

**IN THE CIRCUIT COURT OF THE 15<sup>TH</sup> JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA**

**CASE NO.:**

**Division:**

**BRADLEY C. BIRKENFELD,**

Plaintiff,

v.

**LEONARD A. LAUDER; and,  
KEVIN M. COSTNER,**

Defendants.

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**COMPLAINT**

Comes now Plaintiff, Bradley C. Birkenfeld ("BIRKENFELD"), through his undersigned attorneys, and hereby files this Complaint against Defendants Leonard A. Lauder ("LAUDER") and Kevin M. Costner ("COSTNER") for fraud, negligent misrepresentation and intentional interference with advantageous or business relationship, all arising from publication of Plaintiff's book, *Lucifer's Banker: The Untold Story of How I Destroyed Swiss Bank Secrecy* ("*Lucifer's Banker*"), published by Greenleaf Book Group Press ("Greenleaf"). Plaintiff alleges as follows:

**I. PARTIES**

1. Plaintiff BIRKENFELD is a native-born United States citizen currently residing in Malta. BIRKENFELD is not a citizen of Malta and has no residence in the United States.

2. Defendant LAUDER resides in Palm Beach, Florida at his oceanfront mansion located at 26 South Ocean Boulevard, Palm Beach, Florida and at his New York City apartment. Defendant LAUDER is chairman emeritus of Estée Lauder, the world's third-largest maker of cosmetics and fragrances. Defendant LAUDER stepped down as CEO of Estée Lauder in 1999. According to public reports, Defendant LAUDER's net worth exceeds \$15.9 billion. Defendant LAUDER's

private banker at UBS bank (f/k/a Union Bank of Switzerland) was Christian Bovay in Geneva, Switzerland. Defendant LAUDER is a marquee name.

3. Defendant COSTNER resides in Santa Barbara, California. Defendant COSTNER is an American actor, director, producer, and musician. Among other accolades, Defendant COSTNER has won two (2) Academy Awards and three (3) Golden Globe Awards. He starred as Eliot Ness in the major motion picture blockbuster “*The Untouchables*.” Defendant COSTNER’s private banker at UBS was Stephane Furrer in Geneva, Switzerland. Defendant COSTNER is a marquee name.

4. Plaintiff BIRKENFELD is a world-renowned whistleblower. Among other things, Plaintiff voluntarily disclosed to multiple United States law enforcement authorities and the U.S. Senate Permanent Subcommittee on Investigations (“PSI”) the existence of 19,000 Americans with secret, offshore, undeclared, numbered bank accounts at UBS, Switzerland, an offshore mecca for billionaires, to evade United States income taxes, capital gains taxes, estate taxes, or otherwise engage in illegal conduct. As a direct and proximate cause of Plaintiff’s voluntary disclosures, the United States has recovered more than \$20 billion from American taxpayers in back taxes, fines, and penalties. Approximately 100,000 Americans came into tax compliance in three separate Internal Revenue Service (“IRS”) tax amnesty programs. Plaintiff single-handedly precipitated the end of Swiss bank secrecy through a new United States-Swiss tax treaty and otherwise. Plaintiff’s courageous disclosures earned him the largest IRS whistleblower award in history: \$104 million. Plaintiff is the author of *Lucifer’s Banker* published by Greenleaf. (See [www.lucifersbanker.com](http://www.lucifersbanker.com)).

## II. JURISDICTION AND VENUE

5. This is an action for damages and supplemental relief with an amount in controversy that exceeds the subject matter jurisdictional minimum of this Court, \$30,000.00, exclusive of

interest, costs, and attorney fees, exclusive of interest, costs, and attorney fees, as required under Sections 26.012 and 34.01, Florida Statutes (2019).

6. Venue is proper in this Court pursuant to Florida Statutes Sections 47.11 and 47.021 (2019).

7. Jurisdiction is proper because both Defendants LAUDER and COSTNER have sufficient contacts with the State of Florida, as required under Florida's Long-Arm Statute, Fla. Stat.

§48.193 (1) (a) and (2), because:

- a. Defendants have committed various torts in the State of Florida while Plaintiff was a resident there in 2016.
- b. Defendant LAUDER engaged in substantial and ongoing personal and business activities in the State of Florida through, inter alia, the advertisement, distribution, and sale of cosmetics, fragrances, entertainment, art collection, society soirees and otherwise.
- c. Defendant LAUDER employs a staff of upwards of twenty (20) people at his Palm Beach County, Florida home and also maintains and registers not less than four (4) automobiles at his Palm Beach County residence located at 26 South Ocean Boulevard, Palm Beach, Florida.
- d. Defendant LAUDER is Director and the President of a Melville Management Corporation, an entity authorized and registered to do business in the State of Florida that provides personal financial, investment, and legal services to Defendant LAUDER and his immediate family. The services include wealth management and tax avoidance schemes. Melville Management Corporation employs seven (7) employees in the State of Florida.

- e. Defendant LAUDER pays over \$500,000.00 yearly in taxes on his Palm Beach Billionaire's Row residence at 26 South Ocean Boulevard, Palm Beach, Florida. The residence has been in LAUDER's family for seven (7) decades and the residence was extensively renovated by LAUDER in 1999 to better suit his standing, prestige and lifestyle as one of Palm Beach's most recognized high society members.
- f. Defendant LAUDER avails himself of significant public services provided to his Palm Beach County residence, including but not limited to: roads, water, electricity, gas, sanitation services, fire and police protection and other municipal, county and state services.
- g. Plaintiff BIRKENFELD's claims against LAUDER in this case arise out of or relate to Defendant's general jurisdictional contacts with the forum, as well as his specifically purposeful use of tortious communications intended to protect his pecuniary, personal and social interests while intentionally targeting BIRKENFELD for substantial harm in this forum.
- h. LAUDER's specific actions in this case and general presence in Palm Beach County as a homeowner, taxpayer, employer and resident were such that he had fair warning that he could be subjected to jurisdiction in the State of Florida.
- i. COSTNER and his lawyers intentionally directed their tortious conduct into the State of Florida, knowing that Plaintiff resided in Florida, and knowingly caused him to be injured in Florida.
- j. COSTNER made written communications into Florida from outside of the State which constitute committing a tortious act for purposes of the Florida Long-Arm Statute because this cause of action arises from those communications.

- k. Additionally, COSTNER has numerous contacts with the State of Florida and has a nearly continuous presence in this state as a result of his entertainment and other business activities arising from the broadcast or showing of his motion pictures, which equates to the sale of the products he creates to the citizens of the State of Florida; his regularly scheduled musical performances in the State of Florida and his environmental marine remediation products business that is periodically located, tested or used in the State of Florida.
- l. Plaintiff BIRKENFELD's claims against COSTNER in this case arise out of or relate to Defendant COSTNER's contacts with the forum, as well as his specifically purposeful use of tortious communications intended to protect his pecuniary, personal and social interests while intentionally targeting BIRKENFELD in Florida for substantial harm in this forum, specifically the purposeful directing of tortious communications by COSTNER into the State of Florida to target a Florida resident for harm.
- m. Defendant COSTNER's specific actions in this case were such that he had fair warning that he could be subjected to jurisdiction in the State of Florida.
- n. Both Defendants LAUDER and COSTNER have previously stipulated to satisfaction of Florida's Long-Arm Statute in this dispute.
- o. The cause of action at issue in this case arises from the written communications of the Defendants that contained the tortious misrepresentations and acts of tortious interference and were essential to the success of the torts alleged against Defendants LAUDER and COSTNER.

- p. Defendants LAUDER and COSTNER each have sufficient minimum contacts with this forum such that the maintenance of this action does not offend traditional notions of fair play and substantial justice and Defendants' individual due process rights will not be harmed or offended by litigation in this forum.

### **III. FACTS**

8. In 2005, Plaintiff BIRKENFELD, then a UBS Director, voiced objection to UBS' executive management about secret, offshore, undeclared, numbered bank accounts held by the American 1% to evade income taxes, capital gains, and estate taxes. The response by UBS management was anger and retaliation by UBS against Plaintiff and a classic cover-up. As a result of this dispute, Plaintiff BIRKENFELD resigned from UBS in October 2005.

9. In 2007, Plaintiff BIRKENFELD voluntarily contacted United States law enforcement officials at the Department of Justice (June 19-20, 2007) the Internal Revenue Service (October 12, 2007), and, the Securities and Exchange Commission (November 14, 2007). Plaintiff also testified before the United States Senate Permanent Subcommittee on Investigations ("PSI") about staggering tax fraud perpetrated by the American 1% using secret, offshore, undeclared, numbered bank accounts in Switzerland (October 11, 2007; November 13, 2007).

10. Among other persons, Plaintiff spoke with Kevin Downing and Karen Kelly at the U.S. Department of Justice, Daniel Reeves and John McDougal at the Internal Revenue Service, Matthew Kutz at the Department of Treasury, Thomas Silverstein and Laura Josephs at the Securities and Exchange Commission, and Robert Roach and Laura Stuber at the PSI.

11. Plaintiff's voluntary disclosures revolutionized the multi-trillion-dollar Swiss banking industry. Switzerland and the United States signed and implemented a new tax treaty. The United States Senate held three hearings and issued three reports. The Internal Revenue Service

implemented three tax amnesty programs. The United States Government Accountability Office published four reports. In 2009, UBS and the United States entered into a deferred prosecution agreement on charges of conspiring to defraud the United States. Among other things, UBS was required to provide names and account information for American clients engaged in tax fraud, cease secret, offshore, undeclared, numbered bank accounts for Americans, and pay \$780 million in fines, penalties, interest, and restitution.

12. UBS provided names and account information for only 4,700 of the 19,000 wealthiest Americans complicit in tax fraud through secret undeclared numbered accounts. Many important and well-known UBS clients were knowingly omitted by UBS from the list provided to the IRS, including both Defendants herein. Evidence supports the inference that the leniency of the United States towards UBS was exchanged for political or financial favors, including an email published by Wikileaks in which former Secretary of State Hillary R. Clinton states that a “political” solution must be engineered for UBS’ decades-long massive tax fraud.

13. Former United States Senator Carl Levin (R-MI), former Chairman of the PSI, wrote regarding Plaintiff’s revelations concerning American secret, offshore, undeclared, numbered bank accounts in Switzerland in a letter dated July 28, 2009:

*In October of 2007, Mr. Birkenfeld ... provided testimonial and documentary information related to his employment as a private banker at UBS in Switzerland. In a sworn deposition before the Subcommittee staff, Mr. Birkenfeld supplied information on the program conducted by UBS Switzerland to attract client accounts in the United States, and the activities and practices employed by UBS private bankers operating out of Switzerland.... The information provided by Mr. Birkenfeld has been accurate and enabled the Subcommittee to initiate its investigation of the practices of UBS.*

14. Director of the Division of Enforcement at the Securities and Exchange Commission, Robert Khuzami, wrote a letter to United States District Judge for the Southern District of Florida Hon. William J. Zloch dated August 11, 2009, stating:

*The information provided by Mr. Birkenfeld led the Commission to commence a formal investigation into the conduct he described ... [and] was also important in helping the staff question witnesses and formulate requests for documents from UBS and others. The information that the staff has learned in the course of the Commission's investigation has been consistent with the information that Mr. Birkenfeld has provided.*

15. Jeffrey H. Sloman, Acting United States Attorney, stated that Plaintiff had provided “substantial assistance in the investigation of others who have committed offenses” that “has been significant, useful, truthful, complete, and reliable.”

16. The IRS Summary Award Report for Plaintiff's \$104 million whistleblower award stated:

*Birkenfeld provided information on taxpayer behavior that the IRS had been unable to detect, provided exceptional cooperation, identified connections between parties to transactions (and the methods used by UBS AG) and the information led to substantial changes in UBS AG business practices and commitment to future compliance.... The comprehensive information provided by the whistleblower was exceptional in both its breadth and depth.... [T]he information provided by the whistleblower formed the basis for unprecedented actions against UBS AG, with collateral impact on other enforcement activities and a continuing impact on future compliance by UBS AG.*

17. In an exchange with Judge Zloch on August 21, 2009, Mr. Downing represented that,

*I have no reason to believe that we would have had any other means to have disclosed what was going on [regarding American secret, offshore, undeclared, numbered, bank accounts in Switzerland] but for an insider in that scheme providing detailed information, which Mr. Birkenfeld did.*

18. Plaintiff formalized a contract with Greenleaf to publish *Lucifer's Banker* on or about June 22, 2016, when Plaintiff was a resident of Florida. Plaintiff's submitted manuscript was vetted for accuracy or otherwise by a literary lawyer retained by Plaintiff and by Greenleaf's legal counsel.

19. The submitted manuscript identified Defendant LAUDER and his mother, Josephine Esther “Estée” Lauder, the founder and namesake of the Estée Lauder cosmetics and beauty products empire, as owners of secret, offshore, undeclared bank accounts at UBS, Switzerland. Defendant LAUDER's UBS private banker was Christian Bovay in Geneva, Switzerland. Plaintiff



BIRKENFELD was Estée Lauder's private banker until her death on April 24, 2004. Among other things, the original submitted manuscript stated (p. 232), "At least two of [Hillary Clinton's billionaire friends], Jack Manning and Leonard Lauder, had undeclared secret numbered accounts at UBS in Geneva and had been contributing money to her political campaigns for years." Plaintiff was also the UBS private banker for Mr. Manning. Plaintiff had previously reported to the U.S. Department of Justice, the IRS, the SEC, and to the PSI under oath that Defendant LAUDER and his mother Estée Lauder, had secret, offshore, undeclared numbered accounts at UBS Switzerland.

20. Defendant COSTNER's UBS private banker was Stephane Furrer in Geneva, Switzerland. Among other things, Plaintiff's submitted manuscript stated (pages 135-136): "I gave [my attorneys] client names and account holdings that made their eyes pop: Igor Olenicoff, Kevin Costner, Leonard and Estée Lauder, Abdul Aziz Abbas (a shady character with direct ties to Saddam Hussein), porn stars, prominent physicians, and one of Osama bin Laden's biological brothers."

21. Plaintiff had previously reported that Defendant COSTNER held a secret, offshore, undeclared numbered bank account at UBS, Switzerland, to the U.S. Department of Justice, IRS, SEC, and the PSI in testimony under oath.

22. In an October 11, 2007, email from Mr. Dickieson to colleagues David Schertler and Peter Taylor, Mr. Dickieson reports that in Plaintiff's deposition before the PSI, Plaintiff BIRKENFELD "mentioned that Kevin Costner had a \$20 million account in the Private Banking Unit [of UBS]."

23. In a March 4, 2008 email from Mr. Dickieson to Bob Roach, staff director of the PSI, the former states that "Olenikov [sic] was identified to you during the session we had on October 11, 2007. [Check your notes it was in the part of the discussion where Brad mentioned Costner, too]."

24. Mr. Roach replied by email the same day, “You are right. I completely forgot about Olenicoff. I remembered Costner, but not Olenicoff.”

25. In an April 22, 2008, email from Plaintiff’s attorney David H. Dickieson to Kevin Downing in the Tax Division of the Department of Justice, Mr. Dickieson states, among other things, “Brad is willing to provide information about actor Kevin Costner’s relationship with UBS.”

26. On or about September 2016, on the eve of scheduled publication after tens of thousands of copies of *Lucifer’s Banker* had been printed, Defendants LAUDER and COSTNER, separately through their attorneys, threatened legal action against Plaintiff BIRKENFELD and Greenleaf unless references to them as owners of secret, offshore, undeclared, numbered accounts at UBS, Switzerland in *Lucifer’s Banker* were censored.

27. In a letter to Plaintiff dated September 27, 2016, Defendant COSTNER falsely asserted that he had “never had an account with UBS...[M]y client never had any account with UBS and has never had any offshore bank account.” See Exhibit “A”, attached.

28. In a companion letter dated September 27, 2016, Defendant COSTNER again falsely and fraudulently asserted that Defendant COSTNER “has never had an account with UBS, nor had any other offshore bank account of any kind.” See Exhibit “B”, attached.

29. These letters were essential to the success of the torts alleged against Defendant COSTNER herein and provide the basis for the claims asserted against Defendant COSTNER. See attached Exhibits “A” and “B”.

30. As a direct and proximate consequence of the malicious, negligent or intentional, and false statements of Defendant COSTNER to Plaintiff and Greenleaf denying ownership of secret, offshore, undeclared, numbered secret bank account at UBS, Switzerland and COSTNER’s threats of legal action, the reference to him to that effect was censored from *Lucifer’s Banker*. The

censorship substantially diminished the newsworthiness and global sales of *Lucifer's Banker*, delayed its publication, caused Greenleaf to destroy tens of thousands of previously printed books, required Plaintiff to shoulder the expense of hiring an additional literary attorney to vet the altered manuscript, and an increase in Plaintiff's literary insurance coverage to \$3 million. The financial injury to Plaintiff BIRKENFELD exceeds \$30,000.00, exclusive of interest, costs, and attorney fees.

31. COSTNER's specific actions in this case were such that he had fair warning that he could be subjected to jurisdiction in the State of Florida.

32. In a letter dated September 21, 2016, Defendant LAUDER did not directly refute or dispute that he maintained accounts at UBS or other Swiss banks. Among other things, the letter equivocally stated:

“[A]ny bank accounts in Switzerland that were maintained by Mr. Lauder at any given time were principally in connection with investments managed by UBS on his behalf and were properly reported to the U.S. and Swiss authorities. We were further reliably advised that all required U.S. and foreign income tax filings and foreign bank account reports with respect to such accounts were made in a timely manner in accordance with IRS and Department of Treasury requirements by a major U.S. accounting firm.”

See Exhibit “C”, attached.

33. In a letter dated September 26, 2016, from Defendant LAUDER's attorney to Greenleaf, Defendant LAUDER again did not dispute ownership of accounts at UBS. Defendant LAUDER's attorney stated, however, that his accounts at UBS complied with United States and Swiss law. The September 26, 2016 letter threatened legal action against Plaintiff and Greenleaf unless all references to the Lauders in *Lucifer's Banker* were eliminated. The letter falsely insinuated that Defendant LAUDER and his mother Estée Lauder never owned a secret, offshore, undeclared numbered account at UBS, Switzerland. See Exhibit “D”, attached.

34. These letters were essential to the success of the torts alleged against Defendant LAUDER herein and provide the basis for the claims asserted against Defendant LAUDER. See attached Exhibits “C” and “D”.

35. LAUDER’s specific actions in this case were such that he had fair warning that he could be subjected to jurisdiction in the State of Florida.

36. Defendants LAUDER’s and COSTNER’s false insinuations, averments or denials and legal threats to Plaintiff and Plaintiff’s publisher coerced the deletion of references to them in the original manuscript of *Lucifer’s Banker* as owners of secret, offshore, undeclared, numbered bank accounts in Switzerland with UBS, an offshore bank mecca for billionaires with locations in Zurich, Geneva, and Lugano, Switzerland.

37. Neither LAUDER nor COSTNER have denied under oath their ownership of an offshore, secret, undeclared numbered Swiss bank account with UBS, Geneva.

38. As a direct and proximate consequence of the malicious, negligent or intentional, and false statement of Defendant LAUDER to Plaintiff and Greenleaf denying ownership of a secret, offshore, undeclared, numbered bank account at UBS, Switzerland and Defendant LAUDER’s threat of legal action, references to Defendant LAUDER to that effect were censored from *Lucifer’s Banker*.

39. The censorship caused by Defendants’ tortious falsehoods substantially diminished the newsworthiness and global sales of *Lucifer’s Banker*, delayed its publication, caused Greenleaf to destroy tens of thousands of previously printed books, required Plaintiff to shoulder the expense of hiring an additional literary attorney to vet the altered manuscript, caused damage to Plaintiff’s reputation and brand, and, caused an increase in Plaintiff’s literary insurance coverage to \$3 million.

40. The financial injury to Plaintiff exceeds this Court's jurisdictional minimum amount of \$30,000.00, exclusive of interest, costs, and attorney fees, exclusive of interest and costs.

41. All conditions precedent to the filing of this action have been performed, have occurred or have been waived by Defendants.

42. Plaintiff BIRKENFELD has been required to obtain the services of the undersigned attorneys to prosecute this matter on his behalf and has agreed to pay them a reasonable fee for their services.

**COUNT I - TORTIOUS INTERFERENCE WITH ADVANTAGEOUS OR BUSINESS  
RELATIONSHIP (COSTNER)**

43. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1-42, above, as though fully set forth herein.

44. Plaintiff has an advantageous or business relationship with Greenleaf to publish, disseminate and promote his book *Lucifer's Banker*.

45. Plaintiff has legal rights pursuant to his business relationship with Greenleaf for the publication, promotion and dissemination of his book *Lucifer's Banker*.

46. Defendant COSTNER knew of the advantageous and business relationship between Plaintiff BIRKENFELD and his book publisher.

47. Defendant COSTNER intentionally and without justification interfered with Plaintiff BIRKENFELD's advantageous or business relationship with Greenleaf for the publication, promotion and dissemination of his book *Lucifer's Banker*.

48. Defendant COSTNER acted to disrupt or interfere with Plaintiff BIRKENFELD's business interests or relationship with Greenleaf by threatening legal action unless a reference to him as an owner of a secret, offshore, undeclared, numbered account at UBS, Switzerland was censored from *Lucifer's Banker*.

49. Despite the falsity of Defendant COSTNER's denials, Greenleaf capitulated to Defendant COSTNER's interference and the *Lucifer's Banker* manuscript was accordingly altered under duress by Plaintiff and Greenleaf to omit reference to Defendant COSTNER as being a participant in the secret UBS Swiss banking scheme to defraud the United States of billions of dollars in tax revenues.

50. Defendant COSTNER had no justification for his false denials and malicious threats and acts of interference against Plaintiff BIRKENFELD because in fact Defendant COSTNER owned a secret, offshore, undeclared, numbered account at UBS, Switzerland.

51. As a direct and proximate result of the malicious, intentional, and false statements and threats of Defendant COSTNER to Plaintiff and Greenleaf denying ownership of a secret, offshore, undeclared, numbered bank account at UBS, Switzerland and COSTNER's threats of legal action, which tortuously interfered with or disrupted the business or advantageous relationship between Plaintiff BIRKENFELD and Greenleaf, the reference to Defendant COSTNER was deleted from *Lucifer's Banker*.

52. The deleted material relating to Defendant COSTNER substantially subtracted from Plaintiff's portrait of American marquee tax cheats limned in the book, lowered public interest in the book, reduced its newsworthiness and diminished global sales of *Lucifer's Banker*, caused delay of its publication, caused Greenleaf to destroy tens of thousands of previously printed books, required Plaintiff to shoulder the expense of hiring additional editors and legal counsel to again edit and review the altered manuscript, and occasioned an increase in Plaintiff's literary insurance coverage to \$3 million, all of which resulted in substantial monetary damage to Plaintiff and to his reputation and brand.

53. The damages to Plaintiff as a result of Defendant COSTNER's tortious interference exceeds this Court's jurisdictional minimum of \$30,000.00, exclusive of interest, costs, and attorney fees.

**WHEREFORE**, Plaintiff BRADLEY C. BIRKENFELD requests this Court to render judgment on Count I against Defendant KEVIN M. COSTNER for tortious interference with advantageous or business relationship and award to Plaintiff all damages to be proved at the trial of this cause, including interest, costs and such other and further relief as this Court deems just and proper.

**COUNT II - TORTIOUS INTERFERENCE WITH ADVANTAGEOUS OR  
BUSINESS RELATIONSHIP (LAUDER)**

54. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 - 42, above, as though fully set forth herein.

55. Plaintiff BIRKENFELD has an advantageous or business relationship with Greenleaf to publish, disseminate and promote his book *Lucifer's Banker*.

56. Plaintiff has legal rights pursuant to his business relationship with Greenleaf for the publication, promotion and dissemination of his book *Lucifer's Banker*.

57. Defendant LAUDER knew of the advantageous or business relationship between Plaintiff BIRKENFELD and his book publisher.

58. Defendant LAUDER intentionally and without justification interfered with Plaintiff BIRKENFELD's relationship with Greenleaf for the publication, promotion and dissemination of his book *Lucifer's Banker*.

59. Defendant LAUDER acted to disrupt or interfere with Plaintiff BIRKENFELD's business interests or relationship with Greenleaf by threatening legal action unless a reference to him as an

owner of a secret, offshore, undeclared, numbered account at UBS, Switzerland was censored from *Lucifer's Banker*.

60. Despite the falsity behind Defendant LAUDER's denials, Greenleaf capitulated to Defendant LAUDER's tortious interference for fear of protracted and costly litigation and the *Lucifer's Banker* manuscript was accordingly altered under duress by Plaintiff and Greenleaf to omit reference to Defendant LAUDER as being a participant in the secret UBS Swiss banking scheme to defraud the United States of billions of dollars in tax revenues.

61. Defendant LAUDER had no justification for his false denials and malicious threats and acts of interference against Plaintiff BIRKENFELD because in fact Defendant LAUDER owned a secret, offshore, undeclared, numbered account at UBS, Switzerland.

62. As a direct and proximate result of the malicious, intentional, and false statements and threats of Defendant LAUDER to Plaintiff and Greenleaf denying ownership of a secret, offshore, undeclared, numbered bank account at UBS, Switzerland and LAUDER's threats of legal action, which tortuously interfered with or disrupted the business or advantageous relationship between Plaintiff BIRKENFELD and Greenleaf, the reference to Defendant LAUDER was deleted from *Lucifer's Banker*.

63. The deleted material relating to Defendant LAUDER substantially subtracted from Plaintiff's portrait of American marquee tax cheats limned in the book, lowered public interest in the book, reduced its newsworthiness and diminished global sales of *Lucifer's Banker*, caused delay of its publication, caused Greenleaf to destroy tens of thousands of previously printed books, required Plaintiff to shoulder the expense of hiring additional editors and legal counsel to again edit and review the altered manuscript, and occasioned an increase in Plaintiff's literary insurance



coverage to \$3 million, all of which resulted in substantial monetary damage to Plaintiff and to his reputation and brand.

64. The damages to Plaintiff caused by Defendant LAUDER exceeds this Court's jurisdictional minimum of \$30,000.00, exclusive of interest, costs, and attorney fees.

**WHEREFORE**, Plaintiff BRADLEY C. BIRKENFELD requests this Court to render judgment on Count II against Defendant LEONARD A. LAUDER for tortious interference with advantageous or business relationship and award to Plaintiff all damages to be proved at the trial of this cause, including interest, costs and such other and further relief as this Court deems just and proper.

**COUNT III - NEGLIGENT MISREPRESENTATION (COSTNER)**

65. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 53, above, as though fully set forth herein.

66. Specifically, Defendant COSTNER made misrepresentations of material fact, *to wit*:

- a. On September 27, 2016, Defendant COSTNER falsely asserted to Greenleaf, intended for Plaintiff BIRKENFELD, that he had "never had an account with UBS...". See Exhibit "B", attached.
- b. On September 27, 2016, Defendant COSTNER also misrepresented to Greenleaf, intended for Plaintiff BIRKENFELD, that he "never had any account with UBS and has never had any offshore bank account." See Exhibit "B", attached.
- c. In a companion letter dated September 27, 2016, Defendant COSTNER again falsely represented to Plaintiff BIRKENFELD that he (Defendant COSTNER)

“has never had an account with UBS, nor had any other offshore bank account of any kind.” See attached Exhibit “A”.

- d. As a direct and proximate consequence of these misrepresentations by Defendant COSTNER to Plaintiff and Greenleaf denying ownership of secret, offshore, undeclared, numbered secret bank account at UBS, Switzerland and COSTNER’s threats of legal action, the reference to him to that effect was censored from *Lucifer’s Banker*.

67. These statements by Defendant COSTNER are misrepresentations of the truth that are in fact false.

68. Defendant COSTNER was negligent in making these representations to Greenleaf and Plaintiff, because he knew or should have known them to be false or misrepresentation of material fact.

69. Defendant COSTNER was also grossly negligent in making these representations to Greenleaf and Plaintiff because he knew them to be false or a misrepresentations of material fact, either of which was false.

70. Defendant COSTNER intended to induce Plaintiff BIRKENFELD and/or Greenleaf to rely on his negligent misrepresentations.

71. COSTNER foresaw that his misrepresentations would cause substantial injury to Plaintiff BIRKENFELD and acted accordingly thereby causing injury to Plaintiff BIRKENFELD because Greenleaf acted in justifiable reliance upon the negligent misrepresentations of Defendant COSTNER.

72. Plaintiff BIRKENFELD was harmed as a direct and proximate result of the detrimental and justifiable reliance upon the negligent deception and negligent misrepresentations of Defendant COSTNER causing foreseeable injury to Plaintiff BIRKENFELD.

73. Defendant COSTNER had substantial and protectible pecuniary interests in making the misrepresentations of material fact.

74. These pecuniary interests include protection from disclosure of his secret assets from his ex-wife in their hotly contested and fractious divorce proceedings.

75. The pecuniary interests also include concealment from disclosure of the Swiss secret numbered bank account assets to the Internal Revenue Service with the attendant financial impact arising from his avoidance of paying taxes as well as preservation of his public image as an entertainer, along with avoidance of potential criminal and civil penalties and *inter alia*, negative publicity impacting his public image as an entertainer arising therefrom.

76. Defendant COSTNER's protectible interests additionally include his substantial pecuniary and financial interests that arise from the effort to avoid paying millions of dollars in taxes, penalties and interest to the United States government on the undisclosed millions of dollars that Defendant COSTNER had hidden in his Swiss numbered bank account at UBS in Geneva, Switzerland.

77. As a direct and proximate result of the negligent misrepresentations and false threats of Defendant COSTNER to Plaintiff and Greenleaf denying ownership of a secret, offshore, undeclared, numbered bank account at UBS, Switzerland and COSTNER's threats of legal action, the reference to Defendant COSTNER was deleted from *Lucifer's Banker*.

78. The deleted material related to Defendant COSTNER substantially subtracted from Plaintiff's portrait of American marquee tax cheats limned in the book, lowered public interest in

the book, reduced its newsworthiness and lessened global sales of *Lucifer's Banker*, caused delay of its publication, caused Greenleaf to destroy tens of thousands of previously printed books, required Plaintiff to shoulder the expense of hiring additional editors and legal counsel to again edit and review the altered manuscript, and occasioned an increase in Plaintiff's literary insurance coverage to \$3 million, all of which resulted in substantial monetary damage to Plaintiff and to his reputation and brand.

79. As a direct and proximate result of Plaintiff BIRKENFELD's reliance on Defendant COSTNER's negligent misrepresentations and actions, as set forth herein or otherwise proved at the trial for this cause, Plaintiff BIRKENFELD suffered direct and proximate substantial damages in an amount not less than this Court's jurisdictional minimum of \$30,000.00, exclusive of interest, costs, and attorney fees, and such other and further damages and amounts as will be proved at trial.

80. Plaintiff BIRKENFELD reserves the right to amend this Count III to seek punitive damages upon a showing of gross negligence, pursuant to Fla. Stat. §768.72 (2019), and in accordance with applicable Florida law.

**WHEREFORE**, Plaintiff BRADLEY C. BIRKENFELD requests this Court to render judgment on Count III against Defendant KEVIN M. COSTNER for negligent misrepresentation and award to Plaintiff all damages to be proved at the trial of this cause, including interest, costs and such other and further relief as this Court deems just and proper.

**COUNT IV - NEGLIGENT MISREPRESENTATION (LAUDER)**

81. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 42, and 54 through 64, above, as though fully set forth herein.

82. Defendant LAUDER made misrepresentations of material fact, *to wit*:

- a. In a letter dated September 21, 2016, to Greenleaf and intended for Plaintiff BIRKENFELD, Defendant LAUDER, although not directly disputing that he maintained accounts at UBS or other Swiss banks, misrepresented that “any bank accounts in Switzerland that were maintained by [him] at any given time were principally in connection with investments managed by UBS on his behalf and were properly reported to the U.S. and Swiss authorities.” See Exhibit “C”, attached.
- b. On September 21, 2016, Defendant LAUDER, in the same communication, also falsely asserted that he was “further reliably advised that all required U.S. and foreign income tax filings and foreign bank account reports with respect to such accounts were made in a timely manner in accordance with IRS and Department of Treasury requirements by a major U.S. accounting firm.” See Exhibit “C”, attached.
- c. On September 26, 2016, in a communication from Defendant LAUDER to Greenleaf intended for Plaintiff BIRKENFELD again did not dispute ownership of accounts at UBS again falsely stated that his accounts at UBS complied with United States and Swiss law. See attached Exhibit “D”.
- d. The September 26, 2016, communication also misrepresented that Defendant LAUDER and his mother Estée Lauder never owned a secret, offshore, undeclared numbered account at UBS, Switzerland and threatened legal action against Plaintiff and Greenleaf unless all references to the Lauder family were eliminated in *Lucifer’s Banker*. See attached Exhibit “D”.

e. As a direct and proximate consequence of these misrepresentations by Defendant LAUDER to Plaintiff and Greenleaf denying ownership of secret, offshore, undeclared, numbered secret bank account at UBS, Switzerland and LAUDER's threats of legal action, the reference to him to that effect was censored from *Lucifer's Banker*.

83. These statements by Defendant LAUDER are misrepresentations of the truth that are in fact false.

84. Defendant LAUDER was negligent in making these representations to Greenleaf and Plaintiff, because he knew or should have known them to be false or a misrepresentation of material fact; or he believed them to be true, but they were in fact false and he should have known them to be false.

85. Defendant LAUDER was also grossly negligent in making these representations to Greenleaf and Plaintiff statements because he knew them to be false or a misrepresentation of material fact, either of which was false.

86. Defendant LAUDER intended to induce Plaintiff BIRKENFELD and/or Greenleaf to rely on his negligent misrepresentations.

87. LAUDER foresaw that his misrepresentations would cause substantial injury to Plaintiff BIRKENFELD and acted accordingly thereby causing injury to Plaintiff BIRKENFELD because Greenleaf acted in justifiable reliance upon the negligent misrepresentations of Defendant LAUDER.

88. Plaintiff BIRKENFELD was harmed as a direct and proximate result of the detrimental and justifiable reliance upon the negligent deception and negligent misrepresentations of Defendant LAUDER causing foreseeable injury to Plaintiff BIRKENFELD.

89. Defendant LAUDER had substantial and protectible pecuniary interests in making his negligent misrepresentations of material fact.

90. These pecuniary interests included preventing disclosure of the Swiss secret numbered bank account assets to the Internal Revenue Service with the attendant potential criminal and civil penalties and *inter alia*, negative publicity arising therefrom.

91. Defendant LAUDER's protectible interests further include his substantial pecuniary and financial interests that arise from the effort to avoid paying millions of dollars in taxes, penalties and interest on the undisclosed millions of dollars that Defendant LAUDER had hidden in his Swiss numbered bank account at UBS in Geneva, Switzerland.

92. As a direct and proximate result of the negligent misrepresentations and false threats of Defendant LAUDER to Plaintiff and Greenleaf denying ownership of a secret, offshore, undeclared, numbered bank account at UBS, Switzerland and LAUDER's threats of legal action, the reference to Defendant LAUDER was deleted from *Lucifer's Banker*.

93. The deletion substantially subtracted from Plaintiff's portrait of American marquee tax cheats limned in the book, diminished the public interest in the book, its newsworthiness and global sales of *Lucifer's Banker*, delayed its publication, caused Greenleaf to destroy tens of thousands of previously printed books, required Plaintiff to shoulder the expense of hiring additional editors and legal counsel to again edit and review the altered manuscript, and occasioned an increase in Plaintiff's literary insurance coverage to \$3 million, all of which resulted in substantial monetary damage to Plaintiff and to his reputation and brand.

94. As a direct and proximate result of Plaintiff BIRKENFELD's reliance on Defendant LAUDER's negligent misrepresentations and actions, as set forth herein or otherwise proved at the trial for this cause, Plaintiff BIRKENFELD suffered direct and proximate substantial damages

in an amount not less than this Court's jurisdictional minimum of \$30,000.00, exclusive of interest, costs, and attorney fees, and such other and further damages and amounts as will be proved at trial.

95. Plaintiff BIRKENFELD reserves the right to amend this Count IV to seek punitive damages upon a showing of gross negligence, pursuant to Fla. Stat. §768.72 (2019), and in accordance with applicable Florida law.

**WHEREFORE**, Plaintiff BRADLEY C. BIRKENFELD requests this Court to render judgment on Count IV against Defendant LEONARD A. LAUDER for negligent misrepresentation and award to Plaintiff all damages to be proved at the trial of this cause, including interest, costs and such other and further relief as this Court deems just and proper.

#### **COUNT V - FRAUD (COSTNER)**

96. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 53 and 65 through 80, above, as though fully set forth herein.

97. Specifically, Defendant COSTNER made deliberate and knowing false statements of material fact, *to wit*:

- a. On September 27, 2016, Defendant COSTNER knowingly and deliberately asserted the falsehood to Greenleaf intended for Plaintiff BIRKENFELD that he had "never had an account with UBS...". See attached Exhibit "B".
- b. On September 27, 2016, Defendant COSTNER also knowingly and deliberately expressed falsities and untruth to Greenleaf, which was also intended for Plaintiff BIRKENFELD, that he "never had any account with UBS and has never had any offshore bank account." See attached Exhibit "B".
- c. In a companion letter dated September 27, 2016, Defendant COSTNER again knowingly and deliberately made deceptive representations directly to Plaintiff



BIRKENFELD that he (Defendant COSTNER) “has never had an account with UBS, nor had any other offshore bank account of any kind.” See attached Exhibit “A”.

- d. As a direct and proximate consequence of Plaintiff’s detrimental reliance upon these knowing and deliberate misrepresentations by Defendant COSTNER to Plaintiff and Greenleaf denying ownership of secret, offshore, undeclared, numbered secret bank account at UBS, Switzerland and COSTNER’s threats of legal action, the reference to him to that effect was censored from *Lucifer’s Banker*.

98. These statements by Defendant COSTNER are deliberate and knowingly deceptive and false.

99. Defendant COSTNER was deliberately fraudulent in making these false statements to Greenleaf and Plaintiff, because he knew them to be to be untrue.

100. Defendant COSTNER’s fraudulent deceptive statements were designed to induce Plaintiff BIRKENFELD and/or Greenleaf to rely to their detriment on his fraudulent false statements.

101. COSTNER foresaw that his fraudulent statements would cause substantial injury to Plaintiff BIRKENFELD and acted accordingly thereby causing injury to Plaintiff BIRKENFELD because Greenleaf acted in justifiable reliance upon the fraudulent misrepresentations of Defendant COSTNER.

102. Plaintiff BIRKENFELD was harmed as a direct and proximate result of the detrimental and justifiable reliance upon the deliberate deception and fraudulent representations of Defendant COSTNER causing foreseeable injury to Plaintiff BIRKENFELD.

103. Defendant COSTNER had substantial and protectible pecuniary interests in making the deliberate false representations of material fact.

104. These pecuniary interests include protection from disclosure of his secret assets from his ex-wife in their hotly contested and fractious divorce proceedings.

105. The pecuniary interests also include concealment from disclosure of the Swiss secret numbered bank account assets to the Internal Revenue Service with the attendant potential criminal and civil penalties and inter alia, negative publicity arising therefrom.

106. Defendant COSTNER's protectible interests additionally include his substantial pecuniary and financial interests that arise from the effort to avoid paying millions of dollars in taxes, penalties and interest to the United States government on the undisclosed millions of dollars that Defendant COSTNER had hidden in his Swiss numbered bank account at UBS in Geneva, Switzerland.

107. As a direct and proximate result of the fraudulent falsities and false threats of Defendant COSTNER to Plaintiff and Greenleaf denying ownership of a secret, offshore, undeclared, numbered bank account at UBS, Switzerland and COSTNER's threats of legal action, the reference to Defendant COSTNER was deleted from *Lucifer's Banker*.

108. The deletion substantially subtracted from Plaintiff's portrait of American marquee tax cheats limned in the book, diminished the public interest in the book, its newsworthiness and global sales of *Lucifer's Banker*, delayed its publication, caused Greenleaf to destroy tens of thousands of previously printed books, required Plaintiff to shoulder the expense of hiring additional editors and legal counsel to again edit and review the altered manuscript, and occasioned an increase in Plaintiff's literary insurance coverage to \$3 million, all of which resulted in substantial monetary damage to Plaintiff and to his reputation and brand.

109. As a direct and proximate result of Plaintiff BIRKENFELD's reliance on Defendant COSTNER's false and fraudulent representations and actions, as set forth herein or otherwise proved at the trial for this cause, Plaintiff BIRKENFELD suffered direct and proximate substantial damages in an amount not less than this Court's jurisdictional minimum of \$30,000.00, exclusive of interest, costs, and attorney fees, and such other and further damages and amounts as will be proved at trial.

110. Plaintiff Birkenfeld reserves the right to amend this Count V to seek punitive damages for fraud against Defendant COSTNER in accordance with Fla. Stat. §768.72 (2019), and applicable Florida law.

**WHEREFORE**, Plaintiff BRADLEY C. BIRKENFELD requests this Court to render judgment on Count V against Defendant KEVIN M. COSTNER for fraud and award to Plaintiff all damages to be proved at the trial of this cause, including interest, costs and such other and further relief as this Court deems just and proper.

**COUNT VI - FRAUD (LAUDER)**

111. Plaintiff realleges and incorporates by reference the allegations contained in Paragraphs 1 through 42, 54 through 64, and 81 through 95, above, as though fully set forth herein.

112. Specifically, Defendant LAUDER made deliberate and knowing false statements of material fact, *to wit*:

- a. In a letter dated September 21, 2016, to Greenleaf and intended for Plaintiff BIRKENFELD, Defendant LAUDER, although not directly disputing that he maintained accounts at UBS or other Swiss banks, deliberately and knowingly falsely stated that "any bank accounts in Switzerland that were maintained by [him] at any given time were principally in connection with investments

managed by UBS on his behalf and were properly reported to the U.S. and Swiss authorities.”

- b. On September 21, 2016, Defendant LAUDER, in the same communication, also deliberately falsely asserted that he was “further reliably advised that all required U.S. and foreign income tax filings and foreign bank account reports with respect to such accounts were made in a timely manner in accordance with IRS and Department of Treasury requirements by a major U.S. accounting firm.”
- c. On September 26, 2016, in a communication from Defendant LAUDER to Greenleaf intended for Plaintiff BIRKENFELD again did not dispute ownership of accounts at UBS, but again deliberately and deceptively stated that his accounts at UBS complied with United States and Swiss law.
- d. The September 26, 2016, communication was also fraudulently untruthful in stating that Defendant LAUDER and his mother Estée Lauder never owned a secret, offshore, undeclared numbered account at UBS, Switzerland and threatened legal action against Plaintiff and Greenleaf unless all references to the Lauder family were eliminated in *Lucifer’s Banker*.
- e. As a direct and proximate consequence of Plaintiff’s detrimental reliance upon these fraudulent, knowing and deliberate falsehoods by Defendant LAUDER to Plaintiff and Greenleaf denying ownership of secret, offshore, undeclared, numbered secret bank account at UBS, Switzerland and LAUDER’s threats of legal action, the reference to him to that effect was censored from *Lucifer’s Banker*.

113. These statements by Defendant LAUDER are deliberate and knowingly deceptive and false.

114. Defendant LAUDER was deliberately fraudulent in making these false statements to Greenleaf and Plaintiff, because he knew them to be untrue.

115. Defendant LAUDER's fraudulent deceptive statements were designed to induce Plaintiff BIRKENFELD and/or Greenleaf to rely to their detriment on his fraudulent false statements.

116. LAUDER foresaw that his fraudulent statements would cause substantial injury to Plaintiff BIRKENFELD and acted accordingly thereby causing injury to Plaintiff BIRKENFELD because Greenleaf acted in justifiable reliance upon the fraudulent misrepresentations of Defendant LAUDER.

117. Plaintiff BIRKENFELD was harmed as a direct and proximate result of the detrimental and justifiable reliance upon the deliberate deception and fraudulent representations of Defendant LAUDER causing foreseeable injury to Plaintiff BIRKENFELD.

118. Defendant LAUDER had substantial and protectible pecuniary interests in making his deliberately fraudulent representations of material fact.

119. These pecuniary interests included preventing disclosure of the Swiss secret numbered bank account assets to the Internal Revenue Service with the attendant potential criminal and civil penalties and inter alia, negative publicity arising therefrom.

120. Defendant LAUDER's protectible interests further include his substantial pecuniary and financial interests that arise from the effort to avoid paying millions of dollars in taxes, penalties and interest on the undisclosed millions of dollars that Defendant LAUDER had hidden in his Swiss numbered bank account at UBS in Geneva, Switzerland.

121. As a direct and proximate result of the deliberately fraudulent falsities and false threats of Defendant LAUDER to Plaintiff and Greenleaf denying ownership of a secret, offshore, undeclared, numbered bank account at UBS, Switzerland and LAUDER's threats of legal action, the reference to Defendant LAUDER was deleted from *Lucifer's Banker*.

122. The deletion substantially subtracted from Plaintiff's portrait of American marquee tax cheats limned in the book, diminished the public interest in the book, its newsworthiness and global sales of *Lucifer's Banker*, delayed its publication, caused Greenleaf to destroy tens of thousands of previously printed books, required Plaintiff to shoulder the expense of hiring additional editors and legal counsel to again edit and review the altered manuscript, and occasioned an increase in Plaintiff's literary insurance coverage to \$3 million, all of which resulted in substantial monetary damage to Plaintiff and to his reputation and brand.

123. As a direct and proximate result of Plaintiff BIRKENFELD's reliance on Defendant LAUDER's false and fraudulent representations and actions, as set forth herein or otherwise proved at the trial for this cause, Plaintiff BIRKENFELD suffered direct and proximate substantial damages in an amount not less than this Court's jurisdictional minimum of \$30,000.00, exclusive of interest, costs, and attorney fees, and such other and further damages and amounts as will be proved at trial.

124. Plaintiff Birkenfeld reserves the right to amend this Count VI to seek punitive damages for fraud against Defendant LAUDER in accordance with Fla. Stat. §768.72 (2019), and applicable Florida law.

**WHEREFORE**, Plaintiff BRADLEY C. BIRKENFELD requests this Court to render judgment on Count VI against Defendant LEONARD A. LAUDER for fraud and award to Plaintiff

all damages to be proved at the trial of this cause, including interest, costs and such other and further relief as this Court deems just and proper.

Respectfully submitted this 1<sup>st</sup> day of April 2020.

*s/ W. Bruce DelValle*

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**Attorneys for Plaintiff Bradley C.  
Birkenfeld.**

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HENRY L. SELF, III  
OF COUNSEL

<sup>2</sup> ALSO ADMITTED IN NY  
<sup>3</sup> ALSO ADMITTED IN NY AND NJ

September 27, 2016

**CONFIDENTIAL LEGAL NOTICE**  
**PUBLICATION OR DISSEMINATION IS PROHIBITED**

**VIA EMAIL: [bbirkenfeld@hotmail.com](mailto:bbirkenfeld@hotmail.com)**  
**& CERTIFIED MAIL RETURN**  
**RECEIPT REQUESTED**

Mr. Bradley Birkenfeld  
5875 Collins Avenue, Apt. 1607  
Miami Beach, Florida 33140-3768

**Re: Kevin Costner / Bradley Birkenfeld; Greenleaf Book Group, et al. – Lucifer's Banker**  
Our File No.: 5061-12

Dear Mr. Birkenfeld:

Our firm is litigation counsel to Kevin Costner, and I am writing with respect to your book entitled *Lucifer's Banker: The Untold Story of How I Destroyed Swiss Bank Secrecy* (the "Book"). You are hereby put on notice that in the event you publish any false and defamatory statements regarding my client, and/or statements that depict him in a false light, you and all those involved in the Book's publication will be exposed to millions of dollars in liability, and litigation will result.

In an effort to avoid being prosecuted for your own criminal conduct, you previously manufactured statements about my client, falsely stating to the Justice Department that my client was among the individuals concealing money in secret Swiss bank accounts with UBS in order to evade taxes and defraud the U.S. Treasury (hereinafter the "Statements"). This is an outlandish lie. You know very well that there is no truth whatsoever to these Statements. You are well aware that my client has never had an account with UBS. My client does not know you, and the authorities investigating your false claims concerning my client concluded that there no basis for your claims that my client was in any way involved in the UBS tax fraud scheme since my client never had any account with UBS and has never had any offshore bank account. You should know that false accusations of criminal conduct are libelous *per se*, and that damages are presumed as a matter of law. See *Allard v. Church of Scientology* (1976) 58 Cal.App.3d 439, cert. denied, 97 S.Ct. 1101, 429 U.S. 1091. If you publish the Statements in the Book or any other material that either states or implies in any way that my client engaged in this conduct, you will be guilty of Constitutional malice and will be exposed to substantial liability.

Exhibit "A"  
**BIRKENFELD v. LAUDER and COSTNER**



Mr. Bradley Birkenfeld

Re: Kevin Costner / Bradley Birkenfeld; Greenleaf Book Group, et al. – Lucifer's Banker

September 27, 2016

Page 2

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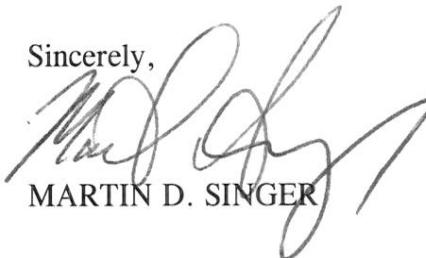
It is well established that "defamation by implication stems not from what is literally stated, but what is implied." In *White v. Fraternal Order of Police* (D.C. Cir. 1990) 909 F.2d 512, 518, the court recognized the "possibility that a defamatory inference may be derived from a factually accurate news report." *Id.* at 518 (citations omitted). *Weller v. American Broadcasting Co.* (1991) 232 Cal.App.2d 991 (news report implying that plaintiff overcharged the museum for candelabra was defamatory and resulted in substantial jury verdict). Taken together, errors, misrepresentations, unfair and disparaging conclusions, false comparisons, statements taken out of context, incomplete information, misleading characterizations of persons quoted, pejorative characterizations, outright misquoting, and calculated omissions, constitute defamation. Thus, to the extent that the Book raises defamatory inferences about Mr. Costner, it will be actionable.

Be forewarned that if the Statements or any other false and defamatory statements concerning my client are published by you in the Book or elsewhere, you will be sued and exposed to millions of dollars in liability for defamation, false light invasion of privacy, and related claims. The Statements are provably false. If you publish the Statements, you do so at your peril.

Please govern yourself accordingly.

Nothing contained herein is intended as, nor should it be deemed to constitute, a waiver or relinquishment of any of our client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved. This is a confidential legal communication and is not intended for publication.

Sincerely,



MARTIN D. SINGER

cc: Mr. Kevin Costner (*via email*)  
Daniel M. Grigsby, Esq. (*via email*)  
Mr. Arnold Robinson (*via email*)  
Allison S. Hart, Esq.

MDS:ash

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Exhibit "A"  
BIRKENFELD v. LAUDER and COSTNER

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MICHAEL E. WEINSTEN  
EVAN N. SPIEGEL

September 27, 2016

## CONFIDENTIAL LEGAL NOTICE PUBLICATION OR DISSEMINATION IS PROHIBITED

### VIA EMAIL:

[bgoodwin@greenleafbookgroup.com](mailto:bgoodwin@greenleafbookgroup.com)

[gbrown@greenleafbookgroup.com](mailto:gbrown@greenleafbookgroup.com)

& CERTIFIED MAIL RETURN

RECEIPT REQUESTED

Bryan Goodwin, Esq.  
Chief Operating Officer & General Counsel  
GREENLEAF BOOK GROUP  
P.O. Box 91869  
Austin, Texas 78709

Re: Kevin Costner / Bradley Birkenfeld; Greenleaf Book Group, et al. – Lucifer's Banker  
Our File No.: 5061-12

Dear Mr. Goodwin:

Our firm is litigation counsel to Kevin Costner, and I am writing with respect to the book authored by Bradley Birkenfeld entitled *Lucifer's Banker: The Untold Story of How I Destroyed Swiss Bank Secrecy* (the "Book"), which Greenleaf Book Group ("Greenleaf") is intending to publish. Greenleaf is hereby put on notice that in the event it publishes any false and defamatory statements regarding my client, and/or statements that depict him in a false light, Greenleaf and all those involved in the Book's publication will be exposed to substantial liability which will result in litigation.

Mr. Birkenfeld is a well known convicted felon. He is also a UBS whistleblower who was awarded \$104 million for identifying overseas tax cheats and exposing widespread tax evasion involving Swiss Bank UBS. He has served time in prison for his own criminal involvement in the massive tax fraud scheme and has previously made false and defamatory statements about my client in an attempt to avoid going to jail. Mr. Birkenfeld has falsely asserted that my client was among the individuals concealing money in secret Swiss bank accounts with UBS in order to evade taxes and defraud the U.S. Treasury (hereinafter the "Statements"). This is an outlandish lie. There is no truth whatsoever to the Statements which were manufactured by Mr. Birkenfeld out of whole cloth in an attempt to save himself from being prosecuted for his own criminal acts. My

Exhibit "B"

BIRKENFELD v. LAUDER and COSTNER

Bryan Goodwin, Esq.

GREENLEAF BOOK GROUP

Re: Kevin Costner / Bradley Birkenfeld; Greenleaf Book Group, et al. – Lucifer's Banker

September 27, 2016

Page 2

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client's personal banking has always been conducted legally and in the United States. My client has never had an account with UBS, nor has he ever had any other offshore bank account of any kind. My client does not know Mr. Birkenfeld and has never been contacted by any government agency concerning Mr. Birkenfeld's assertions, facts which may be readily verified by Greenleaf. Several media organizations were notified by Mr. Birkenfeld of his accusations about my client. None of the media organizations accused my client of engaging in the conduct of Mr. Birkenfeld's bogus accusations. It is axiomatic that false accusations of criminal conduct are libelous *per se*, and that damages are presumed as a matter of law. *See Allard v. Church of Scientology* (1976) 58 Cal.App.3d 439, *cert. denied*, 97 S.Ct. 1101, 429 U.S. 1091.

We have been informed by another media organization recently that Mr. Birkenfeld may include in the Book the Statements about my client. It appears that Mr. Birkenfeld is engaging in this conduct to promote the Book. If Greenleaf publishes the Statements in the Book or any other material that either states or implies in any way that my client engaged in this conduct, Greenleaf will be guilty of Constitutional malice and will be exposed to substantial liability.

As you know, Mr. Birkenfeld is a convicted felon of a crime of dishonesty who was sentenced to 40 months in prison for conspiracy to commit tax fraud. Although Mr. Birkenfeld ultimately received a \$104 million reward from the IRS for exposing UBS clients who were engaging in tax fraud, the U.S. Attorney General's office has stated that Mr. Birkenfeld was prosecuted because he was not truthful about his own involvement in the tax fraud scheme and failed to disclose his dealings with his biggest client, property developer Igor Olenicoff, who himself cooperated with investigators and was not sentenced to any jail time. Mr. Birkenfeld falsely informed investigators that my client was among the list of UBS account holders who engaged tax fraud in an effort to avoid being prosecuted himself. The authorities investigating this matter confirmed Mr. Birkenfeld's statements concerning my client were not truthful and that my client never had an account with UBS. As such, Mr. Birkenfeld has no credibility and is thoroughly unreliable.

Under the circumstances, it would be extraordinarily reckless for Greenleaf to publish the Statements concerning my client based on the word of a convicted felon and known liar. Malice can be proven in a libel case by, among other things, the publisher's reliance on sources known to be hostile, biased or unreliable, or relying on persons who the publisher does not know to be reliable. *St. Amant v. Thompson* (1968) 390 U.S. 727, 88 S.Ct. 1323; *Copp v. Paxton* (1996) 45 Cal.App.4th 829, 845 (1996) ("A failure to investigate..., anger and hostility toward the plaintiff, reliance upon sources known to be unreliable..., or known to be biased against the plaintiff... --such factors may, in an appropriate case, indicate that the publisher himself had serious doubts regarding the truth of his publication"). It would therefore be malicious in the extreme to rely on Mr. Birkenfeld's defamatory assertions regarding my client and to publish Mr. Birkenfeld's lies about client in the Book.

Exhibit "B"

BIRKENFELD v. LAUDER and COSTNER

Bryan Goodwin, Esq.

GREENLEAF BOOK GROUP

Re: Kevin Costner / Bradley Birkenfeld; Greenleaf Book Group, et al. – Lucifer's Banker

September 27, 2016

Page 3

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Media organizations have refused to publish Mr. Birkenfeld's false Statements concerning my client after investigating this matter. In 2009, Mr. Birkenfeld gave an interview to *60 Minutes* in which he repeated the Statements about my client. After doing its due diligence and confirming that there was no evidence supporting Mr. Birkenfeld's Statements and that my client never had an account with UBS and the Justice Department found no basis to pursue charges against my client, *60 Minutes* eliminated Mr. Birkenfeld's Statements about my client from the story that was aired. Numerous media outlets that published stories concerning Mr. Birkenfeld and UBS followed suit and refused to publish Mr. Birkenfeld's false and defamatory Statements about my client.

It is well established that someone who re-publishes defamatory statements with knowledge or reason to know that the statements are defamatory, or consciously disregards the falsity of the statements, is liable for the damages caused by the re-publication of the statements. See for example, *Khawar v. Globe International, Inc.* (1998) 19 Cal.4th 254, 276, which held that "actual malice finding may be upheld ' "where there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports," ' " and that "there were obvious reasons to doubt the accuracy of the . . . central claim, and because that claim was an inherently defamatory accusation . . . , the jury could properly conclude that [publisher] acted with actual malice in republishing that claim if it found also, as it impliedly did, that [the publisher] failed to use readily available means to verify the accuracy of the claim by interviewing obvious witnesses who could have confirmed or disproved the allegations or by inspecting relevant documents or other evidence."

A publisher that broadcasts, disseminates or re-publishes defamatory statements made by a third party with knowledge of falsity or reason to know that the statements are defamatory, or consciously disregards the falsity of the statement, is liable for the damages caused by the re-publication of the statements. *E.g.*, *Khawar, supra*, 19 Cal.4th 254; *Osmond v. Ewap, Inc.* (1984) 153 Cal.App.3d 842; *Auvil v. CBS 60 Minutes* (E.D. Wash. 1992) 800 F.Supp. 928, 931; *Cubby, Inc. v. Compuserve, Inc.* (S.D.N.Y. 1991) 776 F. Supp. 135, 139; *Spence v. Flynt* (D.Wyo.1986) 647 F. Supp. 1266; *Dworkin v. Hustler Magazine, Inc.* (D.Wyo.1985) 611 F. Supp. 781; *Lerman v. Flynt Distributing Co., Inc.* (2nd Cir.1984) 745 F.2d 123, 139; *Lewis v. Time, Inc.*, 83 F.R.D. 455 (E.D.Cal.1979); *Heatherton v. Playboy, Inc.* (C.D.Cal.1973) 60 F.R.D. 372; *see also, Michael Jackson v. Paramount Pictures Corp.* (1998) 68 Cal.App.4th 10, 80 Cal.Rptr. 2d 1, 27 (1998) ("when a party repeats a slanderous charge, he is equally guilty of defamation, even though he states the source of the charge and indicates that he is merely repeating a rumor. \* \* \* A false statement is not less libelous because it is the repetition of rumor or gossip or of statements or allegations that others have made concerning the matter.").

It is also well established that "defamation by implication stems not from what is literally stated, but what is implied." In *White v. Fraternal Order of Police* (D.C. Cir. 1990) 909 F.2d 512, 518, the court recognized the "possibility that a defamatory inference may be derived from a factually accurate news report." *Id.* at 518 (citations omitted). *Weller v. American Broadcasting Co.* (1991) 232 Cal.App.2d 991 (news report implying that plaintiff overcharged the museum for

Exhibit "B"

BIRKENFELD v. LAUDER and COSTNER

Bryan Goodwin, Esq.

GREENLEAF BOOK GROUP

Re: **Kevin Costner / Bradley Birkenfeld; Greenleaf Book Group, et al. – Lucifer's Banker**

September 27, 2016

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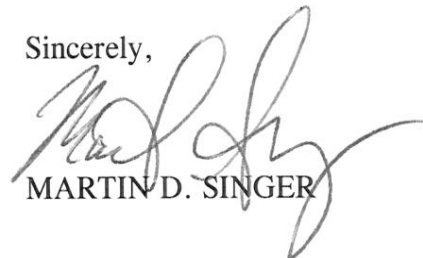
candelabra was defamatory and resulted in substantial jury verdict). Taken together, errors, misrepresentations, unfair and disparaging conclusions, false comparisons, statements taken out of context, incomplete information, misleading characterizations of persons quoted, pejorative characterizations, outright misquoting, and calculated omissions, constitute defamation. Thus, to the extent that the Book raises defamatory inferences about Mr. Costner, it will be actionable.

Be forewarned that if the Statements or any other false and defamatory statements concerning my client are published by Greenleaf in the Book or elsewhere, Greenleaf will be sued and will be exposed to millions of dollars in liability for defamation, false light invasion of privacy, and related claims. The Statements are provably false. If Greenleaf proceeds to publish the Statements, it does so at its peril.

Please govern yourself accordingly.

Nothing contained herein is intended as, nor should it be deemed to constitute, a waiver or relinquishment of any of our client's rights or remedies, whether legal or equitable, all of which are hereby expressly reserved. This is a confidential legal communication and is not intended for publication.

Sincerely,



MARTIN D. SINGER

cc: Mr. Kevin Costner (*via email*)  
Daniel M. Grigsby, Esq. (*via email*)  
Mr. Arnold Robinson (*via email*)  
Allison S. Hart, Esq.

MDS:ash

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Exhibit "B"  
**BIRKENFELD v. LAUDER and COSTNER**

# Weil, Gotshal & Manges LLP

767 Fifth Avenue  
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R. Bruce Rich  
212-310-8170  
bruce.rich@weil.com

September 21, 2016

Eric Rayman, Esq.  
Miller Korzenik Sommers LLP  
488 Madison Avenue  
New York, NY 10022-5702

Re: Leonard and Estée Lauder

Dear Eric:

As requested on our phone conversation, I set forth in summary form herein the "bottom line" of an extensive investigation conducted more than six years ago and in which our firm was actively involved into Bradley Birkenfeld's allegations at that time that the late Estée Lauder had maintained a secret numbered (presumably unreported) account at UBS in Switzerland and, similarly, that Leonard Lauder maintained that undisclosed account following Mrs. Lauder's death. That investigation revealed the completely false nature of such allegations.

At that time, our firm was reliably informed that, at the time of her death, Mrs. Lauder had no assets in any bank deposit accounts whatsoever in Switzerland. Further, any bank accounts in Switzerland that were maintained by Mr. Lauder at any given time were principally in connection with investments managed by UBS on his behalf and were properly reported to the U.S. and Swiss authorities. We were further reliably advised that all required U.S. and foreign income tax filings and foreign bank account reports with respect to such accounts were made in a timely manner in accordance with IRS and Department of Treasury requirements by a major U.S. accounting firm.

Further as we discussed, the CBS and ABC television networks both looked into the allegations of Mr. Birkenfeld and thereafter concluded not to broadcast any story on this.

I am disappointed that you, on Mr. Birkenfeld's behalf, and Greenleaf Book Group have thus far declined to share with us the apparent rehashing of these allegations in the about-to-be-published *Lucifer's Banker: The Untold Story of How I Destroyed Swiss Banking Secrecy*. Such refusal impedes our ability fully to respond as to the potentially defamatory import of statements made concerning the

Exhibit "C"

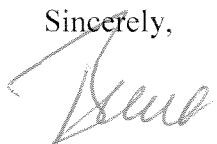
**BIRKENFELD v. LAUDER and COSTNER**

Eric Rayman, Esq.  
September 21, 2016  
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**Weil, Gotshal & Manges LLP**

Lauders. That said, I would appreciate your contacting me once you have had a chance to discuss this matter with Mr. Birkenfeld. In the meanwhile, we hereby place both Mr. Birkenfeld and Greenleaf Book Group on notice that Mr. Lauder reserves all rights with respect to any statements, either relating to the allegations cited above, or potential others not yet known to us, that may appear in the book as published.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. Rich", written over a horizontal line.

R. Bruce Rich

cc: Bryan Goodwin

Exhibit "C"

**BIRKENFELD v. LAUDER and COSTNER**

# Weil, Gotshal & Manges LLP

BY EMAIL AND COURIER

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R. Bruce Rich  
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September 26, 2016

Mr. Bryan Goodwin  
Chief Operating Officer and General Counsel  
Greenleaf Book Group, LLC  
4005B Bannister Lane  
Austin, TX 78704  
[bgoodwin@greenleafbookgroup.com](mailto:bgoodwin@greenleafbookgroup.com)

Mr. Eric Rayman  
Miller Korzenik Sommers LLP  
488 Madison Avenue, Suite 1120  
New York, NY 10022-5702  
[eric@mksrlaw.com](mailto:eric@mksrlaw.com)

Dear Messrs. Goodwin and Rayman:

Bradley Birkenfeld's *Lucifer's Banker*, prepublication copies of which have already been released, read, and the subject of critical reviews, unlawfully defames our client, Leonard Lauder, as well as the entire Lauder family and the business carrying its name. We hereby demand that further distribution and sale of the book be halted immediately until these defamatory passages have been removed. Your clients' failure to do so will subject them to the full panoply of legal and equitable remedies resulting from knowingly false publication of reputationally injurious statements of fact.

The central thesis of *Lucifer's Banker* is set forth at page 4 of the book: that the motivation of "those devious bastards" at UBS Switzerland, where Mr. Birkenfeld was employed, was to "seduc[e] scores of One-Percenters into stashing their fortunes in secret Swiss numbered accounts, no questions asked..., know[ing] all along that everything we were doing was in flagrant defiance of American tax laws." The factual premise of a corrupt Swiss banking system aided and abetted by UBS and employees such as Mr. Birkenfeld is repeated throughout the book, e.g., at page 47 ("For nearly a century, secret bank accounts in Switzerland served as the treasure chests for the world's super-rich and all-powerful. They were the place to hide one's gold, jewels, bundles of cash, and bearer bonds—no names attached"); 48 (wealthy and powerful clients never needed to pay "a single euro in taxes"); 49 ("The rich and famous, the bad and ugly, intelligence agents and Mafiosi used their numbered accounts to hide money from wives, husbands, and business partners; to embezzle company profits; to fund small wars and finance drug

Exhibit "D"

**BIRKENFELD v. LAUDER and COSTNER**



cartels. Movie stars loved the intrigue of it all, and mistresses clutched Swiss Black American Express cards in their Louis Vuitton purses. Never mind that if you held a numbered account, you actually *paid* the Swiss a flat fee for the privilege and never received a penny of interest. The balance was yours to dream about, tucked safely away under your steel Swiss mattress"); 49 ("Best of all, money that no one knew about was *untaxable* money. For wealthy Americans who were less than forthright, it was a godsend. The American market was target-rich, and Swiss banks began assembling teams of private wealth managers who would travel to the United States, attending luxurious venues and soirées where potential clients were swimming in cash, and bring home the bacon."); 70 (in-house training at UBS to assure "our happy [U.S.] cowboy [client] is pleased that he is paying no taxes on his nest egg."); 80 ("apex" of Birkenfeld's career in Swiss banking was "making tons of money" off of "mostly harmless, wealthy Americans who just thought the government was overtaxing them and then spending their hard-earned money on dumbass programs about which they had no say."); 86 (In Birkenfeld's "long back-and-forths to the States," he'd "had lots of time to think about the people I was helping to *not* pay their share, while the tax man's axe fell on those who couldn't afford it....[H]ere I was, helping those One-Percenters shirk their tax obligations while regular folks hefted the burden.")

Sprinkled throughout this narrative are false and defamatory references to Estee and Leonard Lauder as prime examples of beneficiaries of this unlawful scheme. On page 68, the book alleges that Estee Lauder was one such "secret account holder."

On page 88, Birkenfeld recounts attending a Breast Cancer Research Foundation charity event, described as "a project of the Estee Lauder family." He proceeds to write: "The Lauders give tons of money to this charity, which has so far raised \$90 million, but they're not here tonight because, unfortunately, Estée has just passed away. While the Lauder family philanthropies are well documented, their secret UBS accounts are for their eyes only. Why should rich folk pay all those bothersome taxes when they're oh-so-generous?" The passage continues by stating that Birkenfeld met on one occasion with Leonard Lauder, that Mr. Lauder stated that he was looking forward to a meeting in New York with Mr. Birkenfeld's boss, and gratuitously and sarcastically observes: "I'm sure [Mr. Lauder is] eager to ensure that Mom's hidden offshore assets are properly probated."

On page 136, during Birkenfeld's confessional phase, he recounts meeting with several attorneys and "regal[ing] them with very true tales about how UBS whipped us into bringing in Net New Money, as if we were oarsmen on a Roman galleon, and how the bank prepped us to lie, cheat, and—for want of a prettier term—steal. I gave them client names and account holdings that made their eyes pop: Igor Olenicoff, Kevin Costner, Leonard and Estée Lauder...."

Through such deplorable smear tactics, Mr. Birkenfeld and Greenleaf Book Group have already released into the international marketplace the completely fabricated and wholly unsupported allegation that members of the Lauder family maintained bank accounts with UBS Switzerland for the purpose of evading tax payments to the appropriate tax authorities. It may suffice for Mr. Birkenfeld's purposes to make the wholly speculative leap of logic from the fact that one or more members of the Lauder family

**Exhibit "D"**

**BIRKENFELD v. LAUDER and COSTNER**

Mr. Bryan Goodwin  
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(for entirely legitimate reasons) maintained Swiss bank accounts for a period of time to the conclusion that no taxes were paid with respect to such account holdings – but lawful publication under U.S. libel law requires far more. Likewise, it may suit Mr. Birkenfeld’s – but hopefully not Greenleaf’s -- commercial interests in exploitative “journalism” to indiscriminately lump the Lauder family with others who may or may not have acted scrupulously in respect of abiding by the law – but lawful publication under U.S. libel law requires far more.

I have previously advised you both, and therefore your respective clients have been put on notice, as to the false and defamatory nature of the allegations made in the book concerning the Lauder family’s compliance with all tax reporting requirements implicated by any of the bank accounts they maintained at UBS. I further have previously advised you both as to Mr. Birkenfeld’s prior, unsuccessful efforts at the end of 2009 to peddle these same falsehoods through other media outlets. Despite these representations, made based on thorough prior investigation into and refutation of Mr. Birkenfeld’s assertions, we have been asked to provide further support for the falsity of what has been and is about to be more widely published. With due respect, this turns the legal burden on its head. An author may not recklessly make defamatory charges – say, Bruce Rich murdered his wife – without any supporting evidence, yet escape the consequences of defamation law unless and until I were to come forward with proof of the negative. It is the author’s responsibility, and his publisher’s once placed on notice, to have a good-faith basis, grounded in fact, for the defamatory assertion. Mr. Birkenfeld fails that test. That being the case, constitutional malice would be easily proven against both Mr. Birkenfeld and Greenleaf Book Group.

In all events, as part of our own review of these allegations, we have spoken with Mr. Lauder directly, with his personal attorney, Jeffrey Weinberg, who is a retired partner in my law firm, with Mr. Lauder’s financial staff, and with representatives of the Big 4 accounting firm that has managed Mr. Lauder’s and the Lauder family’s U.S. tax filings for decades, including as relate to any Swiss UBS bank accounts ever maintained by any members of the Lauder family. That review has turned up not a scintilla of evidence to support Mr. Birkenfeld’s allegation that Mr. Lauder, as well, perhaps, as other members of the Lauder family, maintained Swiss UBS accounts on which proper tax and other regulatory filings were not made. All evidence is to the contrary.

It is our client’s earnest hope that Greenleaf will do the right thing for all concerned – to preserve the reputational integrity of one of the most prominent and respected families in the world, to avoid tarnishing the renowned Estee Lauder brand as marketed globally through the Estee Lauder Companies, Inc., and to preserve Greenleaf’s public association as a reputable publisher. That right thing entails eliminating any references to the Lauders from all copies of the book worldwide prior to its broad public release; advising those third parties to whom the book has heretofore been distributed of that intention, so as to minimize further reputational damage as may arise from media coverage of passages that never should have seen the light of day; and advising us promptly of your intention to undertake these corrective measures.

**Exhibit "D"**

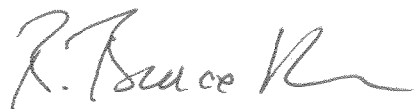
**BIRKENFELD v. LAUDER and COSTNER**

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Mr. Eric Rayman  
September 26, 2016  
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**Weil, Gotshal & Manges LLP**

I await your early response. Mr. Lauder reserves all rights and remedies in the interim.

Very truly yours,

A handwritten signature in dark ink, appearing to read "R. Bruce Rich". The signature is fluid and cursive, with a long horizontal stroke at the end.

R. Bruce Rich

cc: Leonard A. Lauder  
Jeffrey J. Weinberg, Esq.