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Via ECF, Under Seal

February 21, 2020

Hon. Valerie E. Caproni
United States District Court
Southern District of New York
40 Foley Square, Room 240
New York, NY 10007

Re: *Chronicle Books et. al. v. Audible, Inc.*, 19 Civ. 7913 (VEC)

Dear Judge Caproni:

We represent Defendant Audible, Inc. (“Audible”) in the above-captioned matter, and we write on behalf of all parties. The parties have requested that the Court retain jurisdiction over the parties’ settlement agreement (the “Agreement”), as indicated therein. Pursuant to this Court’s recent Order (Dkt. No. 75), attached as Exhibit A to this letter are the parties’ proposed redactions to that Agreement. Those redactions concern solely the nature and amount of consideration exchanged under the Agreement. The parties respectfully submit that there are compelling reasons to maintain the confidentiality of that information, as the Agreement contemplates.

[REDACTED] (Agmt. ¶ 3.) Section 11 provides that the nature and amount of this consideration can be disclosed to a very limited category of individuals who are required to have access to the information, such as parties’ affiliates, lawyers, accountants and other financial advisors for the purpose of obtaining professional advice. (Agmt. § 11.) This confidentiality provision is a key element of the Agreement, and publicly revealing the existence and specifics of the settlement consideration would render it moot. In agreeing to keep this information confidential, the parties recognized that disclosure of the settlement amount may create the impression that the settlement amount reflects the monetary values of the claims—which is not true.

Thus, the parties’ respectfully request that this Court retain jurisdiction over the Agreement, but allow the Agreement to be publicly filed with the redactions reflected on Exhibit A. This request is not unusual: Courts in this Circuit have agreed to redact similar information on numerous occasions. *See, e.g. Mercer Health & Benefits LLC v. DiGregorio, et al.*, No. 18 Civ. 1805, Dkt. No. 83 (S.D.N.Y. July 16, 2018) (Koeltl, J.) (endorsing request to keep settlement amounts confidential after denying request to keep the entire settlement agreement under seal); *Savarese v. Cirrus Design Corp.*, 2010 WL 815027, at *1 (S.D.N.Y. March 9, 2010) (holding there was a “sufficient showing that the amount of the settlement should be filed under seal”); *Pullman v. Alpha Media Pub., Inc.*, 624 F. App’x 774, 779 (2d Cir. 2015) (holding that a

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“district court also did not abuse its discretion in redacting the settlement amount” from transcript of proceeding); *cf. Blake v. Deutsche Bank AG*, 2011 WL 2946374, at *2 (S.D.N.Y. July 18, 2011) (in proceeding to enforce prior settlement agreement agreeing to keep the amount of the settlement under seal while rejecting motion to seal the entire agreement). The same result should follow here. When the Court balances the “competing considerations” of public access to this information versus the “privacy interests of those resisting disclosure” it should come down on the side of the parties, who are jointly requesting these limited redactions, because the public will not be prejudiced by the limited redaction of this sensitive information. *United States v. Amodio*, 71 F.3d 1044, 1051 (2d Cir. 1995). Indeed, in the version of the Agreement reflected in Exhibit A, the public would still have access to nearly all of the terms of the Agreement.

For these reasons, the parties respectfully request that the Court permit them to file the Agreement partially under seal, with the requested redactions as shown on Exhibit A. We thank the Court for its consideration of this matter.

Respectfully,



Emily Rejsbaum

cc: All counsel, by ECF