

1 **BETTS, PATTERSON & MINES P.S.**
Christopher W. Tompkins (WSBA #11686)

2 CTompkins@bpmlaw.com

3 701 Pike Street, Suite 1400
4 Seattle, WA 98101-3927

4 **BLANK ROME LLP**

5 Henry F. Schuelke III (admitted *pro hac vice*)

6 HSchuelke@blankrome.com

7 600 New Hampshire Ave NW
8 Washington, DC 20037

8 James T. Smith (admitted *pro hac vice*)

9 Smith-jt@blankrome.com

10 Brian S. Paszamant (admitted *pro hac vice*)

11 Paszamant@blankrome.com

12 One Logan Square, 130 N. 18th Street
13 Philadelphia, PA 19103

14 **UNITED STATES DISTRICT COURT**
15 **FOR THE EASTERN DISTRICT OF WASHINGTON**
16 **AT SPOKANE**

14 SULEIMAN ABDULLAH SALIM,
15 MOHAMED AHMED BEN SOUD,
16 OBAID ULLAH (as personal
representative of GUL RAHMAN),

17 Plaintiffs,

18 vs.

19 JAMES ELMER MITCHELL and
20 JOHN "BRUCE" JESSEN,

21 Defendants.

NO. 2:15-CV-286-JLQ

**DEFENDANTS' REPLY IN
SUPPORT OF MOTION FOR A
PROTECTIVE ORDER RE:
MANUSCRIPT AND
MANUSCRIPT DRAFTS**

22
DEFENDANTS' REPLY IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER
NO. 2:15-CV-286-JLQ

Betts
Patterson
Mines
One Convention Place
Suite 1400
701 Pike Street
Seattle, Washington 98101-3927

1 Plaintiffs'¹ response to Defendants' request for a very limited protective
2 order ("Response") overlooks two key facts: (1) Defendants seek a protective order
3 to safeguard the property rights of a third-party, Crown; and (2) the Manuscript is
4 the sole document within Defendants' possession responsive to Plaintiffs'
5 document requests that Defendants have not yet produced. Respectfully,
6 Defendants are entitled to entry of the protective order sought by their Motion.

7 In arguing that the Confidentiality Agreement ("Agreement") entered into
8 between Plaintiffs and Defendants is adequate to cover Defendants' "commercial
9 interests," Plaintiffs' Response at 1, Plaintiffs ignore the undisputable property
10 rights and commercial interests that Crown has in the Manuscript – necessitating
11 entry of the requested protective order. As explained by Crown's Tina Constable
12 in her Declaration, Crown invested in the Manuscript before Plaintiffs commenced
13 this litigation and, without sufficient protection, Crown could face real, significant,
14 and direct harm that will be difficult, if not impossible, to prevent or to quantify.
15 Constable Decl., ECF No. 82, at ¶¶ 7-12. Ms. Constable explains, among other
16 things, that if the Manuscript is leaked before its publication, Crown will have
17 already lost its right to determine and coordinate the Manuscript's first publication,
18 which is the most valuable right to a publishing company. *Id.* at ¶ 4. Finally, Ms.

19 _____
20 ¹ Capitalized terms used herein shall have the meanings afforded such terms within
21 Defendants' Motion for a Protective Order ("Motion"), ECF. No. 81, unless
22 otherwise defined herein.

1 Constable explains that Crown has specifically asked Defendants to seek a
2 protective order governing the production of the Manuscript and drafts thereof in
3 light of its belief “that such an order is much more easily and completely enforced
4 than any confidentiality agreement entered into solely by the parties to this action.”
5 *Id.* at ¶¶ 4-5.

6 Further, Plaintiffs’ conclusion notwithstanding, the Agreement is insufficient
7 to protect all of Crown’s interests. The Agreement is between Plaintiffs and
8 Defendants, not Crown. Because Crown is not a party to the Agreement, to the
9 extent that any breach should occur—even unintentionally—Crown will have
10 difficulty enforcing the Agreement or limiting the significant damage it is sure to
11 suffer. To protect Crown, and at Crown’s request, Defendants seek only a limited
12 protective order that will cover the Manuscript and its drafts.

13 Additionally, Plaintiffs dedicate a portion of their Response to arguing that
14 Defendants have somehow been dilatory in their document production, or are
15 somehow improperly refusing to produce a trove of relevant documents.
16 Response, ECF. No. 86, at 2. Plaintiffs’ argument is simply incorrect. To date, as
17 detailed within the Declaration of Ann Querns (“Querns Decl.”) attendant to this
18 Reply, ECF. No. 90, Defendants have: (1) produced to Plaintiffs over 21,000 pages
19 of documents not subject to any confidentiality restrictions; (2) produced to
20 Plaintiffs an additional 900 pages of material subject to the Agreement that is not
21 Crown’s property; (3) supplied to the Government over 700 pages of documents
22

1 for classification review²; and (4) provided the Government access to their homes
2 so that the Government could collect copious additional documents for
3 classification review. In fact, Defendants believe that the only non-privileged,
4 non-classified document in their possession responsive to Plaintiffs' document
5 requests that has not already been produced is the Manuscript. And Defendants'
6 good-faith rationale for withholding the Manuscript from production is clear:
7 Crown, a third-party has requested that Defendants take steps aimed at protecting
8 its property interest.

9 Finally, once a protective order governing the production of the Manuscript
10 and drafts thereof is entered, Defendants will immediately produce the Manuscript
11 to Plaintiffs. So too, Defendants will produce the drafts of the Manuscript and
12 related communications immediately upon receiving the Government's
13 authorization to do so.

14 _____
15 ² Under the Non-Disclosure Agreements Defendants entered with the Government
16 in 2003, ECF No. 84, and the Discovery Protocol governing this case, ECF No. 47,
17 Defendants were required to abide by the Government's request.

18 Most of the documents supplied to the Government are drafts of the
19 Manuscript and related communications. *Id.* ¶¶ 7-9. Thus, even assuming
20 *arguendo* that these documents could be sufficiently protected by the Agreement,
21 Defendants are still unable to produce them absent clearance from the
22 Government.

1 DATED this 18th day of October, 2016.

2 BETTS, PATTERSON & MINES P.S.

3 By: s/ Christopher W. Tompkins

4 Christopher W. Tompkins, WSBA #11686
ctompkins@bpmlaw.com

5 Betts, Patterson & Mines, P.S.
6 701 Pike Street, Suite 1400
Seattle WA 98101-3927

7 Henry F. Schuelke III, admitted *pro hac vice*
8 hschuelke@blankrome.com

9 Blank Rome LLP
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10 Washington, DC 20037

11 James T. Smith, admitted *pro hac vice*
smith-jt@blankrome.com

12 Brian S. Paszamant, admitted *pro hac vice*
paszamant@blankrome.com

13 Blank Rome LLP
14 One Logan Square, 130 N 18th Street
Philadelphia, PA 19103

15 Attorneys for Defendants Mitchell and Jessen
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