDICTION AND VENUE**

3. The Court has jurisdiction of this action under 28 U.S.C. § 1332(a) as the matter in controversy is in excess of Seventy-Five Thousand and 00/100 (\$75,000.00) Dollars, exclusive of interest and costs, and the action is between citizens of different States.
4. Venue is proper in this district under 28 U.S.C. § 1391(a).

**RETENTION AND TERMINATION OF PLA**

5. Grimes is an internationally known mystery writer and the author of over 30 published books, nine of which have been *New York Times* bestsellers.

6. Penguin is a book publisher that has published Grimes' books since about 1999 pursuant to publishing agreements between them.

7. Peter Lampack Agency, Inc. ("PLA"), located in New York, NY, is engaged in the business of providing services as a literary agency.

8. In about 1996 Grimes engaged PLA as her literary agent.

9. During the time that PLA served as Grimes' literary agent, PLA procured a number of publishing agreements for her with Penguin.

10. For its services as her literary agent, PLA was entitled to be paid a commission in the amount of 15% of the monies due and payable to Grimes on the publishing agreements that it procured for her.

11. Grimes terminated PLA as her agent in May 2007.

12. Following Grimes' termination of PLA as her agent, PLA contended in communications with Grimes and Penguin that it was owed a commission on certain publishing agreements entered into by Grimes and Penguin subsequent to PLA's termination in May 2007. One of PLA's contentions was that it would be owed a commission in the event an agreement was negotiated for the option book to which reference was made in a four-book publishing agreement between Grimes and Penguin dated March 30, 2005 (the "March 30, 2005 Publishing Agreement") that PLA had procured for Grimes.

**THE BLACK CAT AGREEMENT'S INDEMNITY PROVISION**

13. On August 27, 2009, Grimes and Penguin entered into a publishing agreement for publication of Grimes' book *The Black Cat*, as well as for a second untitled novel ("*The Black Cat Agreement*"). A copy of *The Black Cat Agreement* is attached to this Complaint as Exhibit "1".

14. *The Black Cat Agreement* included a provision in which Grimes warranted and represented that she had procured that agreement without any agent, and that she had no payment or other obligations to PLA in connection with it. (Exhibit "1", ¶ 45).

15. In light of PLA's contention that it would be owed a commission on an option book arising from the March 30, 2005 Publishing Agreement, and concerned that PLA would claim that *The Black Cat* was that option book, Penguin had advised Grimes that *The Black Cat Agreement* must include a provision in which Grimes agreed to indemnify and hold Penguin harmless from any such claim by PLA.

16. As a result, *The Black Cat Agreement* provided that Grimes "represents and warrants that this Agreement for [the two books] was procured and consummated on Author's part without any agent, and [Grimes] has no payment or other obligations of any kind to [Grimes'] former agent [PLA] in connection with this Agreement or publication by [Penguin] of the [two books] hereunder." (Exhibit "1", ¶ 45). (The indemnity provisions in *The Black Cat Agreement* will hereafter be referred to as "*The Black Cat Indemnity Agreement*.")

17. In negotiations concerning the indemnity provision, Penguin accepted Grimes' position that, in the event of a claim by PLA, Grimes would defend Penguin through counsel of her own choosing and that she would therefore not have to pay for

separate counsel hired by Penguin.

18. As a result, *The Black Cat* Indemnity Agreement provided that, in the event that PLA started an action against Penguin “arising out of or in connection with a breach or alleged breach of the foregoing representations and warranties and/or arising out of or in connection with or in any way concerning” *The Black Cat* Agreement or the two books covered by that agreement, Grimes shall defend Penguin “through counsel of her own choosing”, and Penguin agreed to “fully cooperate” in that defense.

19. *The Black Cat* Indemnity Agreement provided also that, in the event PLA did begin a lawsuit, Penguin had the right “to withhold up to fifteen percent (15%) of the proceeds payable hereunder in connection with the foregoing indemnity from all moneys accruing to Author under this Agreement.” (Exhibit “1”, ¶ 45). The 15% represented the amount of the commission that would be owed to PLA in the event that it was successful in a claim for a commission on *The Black Cat* Agreement.

20. *The Black Cat* Indemnity Agreement concluded by providing that, if Penguin did “withhold” any of the proceeds payable to Grimes, that “[a]ny payments withheld . . . shall be released to [Grimes] . . . within thirty (30) days of a legally binding discontinuance of any such claim, action or proceeding.” (Exhibit “1”, ¶ 45).

#### **THE PLA LAWSUIT**

21. In November 2009, PLA started a lawsuit in New York Supreme Court against Grimes and Penguin claiming that it had not been paid commissions on certain publishing agreements that it claimed to have procured for Grimes with Penguin, and making other claims (the “PLA Lawsuit”). A copy of the Verified Complaint in *Peter Lampack Agency, Inc. v. Martha Grimes et al.*, Index No. 603525/09 (the “PLA

Complaint”), is attached to this Complaint as Exhibit “2”.

22. The First Cause of Action in the PLA Complaint, against both Grimes and Penguin, alleged that *The Black Cat Agreement* arose out of the option clause in the March 30, 2005 Publishing Agreement, and that PLA was therefore owed a 15% commission. The First Cause of Action alleged that PLA’s agency clause stated that PLA was appointed as Grimes’ agent “irrevocably,” and that Grimes “irrevocably” and “as an agency coupled with an interest”, assigned to PLA a sum equal to 15% of the sums paid to her on “all matters pertaining to or arising from the agreements”. (Exhibit “2”, ¶¶s 22, 25, 36)

23. Since the First Cause of Action claimed that PLA was due a commission on *The Black Cat Agreement*, it was a “claim” or “suit” “arising out of or in connection with a breach or alleged breach” of Grimes’ representations and warranties to Penguin in *The Black Cat Agreement*, and/or was “a claim by PLA . . . arising out of or in connection with or in any way concerning” that agreement, and therefore came within the terms of *The Black Cat Indemnity Agreement*.

24. The PLA Complaint contained 14 other causes of action, nine of which were asserted against Penguin as well as against Grimes.

25. The Second through the Seventh Causes of Action against Grimes and Penguin claimed that PLA was owed a commission on “extensions” of six publishing agreements that PLA had procured for Grimes, even though those “extensions” had been entered into subsequent to PLA’s termination as Grimes’ agent. Those claims were based on and re-alleged the allegations in the First Cause of Action that PLA had been appointed as Grimes’ agent “irrevocably”, and that Grimes had “irrevocably” and “as an

agency coupled with an interest” assigned to PLA a 15% commission on “all matters pertaining to or arising from the agreements.” (Exhibit “2”, ¶¶s 43, 50, 56, 61, 68, 73, 80, 85, 92, 97, 104, 107).

26. Since the Second through the Seventh Causes of Action were based on and re-alleged the allegations made in the First Cause of Action concerning *The Black Cat* Agreement that the agency clause in all the agreements procured by PLA appointed PLA “irrevocably” and “as an agency coupled with an interest”, each one was a “claim” or “suit” “arising out of or in connection with a breach or alleged breach” of Grimes’ representations and warranties to Penguin in *The Black Cat* Agreement, and/or was “a claim by PLA . . . arising out of or in connection with or in any way concerning” that agreement, and therefore came within the terms of *The Black Cat* Indemnity Agreement.

27. The Ninth, Tenth, and Eleventh Causes of Action against Grimes and Penguin made claims, respectively, for a declaratory judgment, for a permanent injunction, and for breach of fiduciary duty, all alleged to be arising out of the allegations in “the First through Seventh Causes of Action.” (Exhibit “2”, ¶¶s 128, 132, 135). The Ninth Cause of Action for a declaratory judgment was stated to be based on the alleged existence of “a present and justiciable controversy with respect to each of the agreements denoted in *the First* through Seventh Causes of Action.” (Exhibit “2”, ¶ 128) (emphasis added). The Tenth Cause of Action sought a permanent injunction “with respect to the agreements denoted in *the First* through Seventh Causes of Action.” (Exhibit “2”, ¶ 132) (emphasis added). The Eleventh Cause of Action for breach of fiduciary duty alleged that “[t]he agreements denoted in *the First* through Seventh Causes of Action created a fiduciary relationship between Grimes and each of the respective Penguin defendants on

the one hand and PLA on the other hand.” (Exhibit “2”, ¶ 135) (emphasis added).

28. Since the Ninth, Tenth, and Eleventh Causes of Action derived from the allegations in the First Cause of Action concerning *The Black Cat* Agreement, each one was “claim” or “suit” “arising out of or in connection with a breach or alleged breach” of Grimes’ representations and warranties to Penguin in *The Black Cat* Agreement, and/or was “a claim by PLA . . . arising out of or in connection with or in any way concerning” that agreement, and therefore came within the terms of *The Black Cat* Indemnity Agreement.

29. Grimes and Penguin had entered into an earlier indemnity agreement on November 19, 2007, amended on December 13, 2007 (the “2007 Indemnity Agreement”), that was arguably also applicable, along with *The Black Cat* Indemnity Agreement, to the claims against Penguin in the Second through the Seventh Causes of Action. A copy of the 2007 Indemnity Agreement is attached to this Complaint as Exhibit “3”. *The Black Cat* Indemnity Agreement, however, superseded the 2007 Indemnity Agreement in that regard because *The Black Cat* Agreement provided that it “supersedes all prior agreements, understandings and proposals (whether written or oral) in respect to the matters specified.” (Exhibit “1”, ¶ 31).

#### **PENGUIN DECIDES TO REMAIN NEUTRAL IN THE PLA LAWSUIT**

30. After the PLA Lawsuit was filed in November 2009, Penguin did not invoke the provisions of the *The Black Cat* Indemnity Agreement pursuant to which Grimes was to defend Penguin “through counsel of her own choosing”. Instead, Penguin advised Grimes in about January 2010 that, because it valued its relationship with PLA as well as with Grimes, it intended to remain neutral in the PLA Lawsuit and had therefore

retained its own counsel to represent it in the action.

31. Upon information and belief, Penguin declined to be represented by Grimes in the PLA Lawsuit in order to protect its business interests with PLA.

32. PLA had brought other best-selling authors to Penguin besides Grimes. One of the other best-selling authors that PLA had brought to Penguin was Clive Cussler. Upon information and belief, at or about the time that the PLA Lawsuit was instituted, PLA indicated to Penguin that it would move Clive Cussler to a different publisher if Penguin supported Grimes in her dispute with PLA.

### **MOTIONS IN THE PLA LAWSUIT**

33. On January 28, 2010, Grimes made a motion to dismiss the First through Seventh, Eleventh and Fourteenth Causes of Action in the PLA Complaint.

34. By Decision and Order dated October 6, 2010, Justice Bernard J. Fried of the New York Supreme Court granted Grimes' motion in its entirety, dismissing the First through Seventh, Eleventh and Fourteenth Causes of Action against Grimes. A copy of the decision in *Peter Lampack Agency, Inc. v. Martha Grimes*, 29 Misc.3d 1208(A) (Sup. Ct. N.Y. Co. 2010) is attached to this Complaint as Exhibit "4".

35. In his decision, Justice Fried ruled that the First Cause of Action in the PLA Complaint should be dismissed on the ground that PLA's agency, as set forth in its agency clause, was not "coupled with an interest" and was therefore not "irrevocable." Having made that determination on the scope of PLA's agency clause, Justice Fried concluded that the Second through the Seventh Causes of Action should be dismissed as well. 29 Misc.3d 1208(A) at \*4 and \*5.

36. Although Penguin had advised Grimes that it intended to remain neutral in

the PLA Lawsuit, it claimed that it was eventually compelled by the Court to take an active part in the litigation. As a result, on July 14, 2010, Penguin, by its own counsel, moved to dismiss the First through Seventh and the Eleventh Causes of Action.

37. At a hearing in New York Supreme Court on October 28, 2010, Justice Fried held that the reasoning of the October 6, 2010 Decision and Order in Grimes' favor applied equally to Penguin's motion, and the Court granted Penguin's motion.

#### **PENGUIN SETS-OFF ITS LEGAL EXPENSES**

38. In a letter dated January 27, 2011, Penguin notified Grimes that it had to date incurred legal expenses totaling \$219,536.98 in the PLA Lawsuit. Referring to "several indemnity agreements", Penguin stated that it "previously tendered . . . its legal expenses to Ms. Grimes for reimbursement under the Indemnity Agreements," that "it has not received any payment," and "[t]herefore" that it "intends to exercise its right under the Indemnity Agreements to withhold and apply against Ms. Grimes' indemnity obligations her author's share of proceeds under the various book publishing agreements between her and [Penguin]."

39. Penguin stated that it "attempted to remain neutral in the litigation" but that the Supreme Court "compel[ed] it to abandon neutrality". Penguin stated that its "indemnity set-off" would be in the amount of \$164,410.80, which it claimed were the legal expenses it incurred after the Court "compel[ed] it to abandon neutrality". Penguin also stated in the letter that it intended also to "set off" the legal expenses that it would incur "hereafter" in the PLA Lawsuit. A copy of the January 27, 2011 letter is attached to this Complaint as Exhibit "5".

40. Contrary to its statement in the January 27, 2011 letter, Penguin had not

“previously tendered” any of its legal expenses to Grimes for reimbursement.

41. At the time of its January 27, 2011 letter, Penguin was contractually obligated to pay Grimes \$150,000 for the publication of the paperback edition of *The Black Cat*, \$25,000 for the remaining advance due on acceptance of the manuscript of Grimes’ book *Fadeaway Girl*, the second book covered by *The Black Cat Agreement*, and \$25,000 for the publication of *Fadeaway Girl*.

42. In response to Penguin’s letter, Grimes advised Penguin that *The Black Cat Indemnity Agreement* applied to the claims against Penguin in the PLA Lawsuit, denied that Grimes had an obligation to pay for Penguin’s legal expenses, or that Penguin had a right to “set off” those expenses against monies owed to her, and demanded that Penguin pay her the amounts owed to her under *The Black Cat Agreement*.

43. Penguin has refused to pay to Grimes the \$200,000 owed to her under *The Black Cat Agreement*.

44. Grimes requested by letter dated March 15, 2011 that Penguin provide her with copies of the invoices and time records evidencing Penguin’s claimed legal expenses that it had “set off” against monies owed to her.

45. Penguin has to date not provided Grimes with copies of its counsel’s invoices and time records.

46. By Stipulation so-ordered by the New York Supreme Court on June 30, 2011, PLA withdrew and discontinued the Ninth and Tenth Causes of Action against Penguin. As a result, as of June 30, 2011, all claims against Penguin in the PLA Lawsuit had been either dismissed or discontinued. A copy of the Stipulation is attached to this Complaint as Exhibit “6”.

**CLAIM FOR RELIEF**  
(Breach of Contract)

47. Plaintiff repeats and realleges the allegations in Paragraphs 1 to 46 of the Complaint with the same force and effect as if fully set forth herein.

48. *The Black Cat* Indemnity Agreement applies to the claims against Penguin in the PLA Lawsuit.

49. *The Black Cat* Indemnity Agreement provides that Grimes “shall defend [Penguin] through counsel of her own choosing and [Penguin] shall fully cooperate in [Grimes’] defense.”

50. *The Black Cat* Indemnity Agreement does not obligate Grimes to pay for any legal expenses incurred by Penguin.

51. *The Black Cat* Indemnity Agreement does not allow Penguin to “set-off” its legal expenses against monies that it owes to Grimes.

52. Penguin materially breached the terms of *The Black Cat* Agreement when it “set-off” its legal expenses against monies that it owes to Grimes.

53. Penguin materially breached the terms of *The Black Cat* Agreement by not paying to Grimes the amount of \$200,000 that was owed to her.

54. *The Black Cat* Indemnity Agreement only permits Penguin to “withhold” up to 15% of the monies owed to her under that agreement. Even with respect to such monies withheld, the agreement requires that any money “withheld” shall be released to Grimes “within thirty (30) days of a legally binding discontinuance of any such claim, action or proceeding”.

55. Penguin materially breached the terms of *The Black Cat* Agreement when it withheld 100% of the monies owed to Grimes under that agreement, and when it did

not release to Grimes any monies that it withheld by July 30, 2011, 30 days after the discontinuance of all claims against it in the PLA Lawsuit.

56. Penguin materially breached the terms of *The Black Cat Agreement* by putting its own commercial interests ahead of its contractual obligation to “fully cooperate” with Grimes in the defense of the PLA Lawsuit.

57. Penguin materially breached its implied covenant of good faith and fair dealing in *The Black Cat Agreement* by its actions in, *inter alia*, misrepresenting that it had previously “tendered” its legal expenses to Grimes for payment, in not advising Grimes in advance that it intended to charge her for its legal expenses, and by setting-off from monies owed to her legal expenses that were far in excess of what was reasonable.

58. Grimes has been damaged in an amount to be determined, but that she believes to be in excess of \$200,000.

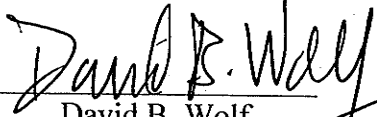
**WHEREFORE**, plaintiff Martha Grimes respectfully asks the Court to grant her judgment against defendant as follows:

1. Awarding her damages in an amount to be determined but believed to be in excess of \$200,000;
2. The costs and expenses of this action, including reasonable attorney's fees;
3. Pre-judgment interest; and
4. Such other and further relief as the Court may deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands trial by jury of all claims so triable.

Dated: August 10, 2011

  
David B. Wolf

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*Attorneys for Plaintiff Martha Grimes*

# **EXHIBIT 1**

AGREEMENT made this 27<sup>th</sup> day of August, 2009

between Martha Grimes  
(name)

residing at 115 D Street, G-6  
(address)

Washington, DC 20003  
(city) (state, zip code, country)

and \_\_\_\_\_  
(name)

residing at \_\_\_\_\_  
(address)

\_\_\_\_\_  
(city) (state, zip code, country)

(individually or collectively the "Author")  
an Viking Penguin, a division of Penguin Group (USA) Inc., whose principal office is located at 375 Hudson  
Street, New York, New York 10014 (the "Publisher").

WHEREAS the Author is or will be the proprietor of the following described literary works (each  
individually a "Book" and collectively the "Work"):

Tentative Title:

\*(the final title)

Book I: THE BLACK CAT\*

\*\* (the final title shall  
be mutually agreed  
upon by the Author  
and the Publisher)

Book II: UNTITLED NOVEL\*\*

Subject Matter Description:

Book I: the Author's next Richard Jury novel in which Jury returns with his trademark analytical  
gifts and charm to solve the murder of a girl who's left behind nothing but an eponymous and  
winsome black cat, as well as the string of escort murders that follow in the wake of her death

Book II: the Author's next stand-alone non-Richard Jury novel

~~(including the proprietor or authorized licensee of the photographs, drawings, captions, maps, charts, tables,  
appendixes, notes, bibliography and index included in the Work and such other matter as set forth herein); and~~

WHEREAS the Author desires to have the Publisher publish, and the Publisher desires to publish, the Work  
on the terms and conditions and in consideration of the covenants set forth herein;

AUTHOR AND PUBLISHER AGREE:

Author's  
Grant

1. The Author hereby grants to the Publisher during the full term of copyright, and any renewals,  
continuations and extensions thereof, in each of the following countries and territories:

\*(a): Schedule A  
countries are reserved  
exclusively for the  
Author.

(a) The exclusive right to print, publish and sell the Work, in whole or in part, in the English language in  
the United States of America, its territories and possessions, the Philippine Republic and Puerto Rico (the  
"Exclusive Territory"), and to sell the same nonexclusively for export to the "Nonexclusive Territory," that is all  
countries other than those designated as exclusive in this subparagraph and in subparagraph 1(b) and in Schedule  
A, which is attached to and is part of this Agreement (the "Schedule A Countries")\*;

(b) The exclusive right to print, publish and sell the Work and to license the Work, in whole or in part,  
for publication, in the English language in Canada (which shall be included in the designation "Exclusive  
Territory");

~~(c) The exclusive right to print, publish and sell the Work and to license the Work, in whole or in part,  
for publication, in the English language in the Schedule A Countries and in the Nonexclusive Territory;~~

~~(d) The exclusive right to print, publish and sell the Work, and to license the Work, in whole or in part,  
for publication throughout the world in all languages other than English;~~

\*(e),(f): subject to Author's prior written approval, such approval not to be unreasonably delayed

#(f),(g): with the exception of permissions, such licenses shall be subject to Author's prior written approval, such approval not to be unreasonably delayed

†(f): (the Author shall have approval of the contents of any abridgement, digest, or condensed version of the Work)

@(g): (such premium sales or licenses shall be subject to Author's prior written approval)

%(j): non-dramatic reproductions of the verbatim text of

**Author's Representations, Warranties and Indemnities**

Whenever in this paragraph 2 provision is made for attorney's fees, it shall mean reasonable attorney's fees, evidenced in writing.

\*Any payments withheld by Publisher pursuant to this paragraph shall be released to Author after a period of one (1) year in the event of any claim, action, or proceeding that is threatened but not pursued, or if a proceeding is instituted but remains dormant for one (1) year, or within thirty (30) days of a legally binding discontinuance of any such claim, action, or proceeding or if such claim, action or proceeding is barred by the statute of limitations.)

(e) The exclusive right in the Exclusive Territory and the Schedule A Countries, and nonexclusively in the Nonexclusive Territory, to license the Work (but the Publisher shall not license the Work for publication prior to the publication of Publisher's respective original hardcover and mass market paperback edition(s) of the Work hereunder), in whole or in part, for publication in the English language in the following editions: (i) mass market paperback\*, (ii) trade paperback\*, (iii) original hardcover and (iv) hardcover reprint\*;

(f) The exclusive right in the Exclusive Territory and the Schedule A Countries, and nonexclusively in the Nonexclusive Territory in the English language, to license the Work, in whole or in part, for publication by book clubs and after first book publication, in magazine condensations+, newspaper syndications, serializations, and as provided in paragraph 10#;

(g) The exclusive right in the Exclusive Territory and the Schedule A Countries, and nonexclusively in the Nonexclusive Territory in the English language, to print, publish and sell the Work and to license the Work, in whole or in part, for publication, in textbook editions, large type editions, anthologies, picture-book editions, photostories, premium@, direct mail, coupon advertising#, non-dramatic audio recordings#, it being understood and agreed that the Author retains unabridged-audio rights for the library market and audiovisual recordings-.

(h) The exclusive right to license or otherwise exploit the Work throughout the world in respect to all forms of commercial ties and adaptations, including (but not limited to) the exclusive right to use and license others to use the Work, or the title of the Work, in whole or in part for (i) trademarks or trade names for other products, (ii) toys or games, and (iii) otherwise reproducing the Work, its cover or associated artwork on any material or in any medium;

(i) The exclusive right to license or otherwise exploit motion picture, dramatic, television, radio, lyric, and all other forms of performance rights to the Work throughout the world; and

(j) The exclusive right in the Exclusive Territory and the Schedule A Countries, and nonexclusively in the Nonexclusive Territory, to display % the Work in any manner designed to be read in the English language and to license (subject to Author's prior written approval) the display of % the Work in any manner designed to be read in the English language, in whole or in part, by any means, method, device or process now known or later developed, and whether the images of the Work are shown sequentially or nonsequentially ("Display Rights"), including microfilm, microfiche, data retrieval and storage systems, computer software systems, and all other forms of copying of the Author's words in any manner designed to be visually read with no sound, video, animation or graphics (but not the right to combine the Work with any other work or to add, modify, alter, adapt, or change the Work). Interactive multimedia rights to the text of the Work with non-textual elements such as sound, music, visuals, graphics, or other multimedia features in an interactive multimedia form are reserved to the Author for the Author's sole use and disposition.

2. The Author hereby represents and warrants to the Publisher, any seller or distributor of the Work, and to the Publisher's successors, licensees and assigns, and any officers, agents and employees of the foregoing: that he is the sole Author of the Work; that the Work is or will be the Author's next book-length work of fiction written under his name or a pseudonym or in collaboration with any other person; that he is the sole and exclusive owner of all rights granted to the Publisher in this Agreement and has not assigned, pledged or otherwise encumbered the same; that the Work is original, has not been published in book form in the English language in the Exclusive Territory, and is not in the public domain; that he has full power to enter into this Agreement and to make the grants herein contained; that the Work does not, in whole or in part, infringe any copyright or violate any right of privacy or other personal or property right whatsoever, or contain any libelous matter or matter otherwise contrary to law; that no recipe, formula or instruction contained in the Work is injurious to the user; and that all statements asserted as facts are based on the Author's careful investigation and research for accuracy.

In the event of the assertion of any claim, action or proceeding inconsistent with any of the foregoing representations and warranties, (a) the Publisher shall have the right to defend the same through counsel of its own choosing, and in addition, the Author may retain her own counsel at her own expense; and (b) the Author shall fully cooperate in the Publisher's defense and shall indemnify and hold harmless the Publisher, any seller or distributor of the Work, and the Publisher's successors, licensees and assigns, and any officers, agents and employees of the foregoing, from and against any and all liability, damage, loss, expense (including attorneys' fees to the extent provided below) and settlement costs, resulting from any such claim, action or proceeding, provided that no settlement covered by this indemnity shall be effected by the Publisher without the prior written consent of the Author, which consent shall not be unreasonably withheld.

Except where the claim, action or proceeding results from the Author's willful breach of any of his foregoing warranties or representations, the Publisher and the Author will share equally the Publisher's attorneys' fees and legal expenses and any settlement made by or final judgment or decree rendered against the Publisher (such fees, expenses, settlement and/or judgment or decree being, collectively, "Legal Costs"), provided that in no event shall the Author be required to contribute to Legal Costs more than either the total advance against royalties paid or payable to the Author under paragraph 5 of this Agreement with respect to the Book(s) for which there is a legal claim, or the Author's share of the deductible under the Publisher's current media insurance policy (if applicable), whichever is less. Where, however, the claim, action or proceeding results from the Author's willful breach of any of his foregoing warranties or representations, the Author will be responsible for the entire amount of such Legal Costs. If at any time the Author desires to settle such claim, action or proceeding, but the Publisher desires to continue the defense thereof, the Author's liability under the foregoing indemnity shall be limited to the bona fide settlement amount accepted by the claimant (evidenced in writing) in respect to such claim, action or proceeding plus one-half (1/2) of the Publisher's attorneys' fees and legal expenses up to the time that the claimant and the Author agreed upon the amount.

If any such claim, action or proceeding is threatened or instituted, the Publisher shall promptly notify the Author and, in the Publisher's sole discretion, may withhold reasonable payments due the Author under this or any other previously executed agreement between the Publisher and the Author, subject to the Author's right to draw on such sums to defray expenses of the Publisher in defending such claim, action or proceeding (to the extent covered by this indemnity) and to satisfy and discharge any judgment or decree rendered. \* In the event that a judgment or decree shall be entered in any court based upon any such claim, action or proceeding and the Author shall desire to appeal, the Author shall indemnify and hold harmless the Publisher, any seller or distributor of the Work, and the Publisher's successors, licensees and assigns, and any officers, agents and employees of the foregoing, from and against any and all liability, damage, loss, and expense (including all attorneys' fees) of such appeal and shall furnish and file all bonds necessary to perfect said appeal and to stay execution of any such judgment or decree. If a final adverse judgment or decree is rendered in such action or proceeding and is not promptly paid, bonded, or stayed by the Author, or if costs and expenses (including attorneys' fees) covered by the foregoing indemnity are not promptly paid by the Author, the Publisher may apply the payments so withheld to the satisfaction and discharge of such judgment or decree and to the payment of such costs and expenses.

Irrespective of the foregoing, the Publisher shall have the right at any time on its own behalf and expense to settle any such claim, action or proceeding without the Author's consent. Similarly, the Author shall have the right at any time on her own behalf and expense to settle such claim, action, or proceeding without the Publisher's consent. Any claim of plagiarism or copyright infringement so settled shall be without admission of liability on the part of the Author or the Publisher.

The representations, warranties and indemnities contained herein are continuing representations, warranties and indemnities and shall survive the termination of this Agreement.

**Delivery of Manuscript and Corrections**

\*(a): The Author has delivered the complete manuscript of Book I satisfactory to Publisher in style, content, length, and form and the

\*\* (b): with respect to Book II

#(d): for Book II

&(d): SEE RIDER TO SUBPARAGRAPH 3(a).

##(d),(e): with respect to such Book

% (f): and upon repayment, all rights, title, and interest in such terminated Book shall revert to the Author for her sole use and disposition

^(f): SEE RIDER TO SUBPARAGRAPH 3(f).

@(h): except that with respect to the Publisher's exercise or licensing of Print Publication Display Rights, Author shall endeavor to obtain written permission from the said copyright proprietor of such copyrighted material for such use but Author's failure to obtain it shall not be deemed a breach of this Agreement by the Author

**Publication**

##(a): (Publisher plans to first publish Book I in Winter 2010 and, provided an acceptable manuscript for Book II is delivered in accordance with the provisions of subparagraph 3(a) above, Book II in Winter 2011.)

\*(a): Author shall have approval of the final copyedited manuscript of each Book of the Work. Author must reply within two (2) weeks of her receipt thereof or approval will be deemed to have been given. Publisher will give Author prior notice of at least one (1) week that the manuscript will be sent.

+(b): within said twelve (12) months

3. (a) \* The Author shall deliver to the Publisher on or before May 30, 2010 one (1) disc and two (2) complete typewritten copies of the manuscript of the Book II in its final form, in the English language, consisting of approximately 75,000-80,000 words, in style, content, length, and form satisfactory to the Publisher.

(b) If the Author fails to deliver the manuscript for Book II within sixty (60) days of by that date, the Publisher shall have the right to terminate this Agreement\*\* upon written notice to the Author, in which event the Author shall promptly repay to the Publisher any and all sums paid to the Author for Book II, whereupon all rights, title, and interest for Book II shall revert to the Author for his sole use and disposition and such termination shall also apply to the option work under Paragraph 26.

(c) If the Publisher should terminate this Agreement as to Book II pursuant to subparagraph 3(b), the Author shall not, for a period of twelve (12) months from the effective date of termination, publish or permit the publication of the Book II or any other work of a substantially similar nature or subject matter by any other publisher without first offering the manuscript for any such Book II or work (in the form delivered to such other publisher) to the Publisher upon the terms set forth in this Agreement. If the Publisher fails to accept Book II, or any other work of a substantially similar nature or subject matter, in writing within thirty (30) days of its receipt thereof, there shall be no further obligation between the parties with respect to such terminated Book.

(d) If the manuscript# or any portion thereof, when delivered, is not satisfactory to the Publisher in style, content, length, and form, the Publisher, in its sole discretion, shall have the option either to notify the Author in writing within thirty (30) days of Publisher's receipt& to what extent the manuscript (or relevant portion) is not satisfactory, in which event the Author shall have ninety (90) thirty-(30) days following the receipt of such notice to submit a manuscript (or relevant portion) that is satisfactory as provided in subparagraph 3(a) above and as provided by such notice, or to terminate this Agreement## upon written notice to the Author.

(e) If the Publisher shall exercise the first option in subparagraph 3(d) above with respect to any Book, and the Author fails or refuses to comply with the notice or if Publisher finds the revised manuscript not satisfactory, the Publisher, in its sole discretion, shall have the option either to terminate this Agreement## upon written notice to the Author or to accept the manuscript, or to have the necessary work done upon the manuscript, if need be employing outside editorial assistance, and to charge the cost thereof to the Author against the Work or past works of the Author.

(f) If the Publisher exercises its option to terminate this Agreement as to Book II as provided in subparagraph 3(d) or 3(e) above, the Author shall use his best efforts to sell such Book or any portion thereof elsewhere and shall repay any and all sums paid to him for such terminated Book under this Agreement out of the first and subsequent payments due him when and if another publisher accepts such Book or any portion thereof for publication %. (Such payments from another publisher, up to the total amount of any and all sums paid to the Author under this Agreement, being "First Proceeds.") The Author hereby (1) assigns and transfers to the Publisher the Author's right to receive First Proceeds and (2) authorizes and directs any other publisher from whom the Author is entitled to receive First Proceeds to pay such sums directly to the Publisher on Publisher's written demand therefor. ^

(g) Simultaneously with the delivery of the manuscript as provided in subparagraph 3(a) above, the Author shall deliver to the Publisher, at the Author's sole cost and expense, all photographs, drawings, captions, maps, charts, tables, appendices, notes, bibliography, and other matters required by this Agreement, and an index within 10 days after the Author's receipt of page proofs. If the Author fails to do so, the Publisher shall have the option, in its sole discretion, either to terminate this Agreement upon written notice to the Author and to recover any and all sums paid hereunder, or to supply such materials itself, if necessary employing outside editorial and artistic assistance, and to charge the cost thereof to the Author against the Work or past works of the Author.

(h) If copyrighted material is included in the Work (other than that of which the Author is the lawful proprietor), the Author, at his sole expense, shall secure from the copyright proprietor and deliver to the Publisher written permission, in form reasonably satisfactory to the Publisher, to reproduce such materials in the Work and in all editions, adaptations and media and in the territory and during the entire term permitted in this Agreement @.

(i) The Author shall promptly read, revise, correct and return to the Publisher all proofs of the Work submitted to him by the Publisher. The Author shall pay for all alterations in the proof made at the Author's request (exclusive of the cost of correcting typesetter errors or making Publisher alterations), to the extent that such alterations exceed ten percent (10%) of the cost of composition per Book. The Author shall pay for all alterations (exclusive of the cost of correcting errors of the typesetter making Publisher alterations) that he requests after page proofs have been made or typesetting of the Work has been corrected in conformity with the Author's corrected galley proof. Such costs, if any, of the Author's alterations, shall be charged to the Author's royalty account for the applicable Book hereunder.

4. (a) Except as provided in subparagraphs 4(b) and 4(e) below, the Publisher will, within twelve (12) months after signing of this Agreement with respect to Book I and within twelve (12) months after acceptance of Book II as provided in paragraph 5 below, first publish or cause publication of such Book in a Viking trade hardcover edition in the United States and Canada # and subsequently in such editions, imprints, style and manner and at such prices as it deems suitable. (SEE RIDER TO SUBPARAGRAPH 4(a).) The Publisher shall be authorized to exercise the usual editorial privileges in the course of preparing the Book for composition and to make the manuscript conform to its standard style of punctuation, spelling, capitalization and usage. \*

(b) If, for any reason beyond the control of the publisher, the Publisher fails to publish or cause publication of a Book within the time period and manner set forth in subparagraph 4(a) above it shall not be deemed to be a violation of this Agreement if such failure to publish is caused by restrictions of governmental agencies, labor disputes, inability to have the book manufactured or to obtain the materials necessary for its manufacture, or by any delay occasioned by the assertion of any claim, action or proceeding covered by any of the representations and warranties contained in paragraph 2, or for any other cause beyond the control of the Publisher. In the event of a delay resulting from any cause referred to in this subparagraph the publication date may, at the Publisher's option, be postponed accordingly, provided, however, that if the delay is occasioned by the assertion of any claim, action or proceeding covered by any of the representations and warranties contained in paragraph 2 hereof and such claim, action or proceeding is not resolved by settlement or final judgment within twelve (12) six-(6) months, the Publisher shall + have the option to terminate this Agreement upon written notice to the Author with respect to the terminated Book in question and the Author shall, within twelve (12) months of receipt of such notice, thereupon repay any advance paid to him with respect to such terminated Book(s) in which event all rights, title, and interest to the terminated Book(s) shall revert to the Author for her sole use and disposition or to publish the terminated Book(s) within an additional six (6) months.

(c) In the case of prepublication serialization, initial book publication may be delayed, at the Publisher's option, for a period not to exceed six (6) months after completion of publication of such serialization.

(d) If the Publisher fails to publish any Book within the agreed time period, the Author may, at his option, by written notice to the Publisher demand that the Publisher publish such Book and in the event the Publisher has not published within six (6) months of such notice the Author may terminate this Agreement as to such unpublished Book(s). In such event the only damages recoverable by the Author shall be limited to the advance paid by the Publisher up to the date of termination of such terminated Book(s). No other damages, actions or proceedings, either legal or equitable, including (but not by way of limitation) specific performance, shall be claimed, instituted or maintained by the Author against the Publisher. SEE RIDER TO SUBPARAGRAPH 4(d).

(e) Subject to the provisions of subparagraph 4(a) hereof, nothing herein shall require the Publisher to publish or license each and every edition permitted to be published or licensed hereunder. Furthermore, the Publisher shall not be required to continue the publication of the Work if in its opinion it violates the right of privacy or any property or personal right of any person, or contains any libelous or other unlawful matter, or presents a substantial risk of liability or injury to third persons or of governmental action against the Work. If in the good faith written opinion of Publisher's legal counsel the Publisher is unable to initially publish the Work for the reasons set forth in this subparagraph, the Publisher shall have the right to terminate this Agreement with respect to that Book by written notice to the Author within thirty (30) days thereafter, and the Author shall thereupon repay any advance paid to him with respect to that Book out of the first payments due her when and if another publisher acquires any of the same exclusive rights in the terminated Book granted to the Publisher under this Agreement. Any balance of the advance not repaid at the end of twelve (12) months shall become immediately due and payable to the Publisher by the Author, whereupon all rights, title, and interest with respect to that Book shall revert to the Author for her sole use and disposition. Upon Author's written request, the Publisher will furnish a copy of such legal opinion in writing to the Author within thirty (30) days of such written request.

(f) Publisher may elect to have the Work reviewed by its counsel prior to publication in which event the Author shall cooperate in the vetting process and shall make such changes in the Work as are requested by Publisher's counsel. Such vetting and changes made as a result of the vetting shall not diminish the Author's representations, warranties and indemnities under paragraph 2 of this Agreement.

**Advance**

5. The Publisher shall pay to the Author as a non-returnable advance under this Agreement (except where provided in this Agreement that the Author is specifically required to repay) against all royalties and other sums accruing to the Author under this Agreement, the sum of

Seven Hundred Thousand Dollars.....(\$700,000.00)  
 (allocated Six Hundred Thousand Dollars(\$600,000.00) for Book I and One Hundred Thousand Dollars(\$100,000.00) for Book II) to be paid as follows:

Book I:

\$300,000.00 on signing of this Agreement;  
 \$150,000.00 on Publisher's initial hardcover publication of Book I, but no later than twelve (12) months after signing of this Agreement; and  
 \$150,000.00 on Publisher's initial paperback publication of Book I, but no later than twenty-four (24) months after signing of this Agreement.

Book II:

\$25,000.00 on signing of this Agreement;  
 \$25,000.00 on delivery and Publisher's acceptance of the complete and finished manuscript of Book II;  
 \$25,000.00 on Publisher's initial hardcover publication of Book II, but no later than twelve (12) months after delivery and Publisher's acceptance of the complete and finished manuscript of Book II; and  
 \$25,000.00 on Publisher's initial paperback publication of Book II, but no later than twenty-four (24) months after delivery and Publisher's acceptance of the complete and finished manuscript of Book II.

SEE PARAGRAPH 42.

**Royalties for  
Trade  
Hardcover  
Edition**

6. The Publisher shall pay to the Author, or credit to the Author's account, the following royalties on copies sold of any trade hardcover edition of the Work published by the Publisher, less credited returns and less a reasonable reserve for estimated returns \*:

(a) Except as otherwise provided in this paragraph 6 or subparagraph 11(a) below, the following percentages of the Publisher's suggested retail price as defined in subparagraph 35(a) below ("Suggested Retail Price"), of each copy sold in the United States through normal channels #:

- With respect to each Book separately
- Ten percent (10%) on the first 5,000 copies of each Book sold; and
- Twelve and one-half percent (12½%) on the next 5,000 copies of each Book sold; and
- Fifteen percent (15%) on all copies of each Book sold thereafter.

Copies covered by any other subparagraph of this paragraph 6, other than subparagraphs 6(b) and 6(h), and 6(i), shall not be included in the computation of total copies sold for purposes of this subparagraph 6(a);

(b) Where the discount to jobbers or to wholesale distributors or booksellers (except as provided for in subparagraph 6(d) below) on copies of any edition published by the Publisher is more than fifty two percent (52%), the Publisher shall pay to the Author the prevailing royalty rate under subparagraph 6(a) above less one-half (½) the difference between a forty-four percent (44%) discount and the discount granted (it being understood that in no event shall the amount paid to the Author be less than one-half (½) the prevailing royalty rate under subparagraph 6(a) above), but the regular rate of royalty, regardless of discount, shall be paid on books delivered to booksellers and bookdealers in payment for trade advertising;

(c) A royalty of ten percent (10%) of the amount received as defined in subparagraph 35(b) below ("Amount Received"), by the Publisher on sales of overstock and damaged copies that the Publisher deems expedient to sell at a discount of sixty percent (60%) or more; provided that the royalty shall in no event exceed one half (½) of the excess of the Amount Received by the Publisher over the Publisher's manufacturing cost as defined in subparagraph 35(c) below ("Manufacturing Cost"). No sale of overstock shall take place within the first year after publication of the relevant Book in book form, except upon the written consent of the Author or the Author's agent pursuant to paragraph 27 below, which consent shall not be unreasonably withheld;

(d) For sales outside normal wholesale and retail trade channels, a royalty of ten percent (10%) of the Amount Received by the Publisher on sales at a discount between fifty percent (50%) and sixty percent (60%) of the Publisher's Suggested Retail Price and five percent (5%) of the Amount Received on sales at a discount of sixty percent (60%) or more; provided that the royalty shall in no event exceed one-half (½) of the excess of the Amount Received by the Publisher over the Publisher's Manufacturing Cost;

(e) A royalty of ten percent (10%) of the Amount Received by the Publisher for copies, bound or in sheets, sold for export (except as provided in subparagraph 6(f) below); provided that the royalty shall in no event exceed one-half (½) of the excess of the Amount Received by the Publisher over the Publisher's Manufacturing Cost;

(f) A royalty of two-thirds (⅔) of the prevailing rate under subparagraph 6(a) above based upon Publisher's Suggested Retail Price twelve and one-half percent (12½%) of the Amount Received by the Publisher on all sales in Canada of copies of any hardcover edition published by the Publisher;

\*such reserves to be withheld for no longer than two (2) full royalty periods after publication of any edition or reissue of the Work and in each instance be distributed to the Author at the time of the next accounting)

#(a): (as used in this Agreement sales through normal channels shall include, but not be limited to, sales of printed physical books by means of the Internet or any other use of electronic commerce)

\*(g): (premium sales are subject to the Author's prior written approval)

(g) A royalty of five percent (5%) of the actual selling price on copies sold by the Publisher directly to commercial purchasers as a premium\* or to the consumer through the medium of mail-order coupon advertising, direct by-mail circularization or solicitation by radio or television;

(h) A royalty of ten percent (10%) of the Publisher's Suggested Retail Price or a royalty equal to the initial royalty rate under subparagraph 6(a) above, whichever is lower, on all copies sold from a reprinting of two thousand five hundred (2,500) copies or less made within the first two years after publication (only one [1] such reprinting may be made at such reduced royalty);

(i) A royalty of one-half (1/2) of the prevailing royalty rate under subparagraph 6(a) above on all copies sold from a reprinting of two thousand five hundred (2,500) copies or less made no earlier than two (2) years after first publication, provided that sales under subparagraphs 6(a) and 6(b) above in the six (6) month period immediately preceding such reprinting do not exceed five hundred (500) copies (only one [1] such reprinting a year may be made at such reduced royalty);

(j) A royalty of five percent (5%) of the Publisher's Suggested Retail Price of each copy sold within the United States of any hardcover reprint edition issued by the Publisher at a Suggested Retail Price of not more than two-thirds (2/3) of the original Suggested Retail Price; and

**Royalties for Mass Market Paperback Edition**

7. The Publisher shall pay to the Author, or credit to the Author's account, the following royalties on copies sold of any mass market paperback edition of the Work published by the Publisher, less credited returns and less a reasonable reserve for estimated returns (such reserves to be withheld for no longer than three [3] full royalty periods after publication of any edition or reissue of the Work and in each instance be distributed to the Author at the time of the next accounting):

(a) Except as otherwise provided in this paragraph 7 or subparagraph 11(a) below, the following percentages of the Publisher's Suggested Retail Price of each copy sold in the United States through normal channels:

With respect to each Book separately  
Ten percent (10%) on the first 250,000 copies of each Book sold;

Twelve and one-half percent (12 1/2%) on the next 250,000 copies of each Book sold; and

Fifteen percent (15%) on all copies of each Book sold thereafter.

Copies covered by any other subparagraph of this paragraph 7 shall not be included in the computation of total copies sold for purposes of this subparagraph 7(a);

(b) A royalty of five percent (5%) of the Publisher's Suggested Retail Price on all copies sold for export, or outside the United States @; and

(c) A royalty of five percent (5%) of the Amount Received by the Publisher on sales of overstock and damaged copies, and on all copies sold to a governmental agency, to a book club, through the medium of mail order, to commercial purchasers as a premium (premium sales are subject to the Author's prior written approval), in bulk outside normal (wholesale and retail) channels, and for each copy sold at a discount of sixty percent (60%) more than fifty-five percent (55%) from the Publisher's Suggested Retail Price of the mass market paperback edition of the Work; provided that the royalty shall in no event exceed one-half (1/2) of the excess of the Amount Received by the Publisher over the Publisher's Manufacturing Cost.

@(b): except on sales in Canada a royalty of two-thirds (2/3) the prevailing rate under subparagraph 7(a) above based upon the Publisher's Suggested Retail Price on all sales in Canada of copies of any mass market edition published by the Publisher

**Royalties for Trade Paperback Edition**

8. The Publisher shall pay to the Author, or credit to the Author's account, the following royalties on copies sold of any trade paperback edition of the Work published by the Publisher, less credited returns and less a reasonable reserve for estimated returns (such reserves to be withheld for no longer than three [3] full royalty periods after publication of any edition or reissue of the Work and in each instance be distributed to the Author at the time of the next accounting):

(a) Except as otherwise provided in this paragraph 8 or subparagraph 11(a) below, the following percentages of the Publisher's Suggested Retail Price of each copy sold in the United States through normal channels:

Seven and one-half percent (7 1/2%) on all copies of each Book sold.

Copies covered by any other subparagraph of this paragraph 8 shall not be included in the computation of total copies sold for purposes of this subparagraph 8(a);

(b) A royalty of two-thirds (2/3) of the prevailing royalty rate under subparagraph 8(a) above, based upon the Amount Received by the Publisher, on all copies sold for export, or outside the United States @; and

(c) A royalty of five percent (5%) of the Amount Received by the Publisher on sales of overstock and damaged copies, and on all copies sold to a governmental agency, through the medium of mail order, to commercial purchasers as a premium (premium sales are subject to the Author's prior written approval), in bulk to book clubs and outside normal (wholesale and retail) channels, and for each copy sold at a discount of more than fifty-two percent (52%) from the Publisher's Suggested Retail Price of the trade paperback edition of the Work; provided that the royalty shall in no event exceed one-half (1/2) of the excess of the Amount Received by the Publisher over the Publisher's Manufacturing Cost.

@(b): except on sales in Canada a royalty of two-thirds (2/3) the prevailing rate under subparagraph 7(a) above based upon the Publisher's Suggested Retail Price on all sales in Canada of copies of any trade paperback edition published by the Publisher

**Royalties for Other Editions**

9. (a) The Publisher shall pay to the Author, or credit to the Author's account, the following royalties on copies sold by the Publisher of any audio cassette (or other sound recording) of the Work, it being understood and agreed that the Author retains unabridged-audio rights for the library market. less credited returns and less a reasonable reserve for estimated returns\*, and except as otherwise provided in subparagraph 11(a) below:

(i) a royalty of ten percent (10%) of the Amount Received by the Publisher, except as otherwise provided in subparagraph 9(a)(ii) below; and

(ii) for downloadable audio recordings, the royalty shall be twice the royalty rate listed in subparagraph 9(a)(i) above, based on the Amount Received by the Publisher.

Copies covered by each of the above subparagraphs shall only be included in the computation of total copies sold for purposes of the respective subparagraph. See Rider to Subparagraph 9 (a).

(b) (i) The Publisher shall pay to the Author or credit to the Author's account, the following royalties on copies sold by the Publisher of any versions of the Work resulting from Publisher's exercise of Display Rights as defined in subparagraph 1(j) above, less any credited returns and a reasonable reserve for estimated returns and except as provided in subparagraph 11(a) below: a royalty of fifteen percent (15%) of the Publisher's Suggested Retail Price on all copies of each Book sold. See Rider to Subparagraph 9 (b) (i).

(ii) Notwithstanding anything to the contrary in subparagraph 9(b)(i) above and subparagraph 11(a) below, for digital sales of the Work, in whole or in part, by a third party or other digital access to the Work, in whole or in part, provided by a third party, where the Publisher does not establish a Suggested Retail Price, but instead receives income based on a share of advertising revenue or subscriptions or receives revenue from micro-transactions, the Publisher shall pay to the Author, or credit to the Author's account: a royalty of twice the royalty rate set forth in subparagraph 9(b)(i) above based upon the Amount Received by the Publisher with respect to each Book.

Where, however, the third party applies or charges a retail price suggested or established by the Publisher, the royalty shall be that set forth in subparagraph 9(b)(i) above.

\*(a): (such reserves to be withheld for no longer than three [3] full royalty periods after publication of any edition or reissue of the Work and in each instance be distributed to the Author at the time of the next accounting)

**Royalties from Licensing** 10. (a) The Publisher shall pay to the Author, or credit to the Author's account, the specified percentage of the actual proceeds received by the Publisher from the licensing of the following rights: (see also paragraph 1 for approvals, see rider to subparagraph 10(a), see paragraph 38)

	<i>Right</i>	<i>Percentage to be Paid to Author</i>
*subject to Author's prior written approval, such approval not to be unreasonably delayed	*Mass Market Paperback	50%
	*Trade Paperback	50%
	*Hardcover Reprint	50%
The Publisher shall not license the Work for publication prior to the publication of the Publisher's respective original hardcover edition and original mass market paperback edition of the Work hereunder.	Book Club	50%
	Syndication	50%
	Second Periodical Rights (after first book publication): serialization, digest, abridgment, condensation, excerpt	50%
#premium licenses are subject to the Author's prior written approval	Anthology and Other Selection Reprint, in whole or in part: In complete, condensed, adapted or abridged versions	50%
	Textbook Edition, Large Type Edition, Picture Book Edition, Photonovel	50%
	Premium#, Direct mail, Coupon Advertising	50%
	Hardcover Original _____	
	Publication in the English language in the Schedule A Countries _____	
	Publication in the English language in Canada	66 2/3%
	Publication in other Languages _____	
	First Periodical Rights (prior to first book publication) _____	
	Motion Picture, Television, Radio and Dramatic Rights _____	
	Lyric Rights _____	
	Commercial Adaptations and Tie-Ins _____	
	Audiovisual Rights _____	
	*Non-Dramatic Audio Recordings (It being understood and agreed that the Author retains unabridged audio rights for the library market)	50%
	Display Rights (subject to Author's prior written approval)	50%

(b) In the event the Author retains Canadian book club rights, the Publisher shall have the nonexclusive right to permit book club editions of the Work licensed by the Publisher to be sold in Canada and the Publisher shall remit to the Author all royalties received on such Canadian sales.

**No Royalties**

11. No royalty, fee or other charge shall be payable to the Author for the following, applicable to all editions of the Work published or caused to be published pursuant to this Agreement:

- (a) Sales made at or below Manufacturing Cost, copies destroyed, copies furnished gratis to the Author, editorial review copies, or copies otherwise used to promote the sale of the Work;
- (b) Licensing publication of the Work without fee, in Braille (or similar tactile symbols), or by audio recordings or visual recordings, solely for the blind and other physically handicapped persons; and
- (c) Publishing or permitting others to publish or broadcast or transmit by radio, television or on-line selections from the Work for publicity and promotion purposes only, in a manner which in the opinion of the Publisher would benefit its sale, provided such rights do not conflict with the rights acquired by the purchaser (if any) of the motion picture rights. SEE RIDER TO SUBPARAGRAPH 11(c).

**Statements and Payments**

~~\*(except in the event of termination as set forth herein, unearned advances shall not be deemed sums owing to the Publisher under this provision) +If after termination for non-delivery under subparagraph 3(b) hereof the Author fails to repay to the Publisher any and all sums paid to the Author under this Agreement, such payments shall be chargeable against and recoverable by the Publisher from any and all moneys accruing to the Author under this or any other agreement with the Publisher.~~

\*Semi-annual accounting periods will commence in the month of initial publication of Book I by the Publisher and end on the last day of the month every six (6) months thereafter.

12. The Publisher shall render semiannual statements of account in accordance with its regular accounting practices, ~~except that the first statement shall not be rendered until at least six (6) months after publication date.~~ Such statements shall be submitted to the Author, together with payment for all amounts due for each period\*, during the fourth month following the close of each period, so long as any payments are due. All payments made by the Publisher to or for the account of the Author pursuant to this agreement shall be chargeable against and recoverable by the Publisher from any and all moneys accruing to the Author under this or any other previous agreement with the Publisher, and all sums owing by the Author to the Publisher under this or any other previous agreement may be deducted from payments accruing to the Author under this or any other previous agreement with the Publisher. + State, federal, and foreign taxes on the Author's earnings, when required by law to be withheld and paid by the Publisher, shall be proper charges against the Author's earnings hereunder. When the balance to the credit of the Author at the end of any statement period shall be less than twenty-five dollars (\$25.00), no statement shall be rendered, and the amount due shall be carried forward. The Author or his duly authorized representatives shall have the right upon written request to examine the Publisher's records that relate to the Work; such examination shall be at the cost of the Author unless errors of accounting amounting to five percent (5%) or more of the total sum paid to the Author during the period covered by such request shall be found to his disadvantage, in which case the cost shall be borne by the Publisher. SEE PARAGRAPHS 37 AND 38.

**Copyright**

13. (a) The Publisher shall print in each edition of the Work published by it a proper United States copyright notice in the name of the Author, sufficient to secure full United States copyright and Universal Copyright Convention protection in the Work to the Author ~~such person~~. The Author hereby appoints the Publisher as her authorized representative for copyright registration ~~as his attorney-in-fact~~, and in such capacity the Publisher shall duly register a claim for United States copyright in the Work in the Author's ~~such person's~~ name, and for any renewals, extensions or continuations thereof if necessary, and shall deposit the required number of copies of the Work with the Library of Congress. The Publisher shall ~~use its best efforts to see that every license granted by it to publish, reproduce or otherwise use the Work, in whole or in part, shall contain a specific requirement that the licensee will print a proper copyright notice in each edition of the Work published by such licensee.~~ The Publisher's failure to carry out the obligations in this subparagraph shall not be deemed to be a breach of this Agreement unless the Publisher shall not use its best efforts to cure such failure after notice from the Author.

(b) The Author, his heirs, executors, administrators, successors and assigns shall render such cooperation and assistance as the Publisher may reasonably request to protect the rights granted hereunder, including (but not by way of limitation) delivering to the Publisher appropriate transfers of copyright and other documents, in legally recordable form, in respect to all or any portion of the Work or any edition thereof. In addition, the Author shall promptly notify the Publisher of any arrangement he makes for the publication of the Work prior to publication by the Publisher, in whole or in part, by any person other than the Publisher, as to any rights reserved to the Author hereunder.

(c) If the Work contains a substantial portion of material taken from documents prepared and published by the United States Government and therefore not subject to copyright, the Author shall notify the Publisher in writing of the existence and location of all such material in the Work.

**Copyright Infringement**

#and first recoup her or its own cash out-of-pocket expenses and thereafter any recovery shall be shared equally.

14. In the event that the copyright of the Work shall be infringed as pertains to the exclusive publication rights granted herein, and if no mutually satisfactory arrangement shall be arrived at for joint action in regard thereto, either the Author or the Publisher, jointly or separately, shall have the right to bring an action to enjoin such infringement and to recover damages. If they shall proceed jointly, the expenses and recoveries, if any, shall be shared equally; if they cannot agree to proceed jointly, any party going forward with such action shall bear # ~~his or its own expenses, and any recoveries had therein shall belong to such party.~~ If the party bringing action does not hold the record title of the copyright, the other party will transfer and permit the recordation of such copyright ownership as will permit the former to bring the action in his or its own name. Such record title will be transferred back to the original holder at the conclusion of such action.

**Author's Property**

15. The Publisher shall not be responsible for any inadvertent loss or damage to any property of the Author. ~~In the absence of a written request from the Author made prior to publication, the~~ The Publisher, after publication of the Work, ~~may dispose of~~ shall use its best efforts to return the original manuscript and proofs.

**Author's Copies**

16. The Author shall be entitled to receive on publication fifty (50) ~~ten (10)~~ free copies of each physical edition of each Book published by the Publisher, and shall have the right to purchase further copies for personal use and not for sale at a discount of forty percent (40%) from the Publisher's Suggested Retail Price. Cowan, DeBaets, Abrahams & Sheppard LLP shall be entitled to receive twenty (20) free copies of each physical edition of each Book.

**Contracts With Others**

17. The Publisher shall notify the Author of the terms of any contracts or agreements entered into by the Publisher for any grant or license permitted under this Agreement where the Author's share of the proceeds or royalty is or is likely to amount to two hundred fifty dollars (\$250.00) ~~five hundred dollars (\$500.00)~~ or more and, upon the Author's request, shall furnish the Author with a copy of each such contract or agreement. Publisher shall use best efforts to see that the Author receives five (5) copies of any such licensed edition, if available.

**Use of Author's Name and Likeness**

18. The Publisher, in its sole discretion, may use and authorize the use of the Author's name, pre-approved likeness, pre-approved photograph and pre-approved biographical data in connection with advertising, publicizing, licensing and promoting the Work, ~~and any commercial adaptation thereof.~~ The Author shall not be depicted as endorsing any commercial product, service, or commodity other than the Work without the Author's prior written consent.

**Motion Picture and Television Tie-Ins**

19. ~~In the event that motion picture or telecast rights in the Work are reserved to the Author and the Author is successful in selling or licensing such rights to a third party, the Author hereby consents and agrees that any such sale or license shall contain a provision in favor of the Publisher, its licensees, successors and assigns, at no additional cost, permitting use of the title used in or suggested by the motion picture or telecast together with or as an alternative to the original title of the Work.~~

No Competing Work

20. The Author agrees that during the term of this Agreement he will not in the Exclusive Territory herein, without the written permission of the Publisher, such permission not to be unreasonably withheld, publish or authorize to be published in the English language any work based upon substantially similar to the Work or which is reasonably likely to injure its sale or the merchandising of the other exclusive rights granted herein. Notwithstanding the foregoing, the Author's reserved first serial rights and any prequel(s) or sequel(s) [which may or may not include characters appearing in a Book of the Work] shall be deemed excluded from the provisions of this paragraph 20.

Out of Print Provisions

\*solely with respect to such out of print Book(s)

21. If one or more Books shall be out of print and if, after written notification from the Author to this effect, the Publisher shall fail to place such Book(s) in print, or license publication of a reprint edition by another publisher as permitted herein, within a period of six (6) months after the date of such notice (subject, however, to the provisions of subparagraph 4(b) hereof in respect to delay from causes beyond the control of the Publisher), this Agreement shall thereupon terminate \* with such effect as provided in paragraph 24 below. A Book shall not be deemed to be out of print so long as it is under option or contract for publication or on sale to the general public through regular wholesale and retail trade outlets in any full-length English language print edition in the United States, whether under the imprint of the Publisher or a licensee. The existence of an individual print on demand edition or an electronic edition shall not constitute a Book being in print unless there are total sales of six hundred (600) three hundred (300) copies per year from the sales of print on demand editions or electronic editions. The existence of a large print or book club edition shall not deem a Book in print. In the event that a Book is available in an electronic display edition but not in a full-length English language print edition, the Author may request a reversion of the print rights for such Book.

Termination by Publisher

22. If the Publisher shall determine that there is not sufficient sale of any Book to enable the Publisher to continue the Book's publication and sale, the Publisher may give written notice of the termination of this Agreement as to such Book to the Author, with such effect as provided in paragraph 24 below.

Bankruptcy and Liquidation

23. If the Publisher is adjudicated a bankrupt or makes a general assignment for the benefit of creditors or liquidates its business, this Agreement, to the extent permitted by law, shall automatically terminate upon notice from the Author to the Publisher, with such effect as provided in paragraph 24 below.

Rights on Termination

24. (a) Upon the termination of this Agreement as to any Book for any cause following publication of such Book by the Publisher, all rights (except as provided in subparagraph 24(b) below) granted to the Publisher as to such Book(s) shall automatically revert to the Author for her sole use and disposition, subject to the Publisher's and the Author's continued participation, to the extent provided, in any licenses granted by the Publisher and Publisher's obligation to account for royalties due hereunder. Upon the Author's request, Publisher will furnish Author with copies of all outstanding sublicenses. The Publisher may dispose of any or all of the copies of the terminated Book(s) remaining on hand as it deems best, for a period of one (1) year after such termination, subject to the payment of royalties as provided. However, for a period of one (1) year thirty (30) days after termination the Author shall have the right to purchase remaining stock at the estimated remainder price plus freight.

(b) If, pursuant to the United States Copyright Act, Author (or, if deceased, the successors of Author) has the right to terminate the rights granted hereunder, and elects to exercise such right as provided pursuant to such Act, after such termination, Author shall not exercise or dispose of such rights except in accordance with the following procedure: commencing with the date of such termination, Author and Publisher shall negotiate in good faith for a period of not less than sixty (60) days with respect to mutually agreeable terms and conditions. If the parties are unable in good faith to arrive at a mutually satisfactory agreement, Author shall be free to offer the terminated rights elsewhere, provided, however, that prior to entering into any agreement with any such third party, Author shall first give Publisher the opportunity to agree, within ten (10) business days, to match the terms offered by such third party which Author is willing to accept.

Revision

25. If the Publisher, in its sole discretion, determines that a revision of the Work is desirable, the Author shall have the thirty (30) days after receipt of a request from the Publisher to notify the Publisher that he will make the revision himself within one (1) year. If the Author fails to deliver such notice, or having delivered such notice he shall fail to deliver a revision satisfactory to the Publisher in style, content, length, and form within that period, the Publisher shall have the right, at its option, to make the revision, charging any outside editorial fee or other fee or royalty to the Author against the Work or past works of the Author. It is further agreed that for the purposes of royalty computation, the revised edition shall be considered a new work, and the same scale of royalties shall apply to it as applied to the original edition hereunder.

Option on Next Work

26. Provided the Publisher accepts the complete manuscript for each Book of the Work, as satisfactory to the Publisher in style, content, length and form, the Author hereby grants to the Publisher the exclusive right and option to publish in the English language exclusively in the exclusive territory and non-exclusively in the non-exclusive territory his next book-length work of fiction subject to the terms and conditions hereinafter set forth. The Author shall submit a proposal the completed manuscript for such work to the Publisher before offering or submitting same to any other party. The Publisher shall have a period of thirty (30) days after submission of such proposal within which to notify the Author whether it desires to publish such work and to negotiate in good faith with respect to the terms of an agreement to publish such work. During this entire period the Author shall not submit or offer such work to any other party or negotiate with any other party with respect to such work. If the Author and Publisher are unable to reach an agreement, the Author may offer such work to other parties. In the event the complete manuscript for Book II is not accepted, then the right and option referred to herein shall be deemed terminated.

Copies / Payments

27. Unless otherwise directed by Author, copies of all statements and notices to Author shall be sent to Cowan, DeBaets, Abrahams & Schppard LLP, 41 Madison Avenue, 34<sup>th</sup> Floor, New York, NY 10010. Attn.: Kenneth N. Swezey, Esq.

All payments due the Author hereunder shall be made payable to the Author and sent to the address in the preface of this Agreement.

- Notices** 28. Any notices required or permitted to be given shall be in writing and shall be delivered personally or sent by registered or certified mail, postage prepaid, return receipt requested, or by prepaid Federal Express or a similar carrier, to the Publisher or the Author (or his agent) at the respective addresses given above, or at such other addresses as the parties may from time to time designate by written notice given in the manner provided herein.
- Reservation of Rights to Author** 29. (a) All rights in the Work not granted to the Publisher are reserved to the Author and may be exercised or disposed of by him at any time during the term of this Agreement, subject to the provisions of paragraph 20 hereof.  
(b) In the event the Author retains such rights, he agrees not to license or otherwise permit the publication of any other English-language hardcover or paperback edition of any Book in the Nonexclusive Territory earlier than the respective dates of the Publisher's publication of its hardcover edition and paperback editions (either the Publisher's own or sublicensed editions) of such Book in the Nonexclusive Territory, except that if no United States paperback edition is published within twelve (12) to eighteen (18) months from the date of first hardcover publication of the Book in question the Author may permit release of an English-language paperback edition of such Book in the Nonexclusive Territory. SEE PARAGRAPH 44.
- Assignment of Publication Under Affiliated Imprint** 30. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, executors, administrators, successors and assigns. Notwithstanding anything to the contrary contained in this Agreement, the Publisher may assign this Agreement, in whole or in part, to any parent, subsidiary or affiliated company, or to an assignee expressly assuming all of the obligations of the Publisher who or which acquires all or a substantial portion of the business of the Publisher. Any other assignment, whether voluntary or by operation of law, shall be null and void unless the assigning party has obtained the prior written approval of the other party. Notwithstanding the foregoing, the Author shall have the right to assign monies due hereunder to the Author to a third party, provided, however, that the assignee and the Author shall be jointly and severally liable for any repayment obligations to the Author under this Agreement.
- Entire Agreement; Waiver or Modification** 31. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, understandings and proposals (whether written or oral) in respect to the matters specified. No waiver or modification of any of these provisions shall be valid unless in writing and signed by or on behalf of the party granting such waiver or modification. No waiver by either party of any breach or default hereunder shall be deemed a waiver of any repetition of such breach or default or in any way affect any of the other terms or conditions hereof.
- Severability** 32. If any provision of this Agreement is judicially declared to be invalid, unenforceable or void by a court of competent jurisdiction, such decision shall not have the effect of invalidating or voiding the remainder of this Agreement, and the part or parts of this Agreement so held to be invalid, unenforceable or void shall be deemed to have been deleted from this Agreement, and the remainder of this Agreement shall have the same force and effect as if such part or parts had never been included.
- Interpretation, Venue and Service of Process** 33. This Agreement shall be interpreted and construed in accordance with the laws of the State of New York, applicable to contracts made and to be entirely performed therein. The state courts of the State of New York in and for New York County and, if the jurisdictional prerequisites exist, the United States District Court for the Southern District of New York, and no other court or tribunal, shall have sole and exclusive jurisdiction to hear and determine any suit, action, proceeding, claim, controversy or dispute arising under or concerning this Agreement. The parties hereby consent to the jurisdiction of the said courts and to service of process upon them either personally or by certified or registered mail, postage prepaid, return receipt requested. Service of process made by certified or registered mail as herein provided shall be deemed complete five (5) to three (3) days after the mailing thereof.
- Definition of "Author"; Joint Authors** 34. The word "Author" shall include male, female, or a firm or corporation, and the plural. In the case of more than one author their rights and duties shall be joint and several, and each author is hereby designated as agent for the other for purposes of service of process in any action or proceeding brought by the Publisher against either or both authors arising out of or in any way relating to this Agreement or its breach. In the event this Agreement is with more than one author and a dispute arises between the authors that threatens to involve the Publisher in litigation, the Publisher shall have the right to cancel this Agreement if such dispute is not settled or finally determined by court order within ninety (90) days, and, in that event, any advances paid to or for the account of the authors shall be repaid to the Publisher.
- Definition of Terms** 35. As used in this Agreement:  
(a) "Suggested Retail Price" will mean the price on the jacket or cover of the applicable edition of a Book or, in the absence of a cover price, the retail list price for the edition suggested by the Publisher in its catalogs, order forms, or promotional material;  
(b) "Amount Received" will mean amounts actually received by the Publisher, after allowances and return credits, and excluding postage and shipping costs or other similar charges, and sales, excise, or similar taxes, if any; and  
(c) "Manufacturing Cost" will mean the per-unit cost of plant, paper, printing and binding of the applicable edition, but any copy sold at a discount of eighty-five percent (85%) or more from the Suggested Retail Price shall be deemed sold below Manufacturing Cost.
- Effect of Headings** 36. Descriptive words and statements used in the margins of this Agreement to summarize the contents of the paragraphs hereof are not to be deemed a part of this Agreement or an interpretation or representation as to the contents of such paragraphs.

## Additional Provisions

37. The Publisher will provide the Author with the following information on receipt of the Author's written request, but not more than twice a year and after issuance of royalty statements: (1) the number of copies of each Book of the Work printed, bound, shipped, sold or given away, as well as the approximate number of salable copies at hand; (2) the number of copies being held as a reasonable reserve against returns for each Book of the Work; (3) the number of copies actually returned; and (4) an itemized listing of subsidiary rights receipts for each Book of the Work.

38. The Publisher shall, upon the Author's request, pay the Author's share of any income received from the license of subsidiary rights in the Work pursuant to the provisions of paragraph 10(a), less any outstanding debits and a reasonable reserve for estimated returns under paragraphs 6, 7, 8, and/or 9 in an amount which the Publisher feels is appropriate, within forty-five (45) days of the Publisher's receipt of such monies. Publisher will make best efforts to pay Author any such sums within thirty (30) days of Publisher's receipt.

39. The Publisher shall only publish or license others to publish each Book separately but not collectively.

40. Advertisements may not be printed in the trade hardcover edition of the Work without the prior written approval of the Author, and advertisements may not be printed in any other edition of the Work whether issued by the Publisher or its licensees, other than a listing of books published by the Publisher, or by its licensees of their own publications, without the Author's prior written permission.

41. The Author shall have approval over the jacket/cover design and jacket/cover copy of the Work, such approval not to be unreasonably withheld or delayed. (NOT TO BE DEEMED A PRECEDENT.) The Publisher will consult Author in a meaningful way on advertising copy, design, catalog copy and interior design of the Work; it being understood and agreed that this is consultation, not approval, and in the event of a disagreement Publisher will prevail.

42. Notwithstanding anything to the contrary in this Agreement, the two (2) Books covered herein shall be jointly accounted.

43. If the Publisher shall, during the existence of this Agreement, default in the delivery of semi-annual statements or in the making of payments as herein provided with respect to any Book (unless such failure is due to a good-faith dispute between the Author and the Publisher as to the amount due), and shall neglect or refuse to deliver such statements or make such payments within thirty (30) days after delivery of Author's written notice to the Publisher with a copy to Publisher's General or Corporate Counsel, the Author may elect to terminate this Agreement with respect to such Book at the expiration of such thirty (30) day period without prejudice to the Author's claim for any monies which may have accrued under this Agreement or to any other rights and remedies to which the Author may be entitled.

44. The Publisher agrees not to place its mass market paperback edition of any Book of the Work on sale in the Nonexclusive Territory earlier than the earliest mass market paperback publication allowed herein without the prior written approval of the Author, which approval shall not be unreasonably withheld if any other English language paperback edition of the applicable Book of the Work is published or sold, or the Publisher and the Author mutually determine that one is about to be published or sold in any part of the Nonexclusive Territory. If, despite this restriction, copies are nevertheless sold without authorization, such copies shall be subject to the full royalty payable under subparagraph 7(a) hereof instead of the reduced royalty payable under subparagraph 7(b) hereof. Copies sold with authorization in the Nonexclusive Territory (i.e., after the earliest permissible mass market publication or with the prior written approval of the Author) will be subject to the royalty payable under subparagraph 7(b) hereof.

45. Author represents and warrants that this Agreement for the Work was procured and consummated on Author's part without any agent, and Author has no payment or other obligations of any kind to Author's former agent Peter Lampack Agency, Inc. ("PLA") in connection with this Agreement or publication by Publisher of the Work hereunder.

Author shall defend (through counsel of her own choosing and the Publisher shall fully cooperate in the Author's defense), indemnify and hold harmless Publisher and its subsidiaries, affiliates, successors, assigns, officers, employees and agents from and against all liability, damage, loss, expense (including reasonable attorney's fees), and settlement costs resulting from any claim, demand, suit or recovery arising out of or in connection with a breach or alleged breach of the foregoing representations and warranties and/or any claim by PLA or Peter Lampack or his or its heirs, representatives, successors or assigns (each a "PLA party," and collectively "PLA parties") arising out of or in connection with or in any way concerning this Agreement and/or the Work.

In the event that an action is instituted by a PLA party, Publisher shall have the right to withhold up to fifteen percent (15%) of the proceeds payable hereunder in connection with the foregoing indemnity from all moneys accruing to Author under this Agreement between Author and Publisher.

Any payments withheld by Publisher pursuant to this Agreement shall be released to the Author after a period of one (1) year in the event that no action, proceeding or claim is pursued or instituted by a PLA party, or if a proceeding is instituted but remains dormant for one (1) year, or within thirty (30) days of a legally binding discontinuance of any such claim, action or proceeding.

**RIDER TO SUBPARAGRAPH 3(d):**

If the Publisher fails to notify the Author within thirty (30) days of receipt of the manuscript, then upon Author's written notice to Publisher, with a copy to Publisher's Corporate or General Counsel, of Publisher's failure to so advise the Author, the Publisher shall have another fifteen (15) days to notify the Author of the acceptance or non-acceptance by written notice. If the Publisher then still fails to notify the Author, the manuscript shall be deemed to have been accepted by the Publisher as satisfactory in style, content, length and form.

**RIDER TO SUBPARAGRAPH 3(f):**

Before demanding payment directly from such other publisher pursuant to the foregoing assignment of First Proceeds, the Publisher shall give the Author thirty (30) days prior written notice of the Publisher's intention to demand payment from the other publisher. In the event another publisher fails or refuses to pay First Proceeds to Publisher hereunder, such failure or refusal shall not be deemed a breach of the Author's material obligations to the Publisher, provided, however, that in the event of another publisher's failure or refusal to pay First Proceeds, Author shall remain obligated to make direct repayment to Publisher if Publisher so requests.

**RIDER TO SUBPARAGRAPH 4(a):**

The Publisher shall publish each Book in a Signet or Onyx mass market paperback edition in the United States and Canada within twenty-four (24) months after signing of this Agreement with respect to Book I and within twenty-four (24) months after Publisher's acceptance of Book II, but no sooner than nine (9) months following Publisher's first publication of each Book hereunder in a Viking hardcover edition.

**RIDER TO SUBPARAGRAPH 4(d):**

If the Publisher fails to publish any Book of the Work within the agreed time period and manner set forth in subparagraph 4(a) above and the rider thereto and paragraph 44 above for such Book, the Author may, at her option, by written notice to the Publisher, terminate this Agreement with respect to such Book, in which event, all rights, title, and interest with respect to such Book shall revert to the Author for her sole use and disposition. In such event the only damages recoverable by the Author shall be limited to the advance due under paragraph 5 hereof (which shall be paid promptly by the Publisher after the Publisher's receipt of the Author's written notice of termination) with respect to such Book of the Work. No other damages, actions, or proceedings, either legal or equitable, including (but not by way of limitation) specific performance, shall be claimed, instituted or maintained by the Author against the Publisher for the Publisher's failure to so publish such Book of the Work.

**RIDER TO SUBPARAGRAPH 9 (a):**

The Author shall have approval of the audio script and audio package of the audio edition(s) of each Book of the Work and over advertising, promotion and single title ads for audio editions of the Work. The Publisher shall submit the material to Author and unless Author notifies Publisher of her specific objections or changes within fourteen (14) business days after Author's receipt thereof, such submission shall be deemed approved. The Publisher shall thereafter have the right to use the approved material without further approval. The Author shall have approval of the reader of the audio of each audio script.

**RIDER TO SUBPARAGRAPH 9 (b) (i):**

In the event that the industry standard royalty rate for e-books is greater than fifteen percent (15%) any time up to five (5) years from the date of the Publisher's initial publication of the electronic edition of the Work, then upon the Author's request such royalty rate shall be subject to re-negotiation with the Publisher in accordance with and at not less than such industry standard. "Industry standard" as used herein shall mean the highest e-book royalty rate that is routinely paid by at least two (2) major publishers (such as Random House, Harper/Morrow, Grand Central Publishing/Little Brown and Simon & Schuster) to authors whose stature is similar to that of the Author.

**RIDER TO SUBPARAGRAPH 10(a):**


Notwithstanding anything to the contrary in this subparagraph 10(a) or elsewhere in this Agreement, with respect to any copyrighted material included in a Book that is the property of others, such material may only be used in the context of the Author's original material in the applicable Book.

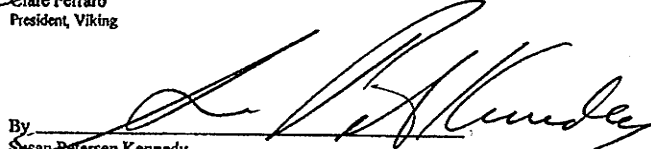
**RIDER TO SUBPARAGRAPH 11(c):**

Subject to any limitations required under any prior disposition of first serial rights by the Author, provided the Author informs the Publisher of the disposition of such rights, publishing or permitting others to publish (such publication not to be serialized or offered for sale or profit) or broadcast by radio or television or transmit online selections from the Work, for publicity and promotion purposes only, in a manner which in the opinion of the Publisher would benefit its sale, provided such rights do not conflict with the rights acquired by the purchases (if any) of the motion picture, television, stage and/or other dramatization(s) rights. Such broadcast or transmitted excerpts shall not exceed 7,500 words or two minutes in length nor be serialized or offered for sale or profit.

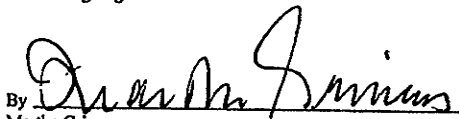
IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

Viking Penguin,  
a division of Penguin Group (USA) Inc.

By   
Clare Ferraro  
President, Viking

By   
Susan Petersen Kennedy  
President, Penguin Group (USA) Inc.

Date of Signing \_\_\_\_\_

By   
Martha Grimes  
Author

USA \_\_\_\_\_  
Citizenship

## SCHEDULE A

Antigua	Malta
Ascension	Mauritius
Australia and territories administered by Australia	Montserrat
Bahamas	Namibia
Bangladesh	Nauru
Barbados	New Zealand and territories administered by New Zealand
Belize	Nigeria
Bermuda	Pakistan
Bhutan	Papua New Guinea
Botswana	Pitcairn Island
British Indian Ocean Territory	Rodrigues
British Virgin Islands	St. Helena
Brunei	St. Kitts-Nevis-Anguilla
Burma	St. Lucia
Cayman Islands	St. Vincent and the Grenadines
Cyprus	Seychelles
Dominica	Sierra Leone
Falkland Islands and territories administered by the Falkland Islands	Singapore*
Fiji	Solomon Islands
Gambia	Somali Republic
Ghana	South African Republic
Gibraltar	Sri Lanka
Grenada	Sudan
Guyana	Swaziland
India	Tanzania
Iraq	Tonga
Irish Republic	Trinidad and Tobago
Jamaica	Tristan da Cunha
Jordan	Turks and Caicos Islands
Kenya	Tuvalu
Kiribati	Uganda
Kuwait	United Kingdom of Great Britain and Northern Ireland (including the Channel Islands, the Isle of Man, and the Isles of Scilly)
Leeward and Windward Islands	Vanuatu
Lesotho	Western Samoa
Malawi	Yemen PDR
Malaysia*	Zambia
Maldives	Zimbabwe

\*(Publisher cannot guarantee exclusivity where local law permits parallel imports.

# **EXHIBIT 2**

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

-----x

PETER LAMPACK AGENCY, INC.,

Plaintiff,

-against-

MARTHA GRIMES,

-and

PENGUIN GROUP (USA) INC.,  
PENGUIN PUTNAM INC.,  
VIKING PENGUIN, a division of  
PENGUIN GROUP (USA) INC.,  
SIGNET, a division of  
PENGUIN GROUP (USA),  
ONYX, a division of  
PENGUIN GROUP (USA),  
and New American Library,  
a division of  
PENGUIN GROUP (USA),

Defendants.

-----x

Index No.

**VERIFIED  
COMPLAINT**

09603525

**FILED**

NOV 18 2009

COUNTY CLERK'S OFFICE  
NEW YORK

Plaintiff, PETER LAMPACK AGENCY, INC. ("PLA" or plaintiff) by its attorneys, Bierman & Palitz, LLP, for its verified complaint against defendant MARTHA GRIMES ("Grimes"), and defendants PENGUIN GROUP (USA) INC. ("Penguin"), PENGUIN PUTNAM INC. ("Putnam"), VIKING PENGUIN, a division of PENGUIN GROUP (USA) INC. ("Viking"), SIGNET, a division of PENGUIN GROUP (USA) ("Signet"), ONYX, a division of PENGUIN GROUP (USA) ("Onyx") and NEW AMERICAN LIBRARY, a division of PENGUIN GROUP (USA) ("NAL") (the foregoing defendants are collectively referred to as "Penguin Defendants") (all of the foregoing defendants hereafter collectively referred to as "defendants") alleges as follows:

## PARTIES

1. Plaintiff PETER LAMPACK AGENCY, INC. is a domestic corporation, organized and existing under the laws of the State of New York, located at 551 Fifth Avenue, Suite 1613, in the City and State of New York, and engaged in the business of providing services as a literary agency.

2. Defendant MARTHA GRIMES is a natural person, residing at 115 D Street, SE, Apartment G-6/G-7, in Washington D.C., and the author of works of literary and commercial fiction.

3. Defendant PENGUIN GROUP (USA) INC., upon information and belief, is a domestic corporation, organized and existing under the laws of the State of New York, located at 375 Hudson Street, New York, New York, and engaged in the business of publishing books.

4. Defendant PENGUIN PUTNAM, INC., upon information and belief is, or formerly was, a domestic corporation, organized and existing under the laws of the State of New York, located at 375 Hudson Street, New York, New York, and engaged in the business of publishing books.

5. Defendant VIKING PENGUIN, a division of PENGUIN GROUP (USA) INC. is, upon information and belief, a business association, organized and existing under the laws of the State of New York, located at 375 Hudson Street, New York, New York, and engaged in the business of publishing books.

6. Defendant SIGNET, a division of PENGUIN GROUP (USA) INC. is, upon information and belief, a business association, organized and existing under the laws of the State of New York, located at 375 Hudson Street, New York, New York, and engaged in.

7. Defendant NEW AMERICAN LIBRARY, a division of PENGUIN GROUP (USA) INC. is, upon information and belief, a business association, organized and

existing under the laws of the State of New York, located at 375 Hudson Street, New York, New York, and engaged in the business of publishing books.

#### **JURISDICTION AND VENUE**

8. Jurisdiction is proper in the State of New York, in that the Penguin Defendants are doing business in the State of New York, Grimes is transacting business within the State of New York and jurisdiction is proper pursuant to CPLR 302(a).

9. Venue is properly laid in the County of New York pursuant to CPLR 503(a), in that PLA maintains an office in the County of New York, and the Penguin Defendants maintain an office in the County of New York.

#### **FACTUAL BACKGROUND**

10. In or about 1996, Grimes engaged PLA as her literary agent.

11. Throughout the ensuing 12-year period, PLA diligently performed services as literary agent for Grimes and procured numerous publishing engagements for the benefit of Grimes.

12. As a direct result of the services performed by PLA for Grimes, numerous literary works authored by Grimes were published by various publishers, including the Penguin Defendants.

13. As the direct result of services provided by PLA, Grimes was paid substantial sums of monies, amounting to over \$12 million of dollars, derived from the publication and the sales in the United States and in foreign territories of literary works authored by Grimes.

14. The publishing agreements procured by PLA generally provided that all gross monies due and payable on the account of Grimes were to be paid directly to PLA, and further provided that PLA was entitled to retain a specified percentage of these sums.

15. The publishing agreements procured by PLA further generally provided that the appointment of PLA as literary agent was irrevocable and an agency coupled with an interest, and that Grimes irrevocably assigned and transferred over to PLA a specified percentage of the gross proceeds paid to the Author's account under the agreements.

16. Under the terms of each of the relevant publishing agreements, PLA is an intended beneficiary.

17. In or about May 2007, Grimes notified PLA that she would no longer be using PLA as her literary agent for her future projects. Grimes did not provide any reason or justification for terminating the services of PLA as her literary agent.

18. In or about May of 2007, Grimes engaged a new representative, who sent PLA a written statement, acknowledging *inter alia* PLA's rights to continue to collect and remit monies on Grimes' behalf and render customary agency services in connection with all of Grimes' existing contracts that had been agented or co-agented by PLA.

19. Despite the prior written statement, starting in or about May of 2007, and at all relevant times thereafter, Grimes and her representatives have, in violation of the relevant publishing agreements, directed various publishers not to account to PLA, refused to render to PLA statements and sales information and otherwise account to PLA, and refused to pay to PLA amounts due it in accordance with its interest and the terms of the agreements procured by PLA.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANTS**

**GRIMES, PENGUIN and VIKING**

(Breach of Contract-The 2005 Penguin/Viking Agreement- Option on Next Work)

20. Plaintiff repeats and re-alleges each of the allegations contained in the preceding paragraphs as if fully set forth herein.

21. In March 2005, Grimes entered into a four-book publishing agreement with Penguin and Viking (Penguin and Viking being hereafter referred to as

"Penguin/Viking"), dated March 30, 2005, which was procured for Grimes by PLA (the "2005 Penguin/Viking Agreement").

22. The 2005 Penguin/Viking Agreement provides, in relevant part:

The Author hereby appoints the Peter Lampack Agency . . . irrevocably as the Agent in all matters pertaining to or arising from this Agreement and further declares that this appointment shall be binding upon the Author's heirs, executors administrators and/or assigns. Such Agent is hereby fully empowered to act on behalf of the Author in all matters in any way arising out of this Agreement, and is hereby designated as the Author's Agent to whom notices regarding this Agreement may be delivered. All sums of money due the Author under this Agreement shall be paid to and in the name of the said Agent, whose receipt thereof shall constitute a full and valid discharge thereof. The Author also does irrevocably assign and transfer to the Peter Lampack Agency, as an agency coupled with an interest, and the Peter Lampack Agency, Inc. shall retain a sum equal to fifteen percent (15%) of all gross monies due and actually paid to the account of the Author under this Agreement.

23. In accordance with the terms of the 2005 Penguin/Viking Agreement, Grimes authored and delivered (either directly or through PLA) to Penguin/Viking the four titles required under the agreement, for the literary works entitled, "Belle Ruin," "The Old Wine Shades," "Dust," and "Dakota."

24. In accordance with terms of the 2005 Penguin/Viking Agreement, until in or about May 2007, the monies payable to the author's account on the preceding titles were paid by Penguin/Viking directly to PLA.

25. In accordance with terms of the 2005 Penguin/Viking Agreement, Grimes and Penguin - Viking agreed that PLA was appointed irrevocably, by reason of an agency coupled with an interest, to act in all matters pertaining to or arising from the agreements, that all sums due to Grimes were to be paid directly to and in the name of PLA, and that Grimes transferred irrevocably transferred to PLA a sum equal to 15% percent of all gross sums due and payable to the account of Grimes.

26. Starting in or about May of 2007, and at all relevant times thereafter, Grimes in violation of the terms of the 2005 Penguin/Viking Agreement wrongfully and

willfully attempted to induce Penguin/Viking not to further account to PLA and not to make certain payments that were due to PLA under the 2005 Penguin/Viking Agreement respecting the titles "Dust," and "Dakota."

27. As a result of Grimes' misconduct, Penguin/Viking initially refused to make the specified payments due to PLA under the Penguin/Viking Agreement in connection with the "Dakota" and "Dust" literary titles.

28. Despite Grimes' continued misconduct and repeated attempts to pressure Penguin/Viking into violating its payment obligations to PLA under the 2005 Penguin/Viking Agreement, Penguin ultimately agreed that it was contractually obligated to make the disputed payments to PLA, and paid directly to PLA the certain payments due under the Penguin/Viking Agreement in connection with "Dakota" and "Dust" titles.

29. Undeterred, Grimes continued in her course of misconduct and did induce Penguin to violate other obligations to PLA under the 2005 Penguin/Viking Agreement.

30. In this context, the 2005 Penguin/Viking Agreement contains an option clause providing in substance that Penguin/Viking shall have the exclusive right and option to publish within specified territories the next book-length works of fiction authored by Grimes (the "Option on Next Work"), including multiple book-length works of fiction arising out of the Option on Next Work clause.

31. Acting for the benefit of Grimes, PLA performed valuable services in negotiating and drafting the terms of the Option on Next Work clause, as an integral and significant provision in the 2005 Penguin/Viking Agreement.

32. Upon information and belief, and in accordance with the terms of the Option on Next Work clause, Grimes has submitted her next book-length work of fiction to Penguin/Viking entitled, "The Black Cat."

33. Upon information and belief, and in accordance with the terms of the Option on Next Work clause, Penguin/Viking has accepted for publication the book-length work of fiction entitled, "The Black Cat."

34. Upon information and belief, Grimes will receive or has received substantial sums of money derived from the publication and sales of the first book arising out of the Option on Next Work clause.

35. Upon information and belief, Grimes will receive or has received substantial sums of money derived from the publication and sales of the subsequent books arising out of the Option on Next Work clause.

36. Under the terms of the 2005 Penguin/Viking Agreement, PLA, on account of its interest and otherwise under the terms of the 2005 Penguin/Viking Agreement, is entitled to receive an amount equal to 15% of all gross monies due and payable to the account of Grimes by Penguin Group/Viking in connection with all books arising out of the Option on Next Work clause.

37. Grimes and Penguin Group/Viking have notified PLA in writing that they do not intend to account to PLA or to pay PLA any monies generated in connection with any books arising out of the Option on Next Work clause.

38. In accordance with terms of the 2005 Penguin/Viking Agreement, defendants Penguin/Viking and Grimes agreed to pay to PLA the amount due PLA on account of its 15% interest for each book arising out of the Option on Next Work clause.

39. In violation of the terms of the 2005 Penguin/Viking Agreement, Grimes and Penguin/Viking have refused to account to PLA and refused to pay PLA the sums due for any books arising out of the Option on Next Work clause.

40. Grimes and Penguin/Viking have also acted in bad faith and breached the covenant of good faith and fair dealing implied in the agreement.

41. In view of the foregoing, PLA has sustained damages in an amount to be determined, plus interest thereon at the applicable statutory rate.

42. Accordingly, PLA is entitled to recover from defendants Grimes and Penguin Group/Viking an amount to be determined, plus interest thereon at the applicable statutory rate.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS  
GRIMES, PENGUIN PUTNAM, PENGUIN GROUP and SIGNET**  
(Breach of Contract-The 2000 Penguin/Putnam Agreement)

43. Plaintiff repeats and re-alleges each of the allegations contained in the paragraphs set forth above as if fully set forth herein.

44. Acting for the benefit of Grimes, PLA secured from a prior publisher, Little, Brown & Company ("Little Brown"), the reversion of the copyright licenses in two works of literary fiction entitled, "I am the Only Running Footman", and "The Five Bells and Bladebone."

45. Acting for the benefit of Grimes, PLA then procured a new publishing agreement with Penguin/Putnam, dated May 11, 2000, by which mass market paperback reprint editions of the preceding literary works were published by Penguin Putnam through its wholly owned imprint publishing entity, Signet ("The 2000 Penguin/Putnam Agreement.").

46. As a direct result of PLA's services, Grimes received substantial sums of monies paid by Penguin under the foregoing agreement.

47. In conformity with all prior contracts obtained by PLA for the benefit of Grimes and as agreed, between PLA and Grimes, PLA retained an amount equal to 15% of all gross monies paid on the author's account under the agreement, and paid the balance over to Grimes.

48. Upon information and belief, Penguin Group and/or one its imprint subsidiaries and Grimes have recently entered into an extension of the 2000 Penguin/Putnam Agreement procured by PLA, providing for further publication and sale of the mass market paperback reprint editions of the books entitled, "I am the Only Running Footman", and "The Five Bells and Bladebone."

49. Upon information and belief, by reason of the extension of the 2000 Penguin/Putnam Agreement, Penguin Group has paid directly to Grimes or her successor agent substantial sums of monies in consideration of the rights granted by Grimes under the 2000 Penguin/Putnam Agreement and its extension.

50. Upon information and belief, in accordance with the terms of the extension of the 2000 Penguin/Putnam Agreement, the parties also contracted to pay to Grimes certain additional sums of monies.

51. PLA sent written requests to Penguin asking that PLA's standard and agreed-upon agency commission, an amount equal to 15% of all gross monies paid on the account of Grimes by reason of the extension of the 2000 Penguin/Putnam Agreement, be paid to PLA.

52. Grimes and Penguin Group, Penguin/Putnam and/or Signet have refused to pay to PLA its commission and further indicated that they do not intend to account to PLA, or pay to PLA any other monies that are payable or become payable on the author's account by reason of the extension of the 2000 Penguin/Putnam Agreement.

53. Grimes, Penguin/Putnam and Signet have also acted in bad faith and breached the covenant of good faith and fair dealing implied in the 2000 Penguin/Putnam Agreement.

54. As the result of the foregoing, PLA has sustained and will continue to sustain substantial damages in amounts to be determined by the Court.

55. Accordingly, PLA is entitled to recover from the Grimes and Penguin Group, Penguin/Putnam and/or Signet an amount equal to 15% of all monies paid on the author's account by reason of the extension of the 2000 Penguin/Putnam Agreement.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANTS**  
**GRIMES, PENGUIN, PUTNAM AND VIKING**  
(Breach of Contract- The 1999 Putnam/NAL Agreement)

56. Plaintiff repeats and re-alleges each of the allegations contained in the paragraphs set forth above as if fully set forth herein.

57. Acting for the benefit of Grimes, PLA secured the reversion of the copyrights for the literary works entitled, "When the Mousetrap Closes" and "The Train Now Departing," reverted from Little Brown.

58. Acting for the benefit of Grimes, PLA then procured a new publishing agreement, dated October 25, 1999, with Putnam-Viking and its imprint subsidiary, NAL, for the publication of mass market reprint editions of the preceding two titles reverted from Little Brown ("the 1999 Putnam/NAL Agreement").

59. As a direct result of the services performed by PLA, Grimes entered into the 1999 Putnam/NAL agreement, and has received substantial sums of monies derived from the publication and sale of the relevant literary works, both in the United States and in the foreign territories.

60. Under the Putnam/NAL agreement, Grimes and Putnam - Viking agreed that PLA was appointed irrevocably, by reason of an agency coupled with an interest, to act in all matters pertaining to or arising from the agreements, that all sums due to Grimes were to be paid directly to and in the name of PLA, and that Grimes transferred irrevocably transferred to PLA a sum equal to 15% percent of all gross sums due and payable to the account of Grimes.

61. Upon information and belief, Penguin, Putnam and/or Viking and Grimes have entered into extensions of the 1999 Putnam/NAL Agreement, and/or intend to enter into extensions of the 1999 Putnam/NAL Agreement procured by PLA.

62. Upon information and belief, in accordance with the terms for the extension of the 1999 Putnam/NAL Agreement, Putnam and/or Penguin and/or NAL have paid or will pay directly to Grimes or her successor agent substantial sums of monies.

63. PLA has made written requests to Grimes and to the counsel for Penguin, Putnam and NAL demanding that they account to PLA and remit to PLA the commissions applicable to any extensions of the underlying agreement procured by PLA.

64. Grimes and the counsel for Penguin Group has notified PLA that it does not intend to account to PLA or remit to PLA any sums applicable to any extensions of the underlying agreements procured by PLA, in violation of the terms of the relevant agreements.

65. Grimes, Penguin, Putnam and NAL have also acted in bad faith and breached the covenant of good faith and fair dealing implied in the agreement.

66. In view of the foregoing, PLA has sustained damages in an amount to be determined, plus interest thereon at the applicable statutory rate.

67. Accordingly, PLA is entitled to recover from defendants Grimes, Penguin, Putnam, and NAL for all damages resulting from their breach of the contract, plus interest thereon at the applicable statutory rate.

**AS AND FOR FOURTH CAUSE OF ACTION AGAINST DEFENDANTS**  
**GRIMES, PENGUIN GROUP, VIKING**

(Breach of Contract- The 2001 Putnam/Signet Agreement)

68. Plaintiff repeats and re-alleges each of the allegations contained in the paragraphs set forth above as if fully set forth herein.

69. Acting for the benefit of Grimes, PLA secured the reversion of the copyright licenses for the literary work entitled, "The Man With a Load of Mischief," reverted from Little Brown.

70. Acting for the benefit of Grimes, PLA then procured a new publishing agreement, dated June 25, 2001 (amended August 2, 2002) with Putnam and its imprint subsidiary, Signet, for the publication of mass market reprint editions of the preceding two titles reverted from Little Brown ("the 2001 Putnam/Signet Agreement").

71. As a direct result of the services performed by PLA, Grimes entered into the 2001 Putnam/Signet Agreement, and has received substantial sums of monies derived from the publication and sale of the relevant literary works, both in the United States in the foreign territories.

72. Under the 2001 Putnam/Signet Agreement, Grimes and Putnam and Signet agreed that PLA was appointed irrevocably, as an agency coupled with an interest, to act in all matters pertaining to or arising from the agreements, that all sums due to Grimes were to be paid directly to and in the name of PLA, and that Grimes transferred irrevocably transferred to PLA a sum equal to 15% percent of all gross sums due and payable to the account of Grimes.

73. Upon information and belief, Penguin, Putnam and/or Signet and Grimes have entered extensions of the relevant agreement, and/or intend to enter into extensions of the relevant agreement procured by PLA.

74. Upon information and belief, in accordance with the terms for the extension of the relevant agreements, Putnam and/or Penguin and/or Signet have paid or will pay directly to Grimes or her successor agent substantial sums of monies.

75. PLA has made written requests to Grimes and Penguin, Putnam and Signet demanding that they account to PLA and remit to PLA all sums due in relationship to any extensions of the underlying agreements procured by PLA.

76. Grimes and the counsel for Penguin, Putnam and Signet have notified PLA that they do not intend to account to PLA or remit to PLA commissions applicable to any extensions of the underlying agreements procured by PLA, in violation of the terms of the relevant agreements.

77. Grimes, Putnam/Signet and Penguin have also acted in bad faith and breached the covenant of good faith and fair dealing implied in the agreement.

78. In view of the foregoing, PLA has sustained damages in an amount to be determined, plus interest thereon at the applicable statutory rate.

79. Accordingly, PLA is entitled to recover from defendants Grimes, Putnam, Signet and Penguin for all damages resulting from their breach of the contract, plus interest thereon at the applicable statutory rate.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST DEFENDANTS GRIMES,  
PENGUIN GROUP, PENGUIN PUTNAM and SIGNET**  
(Breach of Contract-The 2002 Putnam/Penguin Agreement)

80. Plaintiff repeats and re-alleges each of the allegations contained in the paragraphs set forth above as if fully set forth herein.

81. Acting for the benefit of Grimes, PLA secured the reversion of the copyright licenses for the literary works entitled, "The Dirty Duck", "Jerusalem Inn", "Help the Poor Struggler", and "The Deer Leap, " from Little Brown .

82. Acting for the benefit of Grimes, PLA then procured a new publishing agreement, dated March 4, 2002, with Putnam and its imprint subsidiary, Signet, for the publication of mass market reprint editions of the preceding four titles reverted from Little, Brown & Company ("the 2002 Putnam/Penguin Agreement").

83. As a direct result of the services performed by PLA, Grimes entered into the 2002 Putnam/Signet Agreement, and has received substantial sums of monies

derived from the publication and sale of the relevant literary works, both in the United States and in foreign territories.

84. Under the preceding agreement, Grimes and Penguin Putnam and Signet agreed that PLA was appointed irrevocably, by reason of an agency coupled with an interest, to act in all matters pertaining to or arising from the agreements, that all sums due to Grimes were to be paid directly to and in the name of PLA, and that Grimes transferred irrevocably transferred to PLA a sum equal to 15% percent of all gross sums due and payable to the account of Grimes.

85. Upon information and belief, Penguin and Grimes have entered extensions of the relevant agreement, and/or intend to enter into extensions of the relevant agreement procured by PLA.

86. Upon information and belief, in accordance with the terms for the extension of the relevant agreement, Penguin Putnam and/or Penguin Group and/or Signet have paid or will pay directly to Grimes or her successor agent substantial sums of monies.

87. PLA has made written requests to Grimes and the counsel for Penguin, Putnam and Signet demanding that they account to PLA and remit to PLA the commissions applicable to any extensions of the underlying agreement procured by PLA.

88. Grimes and the counsel for Penguin, Putnam and Signet have notified PLA that they do not intend to account to PLA or remit to PLA any funds applicable to any extensions of the underlying agreement procured by PLA, in violation of the terms of the relevant agreement.

89. Grimes, Putnam/Penguin and Signet have also acted in bad faith breached the covenant of good faith and fair dealing implied in the agreement.

90. In view of the foregoing, PLA has sustained or will sustain damages in an amount to be determined, plus interest thereon at the applicable statutory rate.

91. Accordingly, PLA is entitled to recover from defendants Grimes, Putnam, Signet and Penguin for all damages resulting from their breach of the contract, plus interest thereon at the applicable statutory rate.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST DEFENDANTS**

**GRIMES, PENGUIN GROUP and SIGNET**

(Breach of Contract-The 2003 Penguin/Signet Agreement)

92. Plaintiff repeats and re-alleges each of the allegations contained in the paragraphs set forth above as if fully set forth herein.

93. Acting for the benefit of Grimes, PLA secured the reversion of the copyright licenses for the literary work entitled, "The Old Contemptibles," from Little Brown.

94. Acting for the benefit of Grimes, PLA then procured a new publishing agreement, dated April 1, 2003, with Penguin Group and its imprint subsidiary, Signet, for the publication of mass market reprint editions of the preceding title reverted from Little, Brown & Company ("the 2003 Penguin/Signet Agreement").

95. As a direct result of the services performed by PLA, Grimes entered into the 2003 Penguin/Signet Agreement, and has received substantial sums of monies derived from the publication and sale of the relevant literary works, both in the United States in the foreign territories.

96. Under the 2003 Penguin/Signet Agreement, Grimes and Penguin Group and Signet agreed that PLA was appointed irrevocably, by reason of an agency coupled with an interest, to act in all matters pertaining to or arising from the agreements, that all sums due to Grimes were to be paid directly to and in the name of PLA, and that Grimes transferred irrevocably transferred to PLA a sum equal to 15% percent of all gross sums due and payable to the account of Grimes.

97. Upon information and belief, Penguin Group, Signet and Grimes have entered extensions of the relevant agreement, and/or intend to enter into extensions of the relevant agreement.

98. Upon information and belief, in accordance with the terms for the extension of the relevant agreements, Penguin Group and/or Signet has paid or will pay directly to Grimes or her successor agent substantial sums of monies.

99. PLA has made written requests to Grimes and Penguin Group and Signet demanding that they account to PLA and remit to PLA the funds applicable to any extensions of the underlying agreements procured by PLA.

100. Grimes and Penguin Group and Signet have notified PLA in writing that they do not intend to account to PLA or remit to PLA commissions applicable to any extensions of the underlying agreements procured by PLA, in violation of the terms of the relevant agreements.

101. Grimes and Penguin/Signet have also acted in bad faith and breached the covenant of good faith and fair dealing implied in the agreement.

102. In view of the foregoing, PLA has sustained damages in an amount to be determined, plus interest thereon at the applicable statutory rate.

103. Accordingly, PLA is entitled to recover from defendants Grimes, Penguin and Signet for all damages resulting from their breach of the agreement, plus interest thereon at the applicable statutory rate.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST DEFENDANTS  
GRIMES, PENGUIN GROUP and SIGNET**

(Breach of Contract-The Second 2003 Penguin/Signet Agreement )

104. Plaintiff repeats and re-alleges each of the allegations contained in the paragraphs set forth above as if fully set forth herein.

105. Acting for the benefit of Grimes, PLA secured the reversion of the copyrights for the literary work entitled, "The Old Silent," from Little, Brown & Company.

106. Acting for the benefit of Grimes, PLA then procured a new publishing agreement, dated June 23, 2003, with Penguin and its imprint subsidiary, Signet, for the

publication of mass market reprint editions of the preceding reverted from Little, Brown & Company ("the Second 2003 Penguin/Signet Agreement").

107. As a direct result of the services performed by PLA, Grimes entered into the 2003 Penguin/Signet Silent Agreement, and has received substantial sums of monies derived from the publication and sale of the relevant literary works, both in the United States and in the foreign territories.

108. Under the Second 2003 Penguin/Signet Agreement, Grimes and Penguin and Signet agreed that PLA was appointed irrevocably, by reason of an agency coupled with an interest, to act in all matters pertaining to or arising from the agreements, that all sums due to Grimes were to be paid directly to and in the name of PLA, and that Grimes transferred irrevocably transferred to PLA a sum equal to 15% percent of all gross sums due and payable to the account of Grimes.

109. Upon information and belief, Penguin Group and Signet and Grimes have entered extensions of certain of the agreement, and/or intend to enter into extensions of all the relevant agreements.

110. Upon information and belief, in accordance with the terms for the extension of the relevant agreements, Penguin Group and Signet has paid or will pay directly to Grimes or her successor agent substantial sums of monies.

111. PLA has made written requests to Grimes and Penguin Group and Signet demanding that they account to PLA and remit to PLA the commissions applicable to any extensions of the underlying agreements procured by PLA.

112. Grimes and Penguin Group and Signet have notified PLA in writing that they do not intend to account to PLA or remit to PLA commissions applicable to any extensions of the underlying agreements procured by PLA, in violation of the terms of the relevant agreements.

113. Grimes and Penguin/Signet have also acted in bad faith and breached the covenant of good faith and fair dealing implied in the agreement.

114. In view of the foregoing, PLA has sustained damages in an amount to be determined, plus interest thereon at the applicable statutory rate.

115. Accordingly, PLA is entitled to recover from defendants Grimes, Penguin Group and Signet for all damages resulting from their breach of the contract, plus interest thereon at the applicable statutory rate.

**AS AND FOR AN EIGHTH CAUSE OF ACTION AGAINST DEFENDANT**

**GRIMES**

(Breach of Contract-The Foreign Rights Agreements)

116. Plaintiff repeats and re-alleges each of the allegations contained in the paragraphs set forth above as if fully set forth herein.

117. Acting for the benefit of Grimes, PLA procured numerous additional agreements for the benefit of Grimes, licencing in foreign territories the foreign language translation rights and related subsidiary rights of literary works authored by Grimes.

118. As a direct result of the services performed by PLA, Grimes entered into the following agreements, and has received and will continue to receive substantial sums of monies derived from the publication and sale of the relevant literary works:

1. Agreement between Grimes and Random House Audio Publishing, Inc., dated May 2, 1996, for Hotel Paradise.
2. Agreement between Grimes and Books on Tape, Inc., dated December 7, 1998, for The Stargazey.
3. Agreement between Grimes and Arnoldo Mondadori Editore SpA, dated December 12, 2001, for Help the Poor Struggler.
4. Agreement between Grimes and Books on Tape, Inc., dated May 9, 1996, for Hotel Paradise.
5. Agreement between Grimes and Les Presses de la Cite, dated August 8, 2003, for Hotel Paradise.
6. Agreement between Grimes and WAB Wydawnictwo sp.z o.o., dated November 4, 2002, for Hotel Paradise.

7. Agreement between Grimes and Distribuidora Record S.A., dated December 7, 1996, for Hotel Paradise.
8. Agreement between Grimes and DERETA Graficki atelje, dated August 9, 2004, for Hotel Paradise.
9. Agreement between Grimes and Verlagsgruppe Random House GmbH, dated February 12, 2002 for Untitled Novel.
10. Agreement between Grimes and Books on Tape, Inc., dated March 24, 1997, for The Case Has Altered.
11. Agreement between Grimes and Headline Book Publishing Limited, dated December 9, 1997, for The Case Has Altered, Untitled Jury Novel, and two novellas, "When the Mousetrap Closes" and "The Train Now Departing".
12. Agreement between Grimes and Editions Pocket, a Division of Univers Poche, dated November 13, 2002, for The Anodyne Necklace.
13. Agreement between Grimes and Books on Tape, Inc., dated August 8, 2001, for The Blue Last.
14. Agreement between Grimes and Les Presses de la Cite, dated August 8, 2003, for Help the Poor Struggler.
15. Agreement between Grimes and Les Presses de la Cite, dated October 3, 2001, for The Blue Last.
16. Agreement between Grimes and Verlagsgruppe Random House GmbH, dated March 19, 2001, for The Blue Last.
17. Agreement between Grimes and Les Presses de la Cite, dated August 8, 2003, for Jerusalem Inn.
18. Agreement between Grimes and Arnoldo Mondadori Editore SpA, dated December 12, 2001, for I am the Only Running Footman.
19. Agreement between Grimes and Verlagsgruppe Random House GmbH, dated July 18, 2005, for I am the Only Funning Footman.
20. Agreement between Grimes and Les Presses de la Cite, dated August 8, 2003, for I am the Only Funning Footman.
21. Agreement between Grimes and Les Presses de la Cite, dated August 8, 2003, for The Old Contemptibles.
22. Agreement between The Reader's Digest Association, Inc. and Grimes, dated January 13, 2006, for The Man with a Load of Mischeif.

23. Agreement between Grimes and WAB Wydawnictwo sp.z o.o., dated May 9, 2007, for The Man with a Load of Mischeif.
24. Agreement between Grimes and Editions Pocket, a Division of Univers Poche, dated November 13, 2002, for The Man with a Load of Mischeif.
25. Agreement between Grimes and Wilhelm Goldmann Hardcover Verlag, for and on behalf of C. Bertelsmann Verlag GmbH, dated May 12, 1997, for Untitled Inspector Jury Novel # 16.
26. Agreement between Grimes and Les Presses de la Cite, dated September 24, 1999, for The Lamora Wink.
27. Agreement between Grimes and Books on Tape, Inc., dated June 24, 1999, for The Lamora Wink.
28. Agreement between Grimes and Uitgeverij Het Spectrum BV, dated April 24, 2000, for The Lamora Wink.
29. Agreement between Grimes and Headline Book Publishing Limited, dated November 11, 1999, for The Lamora Wink, Untitled Jury mystery, and Untitled Novel.
30. Agreement between Grimes and Graficki atelje DERETA, dated February 28, 2003, for The Grave Maurice.
31. Agreement between Grimes and Verlagsgruppe Random House GmbH, dated February 12, 2002, for Untitled Jury Mystery # 18 (The Grave Maurice).
32. Agreement between Grimes and Les Presses de la Cite, dated October 1, 2002, for The Grave Maurice.
33. Agreement between Grimes and Books on Tape, Inc., dated April 9, 2002, for The Grave Maurice.
34. Agreement between Grimes and Verlasgruppe Bertelsmann GmbH, dated December 14, 2000, for The Five Bells and Bladebone.
35. Agreement between Grimes and Arnoldo Mondadori Editore SpA, dated March 18, 1999, for The Five Bells and Bladebone.
36. Agreement between Grimes and Les Presses de la Cite, dated August 8, 2003, for The Five Bells and Bladebone.
37. Agreement between Grimes and Les Presses de la Cite, dated August 8, 2003, for The Dirty Duck.
38. Agreement between Grimes and Books on Tape, Inc., dated November 13, 2003, for Untitled Richard Jury Novel.

39. Agreement between Grimes and Les Presses de la Cite, dated August 2, 2004, for The Winds of Change.
40. Agreement between Grimes and Verlagsgruppe Random House GmbH, dated February 13, 2002, for Untitled Jury Mystery # 19.
41. Agreement between Grimes and Modern Times, dated January 1, 2005, for Winds of Change.
42. Agreement between Grimes and DERETA Graficki atelje, dated September 29, 2004, for Winds of Change.
43. Agreement between Grimes and Wilhelm Goldmann Verlag GmbH, dated May 1, 1997, for When the Mousetrap Closes and The Train Now Departing.
44. Agreement between Grimes and Verlagsgruppe Random House, Germany GmbH (W. Goldmann Verlag), dated January 9, 2005, for When the Mousetrap Closes and The Train Now Departing.
45. Agreement between Grimes and Les Presses de la Cite, dated March 10, 1999, for The Train Now Departing: Two Novellas.
46. Agreement between Grimes and Books on Tape, Inc., dated March 15, 2002, for The Train Now Departing.
47. Agreement between Grimes and Les Presses de la Cite, dated October 2, 1998, for The Stargazey.
48. Agreement between Grimes and Les Presses de la Cite, dated February 6, 1996, for The Old Wine Shades.
49. Agreement between Grimes and W. Goldmann Verlag, dated March 9, 1995, for The Price of Admission.
50. Agreement between Grimes and Uitgeverij Het Spectrum BV, dated April 24, 2000, for The Stargazey.
51. Agreement between Grimes and WAB Wydawnictwo sp.z o.o., dated May 9, 2007, for The Old Fox Deceiv'd.
52. Agreement between Grimes and Les Presses de la Cite, dated August 8, 2003, for The Old Fox Deceived.
53. Agreement between Grimes and Editora Nova Cultural Ltda., dated September 24, 2003, for Cold Flat Junction.
54. Agreement between Grimes and Headline Book Publishing Limited, dated July 18, 1999, for Biting the Moon.
55. Agreement between Grimes and Books on Tape, Inc., dated June 26, 2000, for Cold Flat Junction.

56. Agreement between Grimes and Wilhelm Goldmann Hardcover Verlag, dated May 12, 1997, for Untitled (Non-Inspector Jury) Novel.
57. Agreement between Grimes and Books on Tape, Inc., dated January 22, 1999, for Biting the Moon.
58. Agreement between Grimes and Books on Tape, Inc., dated April 3, 2003, for Foul Matter.
59. Agreement between Grimes and Les Presses de la Cite, dated July 1, 2003, for Foul Matter.
60. Agreement between Grimes and Editorial Estampa, LDA, dated February 6, 2007, for Dust.
61. Agreement between Grimes and Les Presses de la Cite, dated February 7, 2007, for Dust.
62. Agreement between Grimes and WAB Wydawnictwo sp.z o.o., dated January 10, 2006, for Cold Flat Junction.
63. Agreement between Grimes and Wilhelm Goldmann Hardcover Verlag, dated May 12, 1997, for Untitled Third Novel in "Lake" Trilogy.
64. Agreement between Grimes and Les Presses de la Cite, dated January 12, 2001, for Cold Flat Junction.
65. Agreement between Grimes and Les Presses de la Cite, dated November 29, 2005, for Belle Ruin.
66. Agreement between Grimes and WAB Wydawnictwo sp.z o.o., dated January 10, 2006, for Belle Ruin.
67. Agreement between Grimes and Uitgeverij Het Spectrum BV, dated August 7, 1998, for The Case Has Altered.
68. Agreement between Grimes and Editorial Presenca, LDA, dated March 18, 1999, for The Case Has Altered.
69. Agreement between Grimes and VIKEND Publishers, dated September 24, 1999, for The Case Has Altered.

(The foregoing agreements hereafter being collectively referred to as "the Foreign Rights Agreements.")

119. Under the Foreign Rights Agreements, Grimes agreed that PLA was appointed irrevocably, by reason of an agency coupled with an interest, to act in all matters pertaining to or arising from the agreements, that all sums due to Grimes were to be paid directly to and in the name of PLA, and that Grimes transferred irrevocably transferred to PLA a sum equal to 15% percent of all gross sums due and payable to the account of Grimes.

120. In or about May of 2007, Grimes engaged a new representative, who sent PLA a written statement acknowledging PLA's rights to continue to collect and remit monies on Grimes' behalf and render customary agency services in connection with all of Grimes' existing contracts that had been agented or co-agented by PLA, including the Foreign Rights Agreements.

121. Despite the prior written acknowledgment and confirmation of PLA's rights to collect and remit monies paid on Grimes' account under publishing existing agreements, Grimes has now indicated that she does not intend to pay PLA sums properly due PLA under the Foreign Rights Agreements, or otherwise account to PLA as required under those agreements.

122. Despite her prior written acknowledgment of PLA's rights to collect and remit monies paid on Grimes' account under the Foreign Rights Agreements, Grimes wilfully and wrongfully engaged in misconduct to induce certain foreign publishers not to remit the sums payable to PLA in violation of those agreements.

123. Since May of 2007, upon information and belief, PLA has not received contractually due payments and related accounting statements in connection with the preceding agreements.

124. Grimes has also acted in bad faith and breached the covenant of good faith and fair dealing implied in the agreement.

125. In view of the foregoing, PLA has sustained damages in an amount to be determined, plus interest thereon at the applicable statutory rate.

126. Accordingly, PLA is entitled to recover from Grimes for all damages resulting from her breach of the preceding agreements, plus interest thereon at the applicable statutory rate.

**AS AND FOR A NINTH CAUSE OF ACTION AGAINST PENGUIN DEFENDANTS  
AND GRIMES**

(Declaratory Judgment- All Defendants)

127. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs set forth above as if fully set forth herein.

128. There exists a present and justiciable controversy with respect to each of the agreements denoted in the First through Seventh Causes of Action.

129. Plaintiff lacks an adequate remedy at law due to the continuing nature of the obligation under each of the agreements and plaintiff's inability to determine when payments are being made on account of those agreements or the amounts being paid.

130. Plaintiff is entitled to a judgment declaring with respect to the agreements denoted in the First through Seventh Causes of Action:

A. That each of the respective defendants are required to make and PLA is entitled to receive, all payments due in accordance with its interest in and the terms of the respective agreements, including any percentage interest and/or commission due, with respect to any monies due to be paid to the account of Grimes, including monies payable in connection with any extensions of those agreements, whether by amendment or otherwise, or any agreements arising out of such agreements;

B. That each of the respective defendants are required to provide, and PLA is entitled to receive from the respective defendants, or any of them, copies of any extensions, modifications, changes, alterations, limitations, or amendment of

the respective agreements with each of the respective defendants, or any agreements arising from or out of such agreements;

C. That each of the respective defendants are required to provide, and PLA is entitled to receive from the respective defendants, or any of them, copies of any proposed extensions, modifications, changes, alterations, limitations, or amendment of the respective agreements with each of the respective defendants, or any proposed agreements that arise from or out of the respective agreements, at or about the time that such proposals are made;

D. That with respect to each of the foregoing agreements, and any extensions, modifications, changes, alterations, limitations, or amendments of the respective agreements, each of the respective defendants is required to provide PLA and PLA is entitled to receive, all statements of account sent to Grimes or her representatives, in accordance with each of the respective defendants' regular accounting practices, at or about the time that the statements are prepared.

**AS AND FOR A TENTH CAUSE OF ACTION AGAINST PENGUIN DEFENDANTS  
AND GRIMES**

(Permanent Injunction- All Defendants)

131. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs set forth above as if fully set forth herein.

132. Plaintiff is entitled to a permanent injunction, with respect to the agreements denoted in the First through Seventh Causes of Action, enjoining the defendants to:

A. Remit timely payments to PLA in accordance with its interest and the terms of the respective agreements, with respect to any monies due to be paid to the account of Grimes, including monies payable in connection with any extensions, whether by amendment or otherwise, of the preceding agreements procured by PLA;

B. Provide to PLA, in accordance with the Penguin Defendants' regular accounting practices, statements of account in connection with all monies payable to the account of Grimes, respecting the preceding agreements or any extensions thereof, whether by amendment or otherwise;

C. Provide to PLA any copies of any extensions, whether in the form of amendment of, or otherwise, and any separate agreements arising from or out of, the respective agreements.

133. PLA has no adequate remedy at law.

**AS AND FOR ELEVENTH CAUSE OF ACTION AGAINST PENGUIN DEFENDANTS  
AND GRIMES**

(Breach of Fiduciary Duty-All Defendants)

134. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs set forth above as if fully set forth herein.

135. The agreements denoted in the First through Seventh Causes of Action created a fiduciary relationship between Grimes and each of the respective Penguin defendants on the one hand and PLA on the other hand.

136. The relationship between PLA on the one hand and Grimes and Penguin Defendants on the other hand is characterized by a unique degree of trust and confidence between the parties.

137. PLA placed its trust in Grimes and the Penguin Defendants to use their superior knowledge with respect to the financial affairs of the licensing agreements and the value of PLA's interests, and to faithfully handle the funds due PLA under the agreements that Grimes and Penguin Defendants are entrusted with and to account to plaintiff for all funds held or distributed under the agreements.

138. Grimes and Penguin Defendants have a duty under the agreements to protect the interests of PLA as a third party beneficiary.

139. Grimes and Penguin Defendants have breached their fiduciary duties to PLA under the agreements, thereby causing PLA injury, harm and damages.

140. PLA is entitled to all legal and equitable remedies on account of the breach including, but not limited to, a judgment a) requiring Grimes and Penguin Defendants to account for all funds held under the agreements, b) for monetary damages incurred by PLA by reason of the breach, plus interest c) enjoining Grimes and Penguin Defendants from engaging in such conduct, to account for all funds received in the future under the agreements, and to notify PLA of all extensions, amendments, modifications, or changes to any of the agreements or of any agreements entered into that relate to any of the literary works that are the subject of any of the agreements.

141. The conduct of Grimes and Penguin in breaching their fiduciary duties to PLA has been wanton, outrageous and malicious, entitling PLA to an award of punitive damages.

**AS AND FOR A TWELFTH CAUSE OF ACTION AGAINST**  
**DEFENDANT GRIMES**  
**(Declaratory Judgment)**

142. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs set forth above as if fully set forth herein.

143. There exists a present and justiciable controversy with respect to each of the Foreign Rights Agreements denoted in the Eighth Cause of Action.

144. Plaintiff is entitled to a judgment declaring, with respect to the Foreign Rights Agreements denoted in the Eighth Cause of Action:

A. That Grimes is required to pay, and PLA is entitled receive, payment in accordance with its interest in and the terms of the Foreign Rights Contracts, with respect to any monies due to be paid to the account of Grimes, including monies payable in connection with any extensions, whether by amendment or otherwise,

of those agreements, or of any agreements entered into that relate to any of the literary works that are the subject of any of the agreements;

B. That Grimes is required to provide, and PLA is entitled to receive from Grimes and Penguin Defendants, copies of any extensions, whether in the form of amendment or otherwise, of the Foreign Rights Contracts agreements, and of any agreements entered into that relate to any of the literary works that are the subject of any of the agreements;

C. That PLA is entitled to receive statements of account sent to Grimes or her representatives, in accordance with Penguin Defendants' regular accounting practices, respecting the Foreign Rights Contracts or any extensions thereof, whether by amendment or otherwise, or of any agreements entered into that relate to any of the literary works that are the subject of any of the agreements.

**AS AND FOR A THIRTEENTH CAUSE OF ACTION AGAINST**  
**DEFENDANT GRIMES**  
(Permanent Injunction)

145. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs set forth above as if fully set forth herein.

146. Plaintiff is entitled to a permanent injunction, with respect to the Foreign Rights Agreements denoted in the Eighth Cause of Action, enjoining Grimes to:

A. Direct the applicable foreign publishers and foreign co-agents to timely make payments to PLA in accordance with its interest and the terms of the respective agreements, with respect to any monies due to be paid to the account of Grimes, including monies payable in connection with any extensions, whether by amendment or otherwise, of the preceding agreements procured by PLA;

B. Direct the applicable foreign publishers and foreign co-agents to timely provide statements of account in connection with all monies payable to the account

of Grimes, respecting the preceding agreements or any extensions thereof, whether by amendment or otherwise.

C. Provide to PLA any copies of any extensions, whether in the form of amendment or otherwise, of the respective agreements procured by PLA.

147. PLA has no adequate remedy at law.

**AS AND FOR A FOURTEENTH CAUSE OF ACTION AGAINST**  
**DEFENDANT GRIMES**  
(Breach of Fiduciary Duty)

148. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs set forth above as if fully set forth herein.

149. The Foreign Rights Agreements created a fiduciary relationship between Grimes on the one hand and PLA on the other hand.

150. The relationship between PLA on the one hand and Grimes on the other hand is characterized by a unique degree of trust and confidence between the parties. PLA placed its trust in Grimes to use her superior knowledge with respect to the financial affairs of the licensing agreements and the value of PLA's interests, and to faithfully handle the funds due PLA under the agreements that Grimes and Penguin Defendants are entrusted with.

151. Grimes has a duty under the agreements to protect the interests of PLA.

152. Grimes has breached her fiduciary duties to PLA under the Foreign Rights Agreements, thereby causing PLA injury, harm and damages.

153. PLA is entitled to all legal and equitable remedies on account of the breach including, but not limited to, a judgment a) requiring Grimes to account for all funds held under the agreements, b) for monetary damages incurred by PLA by reason of the breach, plus interest c) enjoining Grimes from engaging in such conduct, to account for all funds received in the future under the agreements, and to notify PLA of all extensions,

amendments, modifications, or changes to any of the agreements or of any agreements entered into that relate to any of the literary works that are the subject of any of the agreements

154. The conduct of Grimes in breaching her fiduciary duties to PLA has been wanton, outrageous and malicious, entitling PLA to an award of punitive damages.

**AS AND FOR AN FIFTEENTH CAUSE OF ACTION AGAINST DEFENDANT GRIMES**  
(Permanent Injunction)

155. Plaintiff repeats and re-alleges each of the allegations contained in paragraphs set forth above as if fully set forth herein.

156. Grimes is engaging in conduct designed to conceal information from PLA relative to its rights under the agreements referenced in the First through Seventh Causes of Action and to prevent PLA from obtaining information that would enable it to secure its rights under the agreements.

157. In addition, Grimes has engaged in conduct designed to conceal information from PLA relative to its rights under the referenced in the First through Seventh Causes of Action and the Foreign Rights Agreements referenced in Eighth Cause of Action and to prevent PLA from obtaining information that would enable it to secure its rights under the agreements.

158. Plaintiff has no adequate remedy at law to determine and ensure that its rights under the various agreements referenced in the First through Seventh Causes of Action and the Foreign Rights Agreements are being abided by or to determine whether PLA's rights are being protected.

159. On information and belief, Grimes is engaging in conduct that includes, but is not limited to, communications with publishers, literary agents and others that is designed to prevent PLA from securing its rights under the agreements referenced in the First through Seventh Causes of Action and the Foreign Rights Agreements and to encourage others obligated to make payments to PLA to violate the agreements

referenced in the First through Seventh Causes of Action and the Foreign Rights Agreements to avoid communicating with PLA and creating an air of suspicion and distrust of PLA in the eyes of colleagues and business associates, which, if not enjoined, will cause irreparable harm to PLA, its business and its reputation.

160. PLA has no adequate remedy at law short of injunctive relief.

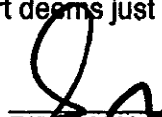
161. By reason of the foregoing, PLA is entitled to a permanent injunction, enjoining Grimes as follows:

A. To cease and desist from engaging in conduct designed to conceal information from PLA relative to its rights under the agreements referenced in the First through Seventh Causes of Action and the Foreign Rights Agreements and to prevent PLA from obtaining information that would enable it to secure its rights under the agreements.

B. To cease and desist from engaging in communications with publishers, literary agents and others that is designed to prevent PLA from securing its rights under the agreements referenced in the First through Seventh Causes of Action and the Foreign Rights Agreements and to encourage others obligated to make payments to PLA to violate these agreements and to avoid regular business communication with PLA, including conduct intended to create an air of suspicion and distrust of PLA in the eyes of colleagues and business associates, which, if not enjoined, will cause irreparable harm to PLA, its business and its reputation.

C. To cease and desist from engaging in any other wrongful conduct in respect to the agreements referenced in the First through Seventh Causes of Action and the Foreign Rights Agreements as may be discovered in this action.

**WHEREFORE**, plaintiff demands judgment against defendants on each and every one of the foregoing causes of action, together with an award of counsel fees and such other and further relief as the Court deems just and proper.



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BIERMAN & PALITZ, LLP  
By: Stephen H. Palitz  
Attorneys for Plaintiff  
74 Trinity Place - Suite 1550  
New York, New York 10005  
(212) 232-2055

Dated: New York, New York  
November 12, 2009

VERIFICATION

I, Peter Lampack, being duly sworn, depose and say that:

I am an officer in the Plaintiff, Peter Lampack Agency, Inc, a party in the within action; I have read the foregoing Verified Complaint and know the contents thereof; the contents of the Verified Complaint are true to my knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true. This verification is made by me because the above party is a corporation, and I am an officer thereof.

  
PETER LAMPACK

Sworn to before me this  
13<sup>th</sup> day of November 2009

  
NOTARY PUBLIC

DOROTHY C. MERITE  
Notary Public, State of New York  
No. 31-4961897  
Qualified in New York County  
My Commission Expires 2/12/10

# **EXHIBIT 3**

# PENGUIN GROUP (USA) INC.

375 HUDSON STREET • NEW YORK, NEW YORK 10014 • (212) 366-2000

November 19, 2007

Ms. Martha Grimes  
115 D Street, G-6  
Washington, D.C. 20003

Re:

I: Agreements between Viking Penguin, a division of Penguin Group (USA) Inc. ("PGI") and Martha Grimes ("Author") dated March 30, 2005 (4 books), February 12, 2002 (3 books), October 25, 1999 (2 novellas), June 3, 1999 (3 books) (together, "Existing Penguin Agreements") for the works referred to therein (together, the "Penguin Original Books"); and

II: Agreement dated August 1, 2007 ("New Agreement for Reverted Books") between New American Library, a division of PGI, and Author (2 books referred to herein as "Reverted Books")

(The above-mentioned agreements and titles of the related books are set out in Schedule I attached hereto and made a part hereof.)

Dear Ms. Grimes:

1. You have informed PGI that you terminated Peter Lampack Agency, Inc.'s ("PLA") appointment as your agent for the Existing Penguin Agreements and requested PGI to split all sums of money due the Author under each of the Existing Penguin Agreements for the Penguin Original Books as follows: fifteen per cent (15%) to PLA and eighty-five per cent (85%) to Author. PGI accepts such direction of payment, subject to the Author's execution and delivery of this Indemnity Agreement to PGI. PGI shall simultaneously send all statements to Author and PLA under the Existing Penguin Agreements.

2. PGI and Author entered into the New Agreement for Reverted Books. You advised PGI that the Author terminated PLA as agent in May 2007 before the negotiation and execution of the New Agreement for Reverted Books and PLA is not the Author's agent for the New Agreement for Reverted Books and is not entitled to agency commissions thereon. PGI agrees to pay all proceeds payable to the Author thereunder directly to Author, subject to the Author's execution and delivery of this Indemnity Agreement to PGI.

3. As inducement to PGI to take such actions, Author makes the aforementioned and following representations, warranties and agreements with knowledge of PGI's reliance thereon:

a) Author represents and warrants that Author has duly terminated PLA's appointment as Author's agent in all matters pertaining to or relating to the Existing Penguin Agreements and/or

Ms. Martha Grimes

November 19, 2007

Page 2

the Penguin Original Books in connection with the Existing Penguin Agreements, and that except for the payment to PLA of commissions in the amount of fifteen per cent (15%) of all sums of money due the Author under each of the Existing Penguin Agreements with respect to the Penguin Original Books, Author has no payment or other obligations of any kind to PLA with respect to or in any way concerning the Existing Penguin Agreements and/or the Penguin Original Books in connection with the Existing Penguin or otherwise.

b) Author represents and warrants that Author has no payment or other obligations of any kind to PLA with respect to or in any way concerning the New Agreement for Reverted Books and/or the Reverted Books in connection with the New Agreement for Reverted Books.

c) Author shall indemnify and hold harmless PGI and its subsidiaries, affiliates, successors, assigns, officers, employees and agents from and against all liability, damage, loss, expense (including reasonable outside attorney's fees), and settlement costs resulting from any claim, demand, suit or recovery arising out of or in connection with a breach or alleged breach of the foregoing representations and warranties and/or any claim by PLA or Peter Lampack or his or its heirs, representatives, successors or assigns (each a "PLA party," and collectively "PLA parties") arising out of or in connection with or in any way concerning the Existing Penguin Agreements, the Penguin Original Books, the New Agreement for Reverted Books, the Reverted Books, or otherwise, including without limitation, any option works, provided that no settlement covered by this indemnity shall be effected by PGI without the prior written consent of Author, which consent shall not be unreasonably withheld. The parties shall fully cooperate in the defense of any such claim, demand or suit. If any such claim, demand of suit is threatened or instituted, PGI shall promptly notify Author.

d) PGI shall have the right to withhold any and all amounts due in connection with the foregoing indemnity, from all moneys accruing to Author under any agreement between Author and PGI or any subsidiary or division thereof. PGI shall give prompt written notice to the Author of any amount withheld hereunder.

e) Any payments withheld by PGI pursuant to this agreement shall be released to the Author after a period of one year in the event that no action, proceeding or claim is pursued or instituted by a PLA party, or if a proceeding is instituted but remains dormant for one year, or within 30 days of a legally binding discontinuance of any such claim, action or proceeding.

Ms. Martha Grimes  
November 19, 2007  
Page 3

4. Nothing in this agreement shall affect in any way the Author's or PGI's respective rights, obligations or positions regarding unabridged audiobook rights for the four books covered by the Agreement dated March 30, 2005 or PLA's role with respect thereto. Any agreement between the Author and PGI with respect with respect to such unabridged audiobooks will be set forth in one or more separate agreements executed by them.

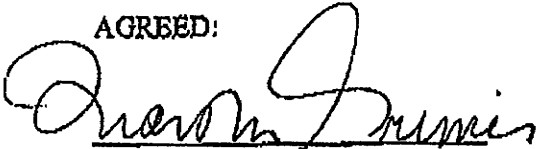
Please sign and return the enclosed copy of this letter to indicate your agreement with the foregoing.

Sincerely yours,

PENGUIN GROUP (USA) INC.

By: \_\_\_\_\_  
Authorized Signatory

AGREED:

  
Martha Grimes (Author)

cc: Kenneth Swezey, Esq.  
Cowan DeBaets, Abrahams & Sheppard LLP  
41 Madison Avenue  
New York, NY 10010

**SCHEDULE I**

**I. Existing Penguin Agreements and Penguin Original Books**

Viking Penguin Agreement dated March 30, 2005

Book I: BELLE RUIN

Book II: OLD WINE SHADES

Book III: DUST

Book IV: DAKOTA

Viking Penguin Agreement dated February 12, 2002

Book I: THE GRAVE MAURICE

Book II: FOUL MATTER

Book III: THE WINDS OF CHANGE

Viking Penguin Agreement dated October 25, 1999

THE TRAIN NOW DEPARTING (Two Novellas)

Viking Penguin Agreement dated June 3, 1999

Book I: THE LAMORNA WINK

Book II: BLUE LAST

Book III: COLD FLAT JUNCTION

**II. New Agreement for Reverted Books and Reverted Books**

New American Library Agreement dated August 1, 2007

Book I: I AM THE ONLY RUNNING FOOTMAN

Book II: THE FIVE BELLS AND BLADEBONE

# PENGUIN GROUP (USA) INC.

375 HUDSON STREET • NEW YORK, NEW YORK 10014 • (212) 366-2000

December 13, 2007

Ms. Martha Grimes  
115 D Street, G-6  
Washington, D.C. 20003

Re: Amendment to Indemnity Agreement dated November 19, 2007 between Penguin Group (USA) Inc. ("PGI") and Martha Grimes ("Author") concerning Agreements between Signet, a division of PGI, and Author dated:

- June 23, 2003 (for the work entitled *The Old Silent*),
- April 1, 2003 (for the work entitled *The Contemptibles*),
- March 4, 2002 (for the works entitled *The Dirty Duck*, *Jerusalem Inn*, *Help the Poor Struggler*, and *The Deer Leap*),
- June 25, 2001 (for the work entitled *The Man With a Load of Mischief*), and
- August 17, 2000 (for the works entitled *The Anodyne Necklace* and *The Old Fox Deceiv'd*) (together, the "Pre-2007 Signet Agreements") for the works referred to therein (together, the "Pre-2007 Signet Reprint Books").

Dear Ms. Grimes:

Reference is made to (a) the Indemnity Agreement dated November 19, 2007 between Author and PGI (the "Indemnity Agreement"), and (b) the Author's payment instructions to PGI after her termination of Peter Lampack Agency, Inc. ("PLA") as her agent, including without limitation payment instructions to PGI in the Indemnity Agreement and in the letter dated December 4, 2007 from the Author's attorney Kenneth N. Swezey to PGI. (Copies of the Indemnity Agreement and the December 4, 2007 letter are attached hereto and made a part hereof.)

Inasmuch as the above-mentioned Pre-2007 Signet Agreements for the Pre-2007 Signet Reprint Books were inadvertently omitted from the Indemnity Agreement, the Author and PGI hereby amend the Indemnity Agreement to add the following:

1. The Author has informed PGI that she terminated PLA's appointment as her agent for the Pre-2007 Signet Agreements and requested PGI to split all sums of money due the Author, if any, under each of the Pre-2007 Signet Agreements for the Pre-2007 Signet Reprint Books as follows: fifteen per cent (15%) to PLA and eighty-five per cent (85%) to Author. PGI accepts such direction of payment, subject to the Author's execution and delivery to PGI of this Amendment to the Indemnity Agreement. PGI shall simultaneously send all statements to Author and PLA under the Pre-2007 Signet Agreements.

Ms. Martha Grimes  
December 13, 2007  
Page 2

2. As inducement to PGI to take such actions, Author makes the aforementioned and following representations, warranties and agreements with knowledge of PGI's reliance thereon:

a) Author represents and warrants that Author has duly terminated PLA's appointment as Author's agent in all matters pertaining to or relating to the Pre-2007 Signet Agreements and/or the Pre-2007 Signet Reprint Books in connection with the Pre-2007 Signet Agreements, and that except for the payment to PLA of commissions in the amount of fifteen per cent (15%) of all sums of money due the Author under each of the Pre-2007 Signet Agreements with respect to the Pre-2007 Signet Reprint Books, Author has no payment or other obligations of any kind to PLA with respect to or in any way concerning the Pre-2007 Signet Agreements and/or the Pre-2007 Signet Reprint Books in connection with the Pre-2007 Signet Agreements or otherwise.

b) Author shall indemnify and hold harmless PGI and its subsidiaries, affiliates, successors, assigns, officers, employees and agents from and against all liability, damage, loss, expense (including reasonable outside attorney's fees), and settlement costs resulting from any claim, demand, suit or recovery arising out of or in connection with a breach or alleged breach of the foregoing representations and warranties and/or any claim by PLA or Peter Lampack or his or its heirs, representatives, successors or assigns (each a "PLA party," and collectively "PLA parties") arising out of or in connection with or in any way concerning the Pre-2007 Signet Agreements, the Pre-2007 Signet Reprint Books, or otherwise, including without limitation, any option works, if any; provided that no settlement covered by this indemnity shall be effected by PGI without the prior written consent of Author, which consent shall not be unreasonably withheld. The parties shall fully cooperate in the defense of any such claim, demand or suit. If any such claim, demand of suit is threatened or instituted, PGI shall promptly notify Author.

c) PGI shall have the right to withhold any and all amounts due in connection with the foregoing indemnity, from all moneys accruing to Author under any agreement between Author and PGI or any subsidiary or division thereof. PGI shall give prompt written notice to the Author of any amount withheld hereunder.

d) Any payments withheld by PGI pursuant to this agreement shall be released to the Author after a period of one year in the event that no action, proceeding or claim is pursued or instituted by a PLA party, or if a proceeding is instituted but remains dormant for one year, or within 30 days of a legally binding discontinuance of any such claim, action or proceeding.

3. Except as expressly amended herein, the Indemnity Agreement shall continue in full force and effect.

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MARTHA GRIMES

PAGE 02

2007-Dec-19 04:00 PM Cowan, DeBaets, et al 2122510653

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Ms. Martha Grimes  
December 13, 2007  
Page 3

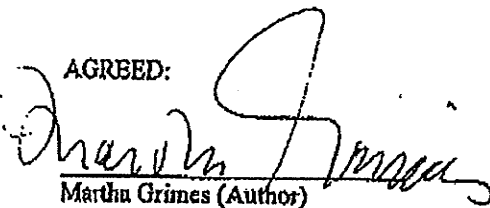
Please sign and return the enclosed copy of this letter to indicate your agreement with the foregoing.

Sincerely yours,

PENGUIN GROUP (USA) INC.

By: \_\_\_\_\_  
Authorized Signatory

AGREED:

  
Martha Grimes (Author)

cc: Kenneth Swezey, Esq.  
Cowan DeBaets, Abrahams & Sheppard LLP  
41 Madison Avenue  
New York, NY 10010

# **EXHIBIT 4**

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

PRESENT: BERNARD J. FRIED  
Justice

**E-FILE** PART 60

Peter Lampack Agency, Inc.,

INDEX NO. 603525/2009

Plaintiff,

MOTION DATE \_\_\_\_\_

- v -

Martha Grimes, et al.,

MOTION SEQ. NO. 001

Defendant(s).

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

PAPERS NUMBERED

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that

This motion is decided in accordance with the accompanying memorandum decision. ✓

SO ORDERED

NEW YORK COUNTY CLERK  
10/07/2010  
MOTION SUPPLEMENT OF

Dated: 10/6/2010

Bernard J. Fried  
HON. BERNARD J. FRIED

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 60

-----X  
PETER LAMPACK AGENCY, INC.,

Plaintiff,

-against-

Index No. 603525/09

MARTHA GRIMES,

-and-

PENGUIN GROUP (USA) INC., PENGUIN PUTNAM INC.,  
VIKING PENGUIN, a division of PENGUIN GROUP (USA)  
INC., SIGNET a division of PENGUIN GROUP (USA) INC.,  
ONYX, a division of PENGUIN GROUP (USA) INC., and  
NEW AMERICAN LIBRARY, a division of PENGUIN  
GROUP (USA) INC.,

Defendants.

-----X  
**APPEARANCES:**

*For Plaintiffs:*

Stephen H. Palitz, Esq.  
Bierman & Palitz LLP  
74 Trinity Place, Suite 1550  
New York, NY 10006

*For Defendant Martha Grimes:*

David B. Wolf, Esq.  
Cowan DeBaets Abrahams & Sheppard LLP  
41 Madison Avenue, 34th Floor  
New York, NY 10010

*For All Other Defendants:*

Jonathan M. Herman, Esq.  
Dorsey & Whitney LLP  
250 Park Avenue  
New York, NY 10177

001

**FRIED, J:**

This case involves the Peter Lampack Agency, Inc. (“PLA”), and Martha Grimes (“Grimes”), Penguin Group (USA) Inc. (“Penguin”), Penguin Putnam Inc. (“Penguin-Putnam”), Viking Penguin, a division of Penguin Group (USA) Inc. (“Viking-Penguin”), Signet, a division of Penguin Group (USA) Inc. (“Signet”), Onyx, a division of Penguin Group (USA) Inc. (“Onyx”), and New American Library, a division of Penguin Group (USA) Inc. (“New American”).

It is undisputed that in or about 1996, Grimes, an author of literary and commercial fiction, retained PLA as her literary agent. (Verified Complaint ¶ 10). PLA acted in this capacity for twelve years, during which it procured publishing agreements for numerous works authored by Grimes. (*Id.* ¶ 11). Those works were published and Grimes received over twelve million dollars from the publication and domestic and international sale of her novels. (*Id.* ¶¶ 12, 13). In or about May 2007, Grimes notified PLA that she would no longer be using PLA as her literary agent and retained a new representative. (*Id.* ¶ 17).

On November 18, 2009, PLA filed a complaint against all defendants alleging breach of contract, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, and seeking a declaratory judgment and injunctive relief. Pursuant to CPLR §§ 3211(a)(1) and 3211(a)(7), Grimes moves to dismiss the first, second through seventh, eleventh, and fourteenth causes of action, which are detailed below.

On a motion to dismiss made pursuant to CPLR 3211, the complaint “is to be afforded a liberal construction,” and the plaintiff is afforded the “benefit of every possible favorable inference.” (*Leon v. Martinez*, 84 N.Y.2d 83, 87 [1994]). While a plaintiff’s

allegations are presumed true on a motion to dismiss, conclusory allegations “consisting of bare legal conclusions” are insufficient to survive a motion to dismiss. (*See Caniglia v. Chicago Tribune-New York News Syndicate Inc.*, 204 A.D.2d 233, 233 [1st Dep’t 1994]). When a motion is based on documentary evidence, pursuant to CPLR 3211(a)(1), dismissal of a cause of action is warranted “only if the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” (*Id.* at 88.). Under CPLR 3211(a)(7), “the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one.” (*Id.*, citing *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 [1977]).

The first cause of action alleges that Grimes breached the four book publishing agreement entered into by Grimes, Penguin, and Viking-Penguin in 2005 (“2005 Penguin/Viking-Penguin Agreement”). (*Id.* ¶ 39). The 2005 Penguin/Viking-Penguin Agreement contains an option clause providing:

[T]he Author hereby grants to the Publisher the exclusive right and option to publish . . . her next book-length work of fiction . . . . The Publisher shall have a period of thirty (30) days after receipt by the Publisher of the notification from the Author or her agent of the Author’s desire to commence negotiation concerning such next book-length work of fiction within which to notify the Author whether it desires to publish such work and to negotiate the terms and conditions of such publication.

(Affirmation of Ellis B. Levine, Exhibit B). On February 4, 2009, in accordance with the terms of the Option on Next Work clause, Grimes’ counsel sent a letter to Penguin enclosing a manuscript of “The Black Cat.” (*Id.*, Exhibit C). On February 27, 2009, Penguin made an oral proposal to Grimes’ counsel and the agreement for “The Black Cat” was finalized on

August 20, 2009. (*Id.*, Exhibits D and E). PLA alleges the publishing agreement for “The Black Cat” arose out of the Option on Next Work clause and that Grimes violated the terms of the 2005 Penguin/Viking-Penguin Agreement by refusing to account to PLA and refusing to pay PLA the sums due for “The Black Cat.” (Verified Complaint, ¶ 38, 39). PLA also alleges that the defendants acted in bad faith and breached the covenant of good faith and fair dealing implied in the 2005 Penguin/Viking-Penguin Agreement. (*Id.* ¶ 40).<sup>1</sup>

The second through seventh causes of action allege breach of contract of multiple publishing agreements that PLA procured on behalf of Grimes. PLA alleges that Grimes entered into extensions of each of these publishing agreements and that as a result of these extensions, the publishers have paid Grimes and the successor agent substantial sums of money. (*Id.* ¶¶ 49, 62, 74, 86, 98, 110). PLA alleges that Grimes violated the terms of the underlying publishing agreements procured by PLA by refusing to account to PLA and refusing to pay PLA the sums due for the extensions of these agreements. (*Id.* ¶¶ 52, 64, 76, 88, 100, 112). PLA also alleges that the defendants acted in bad faith and breached the covenant of good faith and fair dealing implied in these publishing agreements. (*Id.* ¶¶ 53,

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A breach of the implied covenant of good faith and fair dealing is included in the first through seventh causes of action for breach of contract. However, “New York law . . . does not recognize a separate cause of action for breach of the implied covenant of good faith and fair dealing when a breach of contract claim, based upon the same facts, is also pled.” (*Harris v. Provident Life & Accident Ins. Co.*, 310 F.3d 73, 81 [2d Cir. 2002]; *accord Canstar v. J.A. Jones Const. Co.*, 212 A.D.2d 452, 453 [1st Dep’t 1995]; *Levi v. Utica First Ins. Co.*, 12 A.D.3d 256, 257-58 [1st Dep’t 2004]). Here, the plaintiff’s claims for breach of the implied covenant of good faith and fair dealing are based on the same facts as the breach of contract claims. Since these causes of action are duplicative, the plaintiff’s causes of action for breach of the implied covenant are dismissed.

65, 77, 89, 101, 113).<sup>2</sup>

The eleventh and fourteenth causes of action allege breach of fiduciary duty. PLA alleges that the publishing agreements denoted in the first through seventh causes of action and the Foreign Rights Agreement denoted in the eighth cause of action created “a fiduciary relationship between Grimes and each of the respective Penguin defendants on the one hand and PLA on the other hand.” (*Id.* ¶¶ 135, 149). PLA alleges that Grimes and the Penguin defendants have breached their fiduciary duties to PLA under the agreements. (*Id.* ¶¶ 139, 152). PLA alleges that the defendants’ conduct has been “wanton, outrageous and malicious,” thus entitling PLA to an award of punitive damages. (*Id.* ¶¶ 141,154).

The issues presented in this motion are whether PLA has sufficiently pleaded: (1) the first cause of action to establish that the terms of the 2005 Penguin/Viking-Penguin Agreement entitle PLA to commission for publishing agreements arising out of the Option on Next Work clause; (2) the second through seventh causes of action to establish that the terms of the publishing agreements mentioned in these causes of action entitle PLA to commission on extensions of those agreements; (3) the eleventh and fourteenth causes of action to establish that Grimes owes PLA a fiduciary duty.

#### I. First Cause of Action

In the first cause of action, PLA alleges that the publishing agreement for Grimes’ book “The Black Cat” arose out of the Option on Next Work clause in the 2005 Penguin/Viking-Penguin Agreement and that Grimes violated the terms of the 2005

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*See supra* note 1.

Penguin/Viking-Penguin Agreement by refusing to pay PLA commission for “The Black Cat.” Defendant Grimes moves to dismiss the first cause of action, arguing that under the 2005 Penguin/Viking-Penguin Agreement, PLA is not entitled to commission for “The Black Cat” because: (1) PLA’s agency is not coupled with an interest and PLA’s agency was revoked in May 2007; (2) the Option on Next Work clause is an unenforceable “agreement to agree”; and (3) the publishing agreement for “The Black Cat” does not arise out of the Option on Next Work clause.

Turning to the arguments set forth in the Motion to Dismiss, the first issue is whether the terms of the 2005 Penguin/Viking-Penguin Agreement entitle PLA to receive commission for “The Black Cat.” Grimes argues that the terms of the 2005 Penguin/Viking-Penguin Agreement do not entitle PLA to commission for “The Black Cat” because PLA’s agency was not coupled with an interest and it was revoked before negotiations for the “The Black Cat” publishing agreement began. PLA argues that even if its agency was revoked, the first cause of action for breach of contract is sufficiently pleaded in the complaint because the publishing agreement for “The Black Cat” arose out of the Option on Next Work clause in the 2005 Penguin/Viking-Penguin Agreement and under the terms of that Agreement, PLA is entitled to commission for publishing agreements arising out of the Option on Next Work clause. (Plaintiff’s Memorandum of Law in Opposition to Defendant Grimes’ Motion to Dismiss, pp. 25-26; *see also* Affidavit of Peter Lampack, ¶¶ 29-30).

The only part of the 2005 Penguin/Viking-Penguin Agreement that entitles PLA to commission is the commission provision. The Option on Next Work clause does not provide for PLA to receive commission for publishing agreements arising out of the clause.

Therefore, in order to determine whether PLA has sufficiently pleaded a breach of contract claim for the first cause of action, I must look to the commission provision in the 2005 Penguin/Viking-Penguin Agreement and determine whether this provision entitles PLA to receive commission for publishing agreements arising out of the Option on Next Work clause. The commission provision in the 2005 Penguin/Viking-Penguin Agreement provides in relevant part:

The Author hereby appoints [PLA] irrevocably as the Agent in all matters pertaining to or arising from this Agreement . . . . Such Agent is hereby fully empowered to act on behalf of the Author in all matters in any way arising out of this Agreement . . . . All sums of money due the Author under this Agreement shall be paid to and in the name of said Agent . . . . The Author does also irrevocably assign and transfer to [PLA], as an agency coupled with an interest, and [PLA] shall retain a sum equal to fifteen percent (15%) of all gross monies due and payable to the account of the Author under this Agreement.

(Affirmation of Ellis B. Levine, Exhibit B).

It is the general rule that an agency for no definite term is revocable at will. (*Douglas Real Estate Mgmt. Corp. v. Montgomery Ward & Co.*, 4 N.Y.2d 33 [1958]; *Prod. Products Co. v. Vision Corp.*, 270 A.D.2d 922 [4th Dep't 2000]; *Conrad v. Golden*, 275 A.D. 946 [2d Dep't 1949]). However, when an agency authority is coupled with an interest, the agency is irrevocable. (*Hunts v. Rousmanier's Adm'rs*, 21 U.S. 174 [1823]; *In re Jarmakowski's Estate*, 8 N.Y.S.2d 35 [N.Y. Sur. 1938]; *Ravallo v. Refridgerated Holdings, Inc.*, 2009 WL 612490 [S.D.N.Y. 2009]). An agency is coupled with an interest where, as a part of the arrangement with the principal, the agent receives title to all or part of the subject matter of the agency. (3 Am. Jur. 2d Agency § 63; *In re Jarmakowski's Estate*, 8 N.Y.S.2d at 38;

*Marbury v. Barnet*, 40 N.Y.S. 76, 77 [1st Dep't 1896] [“[t]o make the power irrevocable, there must be an interest in the subject of the agency itself, and not a mere interest in the result of the execution of the authority . . . .]. Words alone are not enough to establish an agency coupled with an interest. (2A N.Y. Jur. 2d, Agency § 56; *In re Jarmakowski's Estate*, 8 N.Y.S.2d at 38).

In this case, the commission provision grants PLA a 15% commission in the proceeds from its sale of rights in Grimes' literary works and not an interest in those literary works themselves. The mere fact that the commission provision “appoints PLA irrevocably” as an agent is not enough to create an agency coupled with an interest. (*In re Jarmakowski's Estate*, 8 N.Y.S.2d at 38 [“there must be more than mere words to establish an agency coupled with an interest”]). PLA argues that its agency is irrevocable because the agency authority was given as security for the debts incurred by PLA in procuring the publishing agreements for Grimes. However, an agent who is authorized to reimburse himself out of the proceeds of the agency for advances made or expenses incurred does not have a power coupled with an interest unless he is also given a property interest in the subject matter of the power. (3 Am. Jur. 2d Agency § 65). Since PLA does not have a property interest in Grimes' literary works, its agency is revocable and it was revoked in May 2007. Therefore, PLA's argument fails in so far as PLA relies on its alleged irrevocable agency to support its claim for breach of contract in the first cause of action.

The remainder of the commission provision in the 2005 Penguin/Viking-Penguin Agreement provides that “[PLA] shall retain a sum equal to fifteen percent (15%) of all gross monies due and payable to the account of the Author under this Agreement.” (Affirmation

of Ellis B. Levine, Exhibit B). The commission provision does not provide that PLA is entitled to commission on agreements arising out of the Option on Next Work clause and it only entitles PLA to commission for the four books that are the subject of the 2005 Penguin/Viking-Penguin Agreement. Therefore, PLA is not entitled to commission for “The Black Cat” and the first cause of action is dismissed. In light of this disposition, it is unnecessary to address Grimes’ other arguments with respect to the first cause of action.

## II. Second Through Seventh Causes of Action

The second through seventh causes of action allege breach of contract for the following publishing agreements: (1) an agreement made in 2000 between Grimes, Penguin, and Putnam; (2) an agreement made in 1999 between Grimes, Putnam, and New American; (3) an agreement made in 2001 between Grimes, Putnam, and Signet; (4) an agreement made in 2002 between Grimes, Penguin-Putnam, and Penguin; (5) an agreement made in 2003 between Grimes, Penguin, and Signet; and (6) an agreement made in 2003 between Grimes, Penguin, and Signet.

PLA alleges that the agreements Grimes entered into with Penguin after she terminated PLA as her literary agent are “extensions” of the agreements that PLA procured on behalf of Grimes and that Grimes violated the terms of the underlying agreements by refusing to pay commission to PLA for the extensions. Defendant Grimes moves to dismiss the second through seventh causes of action, arguing that PLA is not entitled to commission for the extensions because PLA’s agency is not coupled with an interest and PLA’s agency was revoked in May 2007. PLA responds by arguing that whether or not its agency was revoked does not affect the sufficiency of the pleadings in the second through seventh causes

of action for breach of contract.

The only provision of the underlying publishing agreements that entitles PLA to commission is the commission provision. Since the commission provision in the underlying publishing agreements only grants PLA a 15% commission in the proceeds from its sale of right in Grimes' literary works, and not an interest in those literary works themselves, PLA's agency is revocable and it was revoked in May 2007. (*See infra*, Section I).

The remainder of the commission provision in the underlying publishing agreements only entitles PLA to commission for the literary works that are the subject of those agreements and it does not entitle PLA to commission for extensions of these agreements. Furthermore, PLA does not allege any facts or cite any cases to support its argument that despite the unambiguous terms of the commission provision in the underlying agreements, PLA is entitled to commission for extensions of these agreements. (*See Swits v. New York Sys. Exch.*, 281 A.D.2d 833, 835 [3d Dep't 2001] [holding that former salesperson is not entitled to commission on post-termination lease renewals or extensions because there was no express provision for the payment of commission post-termination]; *McGimpsey v. J. Robert Folchetti & Assoc., LLC*, 19 A.D.3d 658, 659 [2d Dep't 2005]; *Prod. Products Co. v. Vision Corp.*, 270 A.D.2d 922 [4th Dep't, 2000]). Therefore, the second through seventh causes of action for breach of contract are dismissed.

### III. Eleventh and Fourteenth Causes of Action

In the eleventh and fourteenth causes of action, PLA alleges that the agreements it procured on behalf of Grimes "created a fiduciary relationship between Grimes and each of the respective Penguin defendants on the one hand and PLA on the other hand." (Verified

Complaint ¶¶ 135, 149). To support its claim that Grimes owes PLA a fiduciary duty, PLA alleges that over a 12 year period, PLA “diligently performed services as a literary agent for Grimes” and that as a result of these services, Grimes was paid a substantial sum of money. (*Id.* ¶¶ 11, 13). The complaint further alleges that “[PLA] placed its trust in Grimes and the [defendants] to use their superior knowledge with respect to the financial affairs of the licensing agreements and the value of PLA’s interests, and to faithfully handle the funds due PLA under the agreements that Grimes and [defendants] are entrusted with and to account to [PLA] for all funds held or distributed under the agreements. (*Id.* ¶¶ 137, 150).

PLA further alleges that Grimes and the other defendants breached their fiduciary duties to PLA under the agreements, thereby causing PLA injury, harm, and damages. (*Id.* ¶¶ 139, 152). PLA seeks punitive damages for the alleged breach of fiduciary duty. (*Id.* ¶¶ 141, 154). In response, Grimes argues that PLA’s breach of fiduciary duty claims should be dismissed because PLA has not alleged any facts to support its assertion that Grimes owes PLA a fiduciary duty.

Generally, while “the agent owes a fiduciary obligation to the principal . . . the obligations that a principal owes an agent . . . are not fiduciary.” Restatement (Third) of Agency § 1.01, cmt. e (2006); 2A NY Jur. 2d, Agency § 259 (“in the ordinary situation, there is no trust and confidence reposed by the agent in the principal, as there is by the principal in the agent”). As stated by the Court of Appeals:

A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation. Such a relationship, necessarily fact-specific, is grounded in a higher level of trust than normally presents in the marketplace between those

involved in arms' length business transactions. Generally, where parties have entered into a contract, courts look to that agreement to discover the nexus of the parties' relationship and the particular contractual expression establishing the parties' interdependency. If the parties do not create their own relationship of higher trust, courts should not ordinarily transport them to the higher realm of relationship and fashion the stricter duty for them.

(*EBC I, Inc. v. Goldman Sachs & Co.*, 5 N.Y.3d 11, 19-20 [2005] [internal citations and quotation marks omitted]).

In *EBC I*, the court found that the pleadings were sufficient to establish Goldman's fiduciary duty to the plaintiff where the complaint essentially alleged that the plaintiff hired Goldman to give it advice for the benefit of plaintiff's company and that the plaintiff relied on Goldman's expertise to advise it as to a fair price and engage in honest dealings with the plaintiff's best interest in mind. (*Id.* at 20). By contrast, where the plaintiff's complaint merely recites that the defendant owes the plaintiff a fiduciary duty and the agreement between the parties sets forth the details of that relationship, courts have found that the plaintiff was unable to plead a special relationship to support its fiduciary duty claim. (See *L. Magarian & Co., Inc. v. Timberland Co.*, 245 A.D.2d 69, 69-70 [1st Dep't 1997]; *Rakus, Inc. v. 3 Red G, LLC*, 26 Misc. 3d 1206(A), 2010 WL 26252 at \*3 [N.Y. Sup. 2010]).

Under the terms of the publishing agreements procured by PLA, PLA was appointed as Grimes' literary agent and, as the author, Grimes was the principal in the relationship. PLA's allegation that Grimes, the author, owes a fiduciary duty to her literary agent, is unsupported by case law and the general principles of agency law that the obligations that a principal owes an agent are not fiduciary. (Restatement [Third] of Agency § 1.01, cmt. e [2006]).

Furthermore, unlike *EBC I*, PLA's allegations that the parties worked together for an extended period of time and generated a lot of money are not sufficient to support its claim that Grimes owes PLA a fiduciary duty. PLA's allegation that it "placed its trust in Grimes . . . to use [her] superior knowledge [of] the financial affairs of the licensing agreements" runs contrary to the tenor of the parties' publishing agreement which appointed PLA as Grimes' literary agent. Finally, PLA's right to commission under the publishing agreements creates a contractual, not a fiduciary, obligation which requires both parties to act fairly and adhere to the implied covenant of good faith and fair dealing. Therefore, PLA's allegations are insufficient to support its claim that Grimes owes PLA a fiduciary duty and the eleventh and fourteenth causes of action are dismissed.

Accordingly, it is hereby

ORDERED that the motion to dismiss the first, second through seventh, eleventh and fourteenth causes of action is granted; and it is further

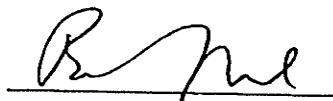
ORDERED that the parties appear for a status conference in court on October 28, 2010 at 2:30 p.m.; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

Dated:

10/6/2010

ENTER:



J.S.C.

**HON. BERNARD J. FRIED**

# **EXHIBIT 5**



Penguin Group (USA)

375 Hudson Street, New York, NY 10014-3658  
Telephone (212) 366 2959 Fax (212) 366 2867 alex.gigante@us.penguin.com

Alexander Gigante  
SENIOR VICE PRESIDENT  
LEGAL AFFAIRS/CORPORATE COUNSEL

January 27, 2011

Ms. Martha Grimes  
115 D Street, G-6  
Washington, D.C. 20003

David B. Wolf, Esq.  
Ellis B. Levine, Esq.  
Cowan, DeBaets, Abrahams & Sheppard LLP  
41 Madison Avenue, 34<sup>th</sup> Floor  
New York, NY 10010

Re: Peter Lampack Agency, Inc. v. Martha Grimes and Penguin Group (USA) Inc.

Dear Ms. Grimes and Gentlemen:

Penguin Group (USA) Inc. ("PGI") has incurred to date legal expenses totaling \$219,536.98 in the lawsuit *Peter Lampack Agency, Inc. v. Martha Grimes and Penguin Group (USA) Inc.* Moreover, because Lampack has appealed the Supreme Court's dismissal of the action, PGI is likely to incur additional legal expenses.

It was precisely because of the possibility of such litigation with the Lampack Agency that Ms. Grimes and PGI entered into several indemnity agreements (together, the "Indemnity Agreements"). Although PGI previously tendered (through Cowan, DeBaets) its legal expenses to Ms. Grimes for reimbursement under the Indemnity Agreements, it has not received any payment. Therefore, this letter is to notify you that PGI intends to exercise its right under the Indemnity Agreements to withhold and apply against Ms. Grimes' indemnity obligations her author's share of proceeds under the various book publishing agreements between her and PGI.

PGI will exclude from this indemnity set-off legal expenses totaling \$55,126.18, for the period from December 2009 through June 2010, during which time PGI attempted to remain neutral in the litigation through a separate, negotiated standstill agreement with plaintiff. Unfortunately, after Ms. Grimes filed her motion to dismiss, the Supreme Court insisted that PGI move as well, thus compelling PGI to abandon neutrality and actively defend against Lampack's claims. For now,

# **EXHIBIT 6**

E-FILE

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

PETER LAMPACK AGENCY, INC.,

Plaintiff,

v.

MARTHA GRIMES, PENGUIN GROUP (USA) INC.,  
PENGUIN PUTNAM INC., VIKING PENGUIN, a  
division of PENGUIN GROUP (USA), ONYX, a  
division of PENGUIN GROUP(USA) and NEW  
AMERICAN LIBRARY, a division of PENGUIN  
GROUP (USA),

Defendants.

Index No. 09/603525

STIPULATION

WHEREAS, Hon. Bernard Fried issued a Decision and Order, dated October 28, 2011 (the "Order") which, *inter alia*, dismissed the plaintiff's First through Seventh and Eleventh causes of action alleged in the Verified Complaint as against Penguin Group (USA) Inc. and its affiliates denoted in the caption herein (collectively "Penguin");

WHEREAS, Plaintiff has filed and served a Notice of Appeal from the Order, dated November 8, 2010, and anticipates perfecting an appeal within the time permitted by law;

WHEREAS, Penguin has served a motion for summary judgment seeking dismissal as against Penguin of the Ninth and Tenth causes of action asserted in the Verified Complaint;

WHEREAS, counsel for the parties recognize that the outcome of the appeal may directly affect the Ninth and Tenth causes of action;

WHEREAS, counsel for the parties wish to avoid the cost and expense of further motion practice;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned and authorized counsel for the parties, that:

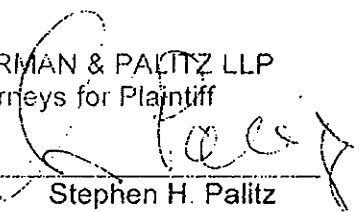
1. Plaintiff withdraws and discontinues the Ninth and Tenth Causes of Action in the Verified Complaint, without prejudice, and subject to the final outcome on appeal of the claims dismissed by the Order. The Ninth and Tenth causes of action may be reinstated only if there is a reversal or partial reversal of the Order on appeal, or if an appellate court modifies the Order, so as to permit reinstatement in whole or in part of the claims dismissed under the Order.

2. Penguin withdraws, without prejudice, its motion for summary judgment seeking dismissal of the Ninth and Tenth Causes of Action in the Verified Complaint.

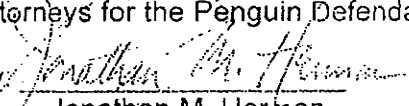
3. In the event the Ninth and Tenth Causes of Action are re-asserted in an amended complaint based on the outcome of the anticipated Appeal, they shall be deemed to have been interposed at the time these claims were interposed in the original Verified Complaint.

Dated: June 24, 2011  
New York, New York

BIERMAN & PALITZ LLP  
Attorneys for Plaintiff

By:   
Stephen H. Palitz  
74 Trinity Place, Suite 1550  
New York, NY 10005

DORSEY & WHITNEY LLP  
Attorneys for the Penguin Defendants

By:   
Jonathan M. Herman  
51 West 52<sup>nd</sup> Street  
New York, NY 10019-6119

SO ORDERED: 

J.S.C. Date

HON. BERNARD J. FRIED

Tel: (212) 232-2055  
[spalitz@biermanpalitzllp.com](mailto:spalitz@biermanpalitzllp.com)

Tel: (212) 415-9200  
[herman.jonathan@dorsey.com](mailto:herman.jonathan@dorsey.com)