

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

BROOKS SHERMAN,

Plaintiff,

v.

THE BENT AGENCY, INC. and JENNY  
BENT,

Defendants.

Index No. 652602/2021

THE BENT AGENCY, INC.,

Counterclaim Plaintiff,

v.

BROOKS SHERMAN,

Counterclaim Defendant.

**JURY TRIAL DEMANDED**

**DEFENDANTS' VERIFIED ANSWER AND SEPARATE  
DEFENSES TO PLAINTIFF'S VERIFIED AMENDED  
COMPLAINT AND DEFENDANT TBA'S VERIFIED  
COUNTERCLAIMS**

Defendants The Bent Agency, Inc. and Jenny Bent (“TBA” and “Bent,” respectively, or, collectively, “Defendants”), by and through their undersigned attorneys, DLA Piper LLP (US), hereby answer and respond to the Verified Amended Complaint, dated April 28<sup>th</sup>, 2021 (the “Complaint”), filed by Brooks Sherman (“Sherman” or “Plaintiff”), by his counsel, Slarskey LLC, and state as follows:

1. Defendants deny the allegations contained in paragraph 1 of the Complaint, except admit that Sherman was a literary agent previously affiliated with TBA, and that TBA paid Sherman certain commissions for seven years, including more than three years after he left TBA.

Defendants further state that, contrary to the false, “alternate reality” concocted by Sherman in his Complaint – which would be actionable as defamation were it not couched in the protective coating of a legal pleading – TBA ceased paying Sherman continuing commissions only after evidence of his multiple breaches and incidents of misconduct came to light, as brave victims of his mistreatment made public statements attesting to various indignities they suffered as a result of his conduct.

2. Defendants deny the allegations contained in paragraph 2 of the Complaint, except admit that Sherman has focused on representing authors of the young adult fiction category and that he was affiliated with TBA from approximately 2014-2017.

3. Defendants deny the allegations contained in paragraph 3 of the Complaint.

4. Defendants deny the allegations contained in paragraph 4 of the Complaint, except admit that Sherman sold or assisted in the sale of certain publishing and/or subsidiary rights of authors such as Becky Albertalli, Adam Silvera, and Angie Thomas.

5. Defendants deny the allegations contained in paragraph 5 of the Complaint.

6. Defendants deny the allegations contained in paragraph 6 of the Complaint, except admit that Sherman ceased his affiliation with TBA in or about 2017, that TBA paid Sherman certain commissions for more than three years after he left TBA, that upon information and belief Sherman became affiliated with another agency, Janklow & Nesbit Associates (“J&N”), and that certain authors also went with Sherman for a limited time to J&N.

7. Defendants deny the allegations contained in paragraph 7 of the Complaint.

8. Defendants deny the allegations contained in paragraph 8 of the Complaint.

9. Defendants deny the allegations contained in paragraph 9 of the Complaint.

10. Defendants admit upon information and belief the allegations contained in paragraph 10 of the Complaint.

11. Defendants deny the allegations contained in paragraph 11 of the Complaint, except admit that TBA is a corporation organized and existing under the laws of the State of New York and at all times relevant has maintained a principal place of business in Manhattan.

12. Defendants deny the allegations contained in paragraph 12 of the Complaint, except admit that Bent is a natural person.

13. The allegations contained in paragraph 13 of the Complaint contain legal arguments and conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in paragraph 13 of the Complaint, except admit that TBA is a corporation organized and existing under the laws of the State of New York and at all times relevant has maintained a principal place of business in Manhattan, and that Sherman was affiliated with TBA in New York, New York.

14. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the Complaint and those allegations are, therefore, denied.

15. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained the first sentence in paragraph 15 of the Complaint and those allegations are, therefore, denied. The second through fourth sentences of paragraph 15 reflect the plaintiff's opinion or subjective characterization of the market, to which no response is required. To the extent a response is required, Defendants deny the allegations in the second through fourth sentences of paragraph 15.

16. Defendants deny the allegations contained in paragraph 16 of the Complaint, except admit that a particular literary agent is typically the primary point of contact for a client.

17. Defendants deny the allegations contained in paragraph 17 of the Complaint.

18. Defendants deny the allegations contained in paragraph 18 of the Complaint.

19. Defendants deny the allegations contained in paragraph 19 of the Complaint.

20. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Complaint and those allegations are, therefore, denied.

21. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Complaint and those allegations are, therefore, denied, except admit the allegations contained in the second sentence of paragraph 21 and admit that *Simon vs. The Homo Sapiens Agenda* was adapted into the film *Love, Simon* in 2018.

22. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Complaint and those allegations are, therefore, denied, except admit the allegations contained in the second sentence of paragraph 22.

23. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Complaint and those allegations are, therefore, denied, except admit that certain of Sherman's clients continued working with Sherman for a period of time after he left TBA.

24. Defendants deny the allegations contained in paragraph 24 of the Complaint, except admit that Sherman became affiliated with TBA in or about January 2014.

25. Defendants deny the allegations contained in paragraph 25 of the Complaint, except admit upon information and belief that certain authors had worked with Sherman prior to his affiliation with TBA in or about January 2014.

26. Defendants deny the allegations contained in paragraph 26 of the Complaint, except admit that TBA is an independent literary agency and that TBA's sole owner is Jenny Bent.

27. Paragraph 27 of the Complaint purports to characterize the contents of alleged agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same.

28. Paragraph 28 of the Complaint purports to characterize the contents of alleged agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same.

29. Paragraph 29 of the Complaint purports to characterize the contents of alleged agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same.

30. Paragraph 30 of the Complaint purports to characterize the contents of alleged agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same.

31. Paragraph 31 of the Complaint purports to characterize the contents of alleged agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same.

32. Paragraph 32 of the Complaint purports to characterize the contents of alleged agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same.

33. The allegations contained in paragraph 33 of the Complaint contain legal arguments and conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in paragraph 33 of the Complaint, except admit that during a portion of 2014 Sherman worked as a part-time employee performing office work as Bent's assistant and TBA paid Sherman on IRS Form W-2 during 2014.

34. Defendants deny the allegations contained in paragraph 34 of the Complaint.

35. Defendants deny the allegations contained in paragraph 35 of the Complaint.

36. Defendants deny the allegations contained in paragraph 36 of the Complaint, except admit that Sherman sold or assisted in the sale of certain publishing and/or subsidiary rights of authors such as Becky Albertalli, Adam Silvera, and Angie Thomas during his affiliation with TBA.

37. Defendants deny the allegations contained in paragraph 37 of the Complaint, except admit that Sherman sold or assisted in the sale of certain publishing and/or subsidiary rights of authors such as Becky Albertalli, Adam Silvera, and Angie Thomas during his affiliation with TBA.

38. Defendants deny the allegations contained in paragraph 38 of the Complaint, except admit that Sherman sold or assisted in the sale of certain publishing and/or subsidiary rights of authors such as Becky Albertalli during his affiliation with TBA.

39. Defendants deny the allegations contained in paragraph 39 of the Complaint, except admit that Sherman sold or assisted in the sale of certain publishing and/or subsidiary rights of authors such as Becky Albertalli during his affiliation with TBA.

40. Defendants deny the allegations contained in paragraph 40 of the Complaint, except admit that Sherman sold or assisted in the sale of certain publishing and/or subsidiary rights of

authors such as Adam Silvera during his affiliation with TBA, and lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in the second sentence of paragraph 40 and those allegations are, therefore, denied.

41. Defendants deny the allegations contained in paragraph 41 of the Complaint, except admit that Sherman sold or assisted in the sale of certain publishing and/or subsidiary rights of authors such as Adam Silvera during his affiliation with TBA.

42. Defendants deny the allegations contained in paragraph 42 of the Complaint, except admit that Sherman sold or assisted in the sale of certain publishing and/or subsidiary rights of authors such as Angie Thomas during his affiliation with TBA, admit the allegations contained in the second sentence of paragraph 42, admit that Angie Thomas became one of today's most prominent and successful young adult novelists, admit that *The Hate U Give* was published in 2017 and, on information and belief, has been on The New York Times Best Seller list without interruption since its initial publication, and admit the allegations contained in the sixth sentence of paragraph 42.

43. Defendants deny the allegations contained in paragraph 43 of the Complaint, except admit that Sherman sold or assisted in the sale of certain publishing and/or subsidiary rights of authors such as Angie Thomas during his affiliation with TBA, admit the allegations contained in the first sentence of paragraph 43, and admit the allegations contained in the second sentence of paragraph 43.

44. Defendants deny the allegations contained in paragraph 44 of the Complaint.

45. Defendants deny the allegations contained in paragraph 45 of the Complaint.

46. Defendants deny the allegations contained in paragraph 46 of the Complaint.

47. Defendants deny the allegations contained in paragraph 47 of the Complaint.

48. Defendants deny the allegations contained in paragraph 48 of the Complaint.

49. Defendants deny the allegations contained in paragraph 49 of the Complaint.

50. Defendants deny the allegations contained in paragraph 50 of the Complaint, except admit that upon information and belief Sherman became affiliated with another agency, J&N.

51. Defendants deny the allegations contained in paragraph 51 of the Complaint, and further state that paragraph 51 of the Complaint purports to characterize the contents of alleged agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same.

52. Defendants deny the allegations contained in paragraph 52 of the Complaint, except admit that TBA paid Sherman certain commissions for more than three years after he left TBA, and further state that paragraph 52 of the Complaint purports to characterize the contents of alleged agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same.

53. Defendants deny the allegations contained in paragraph 53 of the Complaint, except admit that upon information and belief Sherman became affiliated with another agency, J&N, and that certain authors also went with Sherman for a limited time to J&N.

54. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the Complaint and those allegations are, therefore, denied.

55. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the Complaint and those allegations are, therefore, denied, except admit that Sherman sold or assisted in the sale of certain publishing and/or subsidiary rights of authors such as Becky Albertalli, Adam Silvera, and Angie Thomas during his



affiliation with TBA, admit that the film *Love, Simon* was an adaption of *Simon vs. The Homo Sapiens Agenda* and was released in 2018, admit that Becky Albertalli and Adam Silvera's *What If It's Us* was published in 2018, admit the allegations contained in the fifth sentence of paragraph 55, admit that Angie Thomas's *The Hate U Give* was published in 2017 and a movie adaptation premiered in 2018, admit that Angie Thomas's *On The Come Up* was published in February 2019, and further state that paragraph 55 of the Complaint purports to characterize the contents of alleged agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same.

56. Paragraph 56 of the Complaint purports to characterize the contents of alleged agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same.

57. Paragraph 57 of the Complaint purports to characterize the contents of alleged agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same, except admit that TBA paid Sherman certain commissions for more than three years after he left TBA.

58. Defendants deny the allegations contained in paragraph 58 of the Complaint, except admit that TBA paid Sherman certain commissions for more than three years after he left TBA, and further state that paragraph 58 of the Complaint purports to characterize the contents of alleged agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same.

59. Defendants deny the allegations contained in paragraph 59 of the Complaint, except admit that TBA paid Sherman certain commissions for more than three years after he left TBA, and further state that paragraph 59 of the Complaint purports to characterize the contents of alleged

agreements between Sherman and TBA, which documents speak for themselves, and Defendants deny Sherman's characterization of same.

60. Defendants deny the allegations contained in paragraph 60 of the Complaint, except admit that TBA paid Sherman certain commissions for more than three years after he left TBA, and further state that paragraph 60 of the Complaint purports to characterize the contents of a letter from counsel for TBA, which document speaks for itself, and Defendants deny Sherman's characterization of same.

61. Defendants deny the allegations contained in paragraph 61 of the Complaint.

62. Defendants deny the allegations contained in paragraph 62 of the Complaint, and further state that paragraph 62 of the Complaint purports to characterize the contents of a letter from counsel for TBA, which document speaks for itself, and Defendants deny Sherman's characterization of same.

63. Defendants deny the allegations contained in paragraph 63 of the Complaint.

64. Defendants deny the allegations contained in paragraph 64 of the Complaint.

65. Defendants deny the allegations contained in paragraph 65 of the Complaint, and further state that paragraph 65 of the Complaint purports to characterize the contents of a letter from counsel for Sherman, which document speaks for itself, and Defendants deny Sherman's characterization of same.

66. Defendants deny the allegations contained in paragraph 66 of the Complaint.

67. Defendants deny the allegations contained in paragraph 67 of the Complaint.

68. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Complaint and those allegations are, therefore, denied, except admit that Sherman filed this action in April 2021.

69. Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Complaint and those allegations are, therefore, denied.

70. Defendants deny the allegations contained in paragraph 70 of the Complaint.

71. Defendants deny the allegations contained in paragraph 71 of the Complaint.

72. Defendants deny the allegations contained in paragraph 72 of the Complaint.

73. Defendants deny the allegations contained in paragraph 73 of the Complaint.

74. Defendants deny the allegations contained in paragraph 74 of the Complaint.

75. Defendants deny the allegations contained in paragraph 75 of the Complaint.

**FOR A FIRST CAUSE OF ACTION  
[Breach of Contract (TBA)]**

76. Defendants repeat and reallege their responses to the allegations contained in paragraphs 1 through 75 of the Complaint with the same force and effect as if set forth fully herein.

77. Defendants deny the allegations contained in paragraph 77 of the Complaint.

78. Defendants deny the allegations contained in paragraph 78 of the Complaint.

79. Defendants deny the allegations contained in paragraph 79 of the Complaint.

80. Defendants deny the allegations contained in paragraph 80 of the Complaint.

81. Defendants deny the allegations contained in paragraph 81 of the Complaint.

82. Defendants deny the allegations contained in paragraph 82 of the Complaint.

**FOR A SECOND CAUSE OF ACTION  
[Misappropriation (TBA)]**

83. Defendants repeat and reallege their responses to the allegations contained in paragraphs 1 through 82 of the Complaint with the same force and effect as if set forth fully herein.

84. Defendants deny the allegations contained in paragraph 84 of the Complaint.

85. Defendants deny the allegations contained in paragraph 85 of the Complaint.

86. Defendants deny the allegations contained in paragraph 86 of the Complaint.

87. Defendants deny the allegations contained in paragraph 87 of the Complaint.

88. Defendants deny the allegations contained in paragraph 88 of the Complaint.

**FOR A THIRD CAUSE OF ACTION  
[Unfair Competition (TBA)]**

89. Defendants repeat and reallege their responses to the allegations contained in paragraphs 1 through 88 of the Complaint with the same force and effect as if set forth fully herein.

90. The allegations contained in paragraph 90 of the Complaint contain legal arguments and conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in paragraph 90 of the Complaint.

91. Defendants deny the allegations contained in paragraph 91 of the Complaint.

92. Defendants deny the allegations contained in paragraph 92 of the Complaint.

93. Defendants deny the allegations contained in paragraph 93 of the Complaint.

**FOR A FOURTH CAUSE OF ACTION  
[New York Labor Law § 191 and 198 (TBA and Ms. Bent)]**

94. The allegations contained in paragraph 94 of the Complaint contain legal arguments and conclusions to which no response is required. To the extent that a response is required, Defendants deny the allegations contained in paragraph 94 of the Complaint.

95. Defendants deny the allegations contained in paragraph 95 of the Complaint.

96. Defendants deny the allegations contained in paragraph 96 of the Complaint.

97. Defendants deny the allegations contained in paragraph 97 of the Complaint.

98. Defendants deny the allegations contained in paragraph 98 of the Complaint.

99. Defendants deny the allegations contained in paragraph 99 of the Complaint.

100. Defendants deny the allegations contained in paragraph 100 of the Complaint.

**FOR A FIFTH CAUSE OF ACTION  
[Conversion and Wage Theft [TBA and Ms. Bent]]**

101. Defendants deny the allegations contained in paragraph 101 of the Complaint.

102. Defendants deny the allegations contained in paragraph 102 of the Complaint.

103. Defendants deny the allegations contained in paragraph 103 of the Complaint.

104. Defendants deny the allegations contained in paragraph 104 of the Complaint.

105. Defendants deny the allegations contained in paragraph 105 of the Complaint.

106. Defendants deny the allegations contained in paragraph 106 of the Complaint.

107. Any and all allegations and inferences contained in the Complaint that are not expressly admitted herein, including all of the headings and sub-headings in the Complaint, are hereby denied. Defendants further deny that Plaintiff is entitled to any of the relief requested in the “WHEREFORE” clause or prayer for relief and subparts (A) through (F) thereof following paragraph 106 of the Complaint, or otherwise.

**SEPARATE DEFENSES**

Defendants do not knowingly or intentionally waive any applicable defense and reserve the right to assert and rely on such other applicable defenses as may become available or apparent during the course of the proceedings. Defendants further reserve the right to amend their Answer and/or defenses accordingly, and/or delete defenses that they determine are not applicable, during the course of the proceedings. Without assuming any burdens that they would not otherwise bear, Defendants assert the following defenses:

**AS AND FOR A FIRST DEFENSE**

Plaintiff's purported claims are barred, in whole or in part, because the Complaint fails to state a claim upon which relief can be granted for breach of contract, misappropriation, unfair competition, violation of New York Labor Law § 191 and 198, or conversion and wage theft.

**AS AND FOR A SECOND DEFENSE**

Plaintiff's purported claims are barred, in whole or in part, by the after-acquired evidence doctrine.

**AS AND FOR A THIRD DEFENSE**

Plaintiff's purported claims are barred, in whole or in part, because the 2013 Agency Engagement referenced in the Complaint expired, by its terms, prior to Plaintiff's termination from TBA.

**AS AND FOR A FOURTH DEFENSE**

Plaintiff's purported claims are barred, in whole or in part, because the 2015 Agency Engagement referenced in the Complaint expired, by its terms, prior to Plaintiff's termination from TBA.

**AS AND FOR A FIFTH DEFENSE**

Plaintiff's purported claims for violation of New York Labor Law § 191 and 198, and conversion and wage theft are barred, in whole or in part, because Plaintiff was not an "employee" of TBA or Bent, nor were TBA or Bent an "employer" of Plaintiff.

**AS AND FOR A SIXTH DEFENSE**

Plaintiff's purported causes of action are barred, in whole or in part, because of the doctrine of unclean hands and/or *in pari delecto*.

**AS AND FOR A SEVENTH DEFENSE**

Plaintiff's purported claims are barred, in whole or in part, by the equitable doctrines of laches, waiver, and estoppel.

**AS AND FOR AN EIGHTH DEFENSE**

To the extent that Plaintiff suffered any damages, which damages are denied, Plaintiff's purported claims are barred, in whole or in part, because Plaintiff's breaches and/or failure to perform justify any non-performance on behalf of TBA.

**AS AND FOR A NINTH DEFENSE**

Plaintiff's purported claims are barred, in whole or in part, by the statute of frauds.

**AS AND FOR A TENTH DEFENSE**

To the extent that Plaintiff suffered any damages, which damages are denied, Plaintiff is barred from recovering any such damages, in whole or in part, because Plaintiff has failed to mitigate or avoid the damages complained of in the Complaint.

**AS AND FOR AN ELEVENTH DEFENSE**

Plaintiff's purported claims are barred, in whole or in part, because the purported damages complained of, which damages are denied, were not caused by Defendants' conduct or actions. To the extent Plaintiff suffered any damages, which damages are denied, any such damages are the result of Plaintiff's own conduct and actions.

**AS AND FOR A TWELFTH DEFENSE**

Plaintiff's purported claims for punitive damages are barred, in whole or in part, because Plaintiff fails to plead facts necessary to sustain a claim for punitive damages, and, moreover, because Defendants did not act willfully, outrageously, or with malice or reckless indifference toward Plaintiff.

**AS AND FOR A THIRTEENTH DEFENSE**

Plaintiff's purported claims for liquidated damages and attorneys' fees are barred, in whole or in part, because at all times relevant Plaintiff was not an "employee" of TBA or Bent, nor were TBA or Bent an "employer" of Plaintiff.

**AS AND FOR A FOURTEENTH DEFENSE**

Plaintiff's purported claims for misappropriation, unfair competition, violation of New York Labor Law § 191 and 198, and conversion and wage theft are barred, in whole or in part, as they are duplicative of, and arise from the same facts and circumstances as, his breach of contract claims.

**AS AND FOR A FIFTEENTH DEFENSE**

Defendants intend to rely upon any other defense that may become available during the proceedings in this case and hereby reserves their right to amend the Answer to assert any such defense(s), including their right to assert additional Defenses as Plaintiff's claims are clarified in the course of this litigation.

**DEFENDANT TBA'S COUNTERCLAIMS**

Counterclaim Plaintiff The Bent Agency (hereinafter, "TBA"), by and through its attorneys DLA Piper LLP (US), asserts the following counterclaims (the "Counterclaims") against Counterclaim Defendant Brooks Sherman (hereinafter, "Sherman"), and alleges as follows:



**PRELIMINARY STATEMENT**

1. TBA engaged Sherman as a literary agent from early 2014 until May 2017. Following his departure, TBA became aware that Sherman, on multiple occasions, materially breached contracts governing his engagement by TBA. Sherman's breaches have cost, and will continue to cost, TBA substantial monetary losses well in excess of \$1 million, which TBA now seeks to recover.

2. As set forth more fully below, one such breach involves Sherman's failure to secure agency agreements with numerous clients, as he was contractually obligated to do in his contracts with TBA, in accordance with industry and agency standards. Such agency agreements define TBA's rights with respect to certain aspects of publishing deals, including for example rights concerning future foreign rights and translation licenses, and future film or television deals. By breaching his contractual commitment to secure such agency agreements, Sherman caused TBA to lose out on substantial future commissions it would have otherwise been entitled to receive.

3. Unbeknownst to TBA at the time, Sherman frequently also failed to fulfill the most basic and critical duties of a literary agent. For example, Sherman made false misrepresentations to clients about his communications with publishers and editors on their behalf, including by representing to certain clients that he had performed work on their behalf when he had in fact not done so.

4. Moreover, Sherman failed to respond or provided unreasonably delayed responses to submissions and communications from both clients and potential clients, routinely ignoring emails and other attempts to contact him. Sherman also violated the express terms of his contracts with TBA and industry and agency standards by disclosing to certain clients the confidential details of offers made to, or deals entered into by, other clients.

5. Upon information and belief, and as has recently come to light through a variety of public media postings from Sherman's former clients and colleagues, Sherman had engaged in a pattern of grossly inappropriate, unprofessional, and entirely unacceptable behavior with certain clients. Upon information and belief, Sherman has, among other things, made unwelcome gestures and comments of a sexual nature to clients.

6. All of the aforementioned conduct is in direct violation of Sherman's contracts with TBA, which provide among other things that he was required to conduct himself in accordance with industry and agency standards and that any "gross misconduct" on his part would result in his forfeiting any future commissions.

7. Had TBA been aware of Sherman's inappropriate conduct and multiple breaches of the Agency Engagement Agreements, Sherman's engagement with the agency would have been terminated immediately for gross misconduct and TBA would not have continued to pay Sherman hundreds of thousands of dollars which he was no longer entitled to receive.

8. TBA now seeks to recover for the substantial monetary losses Sherman has caused by his flagrant breaches, including but not limited to, recoupment from Sherman of hundreds of thousands of dollars of commissions that he was no longer entitled to receive following his gross misconduct and material breaches.

#### **THE PARTIES**

9. TBA is a corporation organized and existing under the laws of the State of New York and having its principal place of business in New York.

10. Sherman is a natural person and, upon information and belief, resident of the State of New York.

### **JURISDICTION AND VENUE**

11. This Court may exercise personal jurisdiction over Sherman pursuant to C.P.L.R. §§ 301 and 302.

12. Venue lies in this Court pursuant to C.P.L.R. § 503.

### **STATEMENT OF FACTS**

#### **TBA ENGAGES SHERMAN AS A LITERARY AGENT**

13. TBA is a leading literary agency founded by Jenny Bent (“Bent”) in or about 2009. TBA represents a wide variety of authors across a number of genres, including history, humor, lifestyle, inspiration, memoir, literary fiction, children’s and commercial fiction.

14. From January 2014 through May 2017, TBA engaged Sherman to provide services as a literary agent. During his engagement, TBA and Sherman entered into two contracts (the “Agency Engagement Agreements”). The first Agency Engagement Agreement was executed on or about December 3, 2013 (the “2013 Agency Engagement Agreement”) and the second Agency Engagement Agreement was executed on or about December 10, 2014 (the “2015 Agency Engagement Agreement”). The 2015 Agency Engagement Agreement states that it “shall go into effect on January 1, 2015, and shall be valid for a period of twelve (12) months thereafter.”

15. During the time he was engaged by TBA, one of Sherman’s primary duties as a literary agent involved negotiating and procuring publishing deals on behalf of the authors he represented. Once such a deal was secured, the publisher typically would agree to pay to TBA a commission of the royalties resulting from the publication and sale of a particular work. Such deals procured by Sherman during the term of the Agency Engagement Agreements are defined in the Agency Engagement Agreements as “Covered Contracts.” Under the terms of each of the

Agency Engagement Agreements, Sherman's compensation consisted of certain percentages of commissions TBA received as a result of the Covered Contracts.

16. The Agency Engagement Agreements also set forth certain standards for Sherman's performance and conduct during his engagement by TBA. For example, under the terms of the 2015 Agency Engagement Agreement, Sherman was required to "operate and provide customary agency services in accordance with industry and [TBA] standards."

17. The 2015 Agency Engagement Agreement further includes a provision expressly requiring Sherman to ensure that he "secure[d] a signed agency agreement in line with [TBA's] standard agency agreement for each client [he] represent[ed]."

18. The 2015 Agency Engagement Agreement also includes an express promise by Sherman to maintain confidentiality. Specifically, Sherman agreed that he would not divulge any confidential information he learned during the scope of his involvement with TBA (including, among other things, information about TBA's business practices, TBA clients' personal information, and other sensitive material) to any person or any company outside of TBA at any time for any purpose. This restriction expressly survived any termination of the 2015 Agency Engagement Agreement. Moreover, the 2015 Agency Engagement Agreement provided that any failure by Sherman to abide by his confidentiality obligations was grounds for immediate termination of the Agency Engagement Agreement, without prejudice to any other remedies available at law or equity.

19. The 2015 Agency Engagement Agreement further provides that in the event Sherman committed "gross misconduct," he would forfeit his right to receive his share of any commissions received by TBA after his date of termination (defined in the contract as "Termination Commissions").

**SHERMAN FAILS TO SECURE CERTAIN AGENCY AGREEMENTS**

20. On multiple occasions during his engagement with TBA, Sherman failed to obtain signed agency agreements with the authors he represented, causing substantial financial damage to TBA.

21. When a TBA agent procures a publishing deal on behalf of a client, the agent is to have the client sign an agency agreement which, among other things, establishes the agency's rights with regard to subsidiary rights to the work. Subsidiary rights include the right to obtain and/or renew future foreign rights and translation licenses for the work, as well as the right to handle future film and television deals for the work.

22. As is expressly outlined in the 2015 Agency Engagement Agreement, Sherman was required to "secure a signed agency agreement in line with [TBA's] standard agency agreement for each Client [he] represent[ed]." Under the terms of TBA's standard agency agreement, TBA retains the right to commission unsold subsidiary rights for works published by TBA clients. Such rights survive even in situations where the author and/or associated agent subsequently terminate their relationship with the agency, and are common practice in the industry.

23. Sherman failed to obtain signed agency agreements for numerous works authored by his clients during his engagement with TBA. Many of the works for which Sherman failed to obtain signed agency agreements have since had translation deals, and certain of them have also been the subject of film or television deals.

24. Because Sherman failed to secure the proper agency agreements as he contractually promised to do, TBA has lost out on the rights to handle myriad translation deals and film and television deals, which were instead handled by Sherman at the agency he joined after leaving

TBA. TBA therefore lost out on all of the commission payments and other ancillary benefits associated with those deals.

25. It is difficult to estimate the total losses TBA has incurred and will incur as a result of Sherman's failure to obtain to these agency agreements, however TBA expects such losses to be well in excess of \$1 million.

**SHERMAN ENGAGES IN SERIOUS GROSS MISCONDUCT**

26. In addition to his failure to secure agency agreements, Sherman also engaged in gross misconduct in breach of the Agency Engagement Agreements.

27. Upon information and belief, Sherman intentionally disclosed the details of TBA clients' publishing deals to other clients, including informing certain clients of the details of offers he had received for other clients' work. Such disclosure was in express violation of the 2015 Agency Engagement Agreement, which explicitly provides that Sherman would not divulge such confidential information to "any person or company outside of [TBA] at any time for any purpose." Moreover, the 2015 Agency Engagement Agreement provides that "breach of confidentiality" is one example of gross misconduct, as a result of which Sherman would "forfeit [his] right to receive Termination Commissions."

28. Upon information and belief, Sherman also engaged in grossly inappropriate, unprofessional, and entirely unacceptable conduct with certain authors he represented.

29. Upon information and belief, Sherman intentionally failed to respond or provided unreasonably delayed responses to submissions and communications from both clients and potential clients, including by ignoring emails and other attempts to contact him.

30. Upon information and belief, Sherman also made knowingly false misrepresentations to clients about his communications with publishers and editors on their behalf,

including by falsely representing to clients that he had performed work on their behalf when he had in fact not done so.

31. Had TBA been aware of Sherman's inappropriate conduct and multiple breaches, Sherman's engagement with the agency would have been terminated immediately for gross misconduct and TBA would not have continued to pay Sherman hundreds of thousands of dollars which he was no longer entitled to receive.

**COUNT I**  
**BREACH OF CONTRACT**  
**(Failure to Secure Agency Agreements)**

32. TBA hereby realleges and incorporates the allegations in the preceding paragraphs of the Counterclaims as if fully set forth herein.

33. The Agency Engagement Agreements are valid and enforceable contracts between TBA and Sherman that impose upon Sherman contractual obligations.

34. TBA has complied with the terms of the Agency Engagement Agreements at all relevant times.

35. Sherman has violated the Agency Engagement Agreements by, among other things, failing to secure signed agency agreements for certain authors he represented during his engagement with TBA.

36. By reason of the foregoing, Sherman has materially breached, among other provisions of the Agency Engagement Agreements, those pursuant to which he agreed to (i) "operate and provide customary agency services in accordance with industry and [TBA] standards," and (ii) "secure a signed agency agreement in line with [TBA's] standard agency agreement for each Client [he] represent[ed]."

37. As a direct result of Sherman's breach, TBA has sustained damages, including but not limited to actual and compensatory damages, in an amount to be determined at trial, as well as interest, costs and fees incurred by TBA in connection therewith. Such damages include, but are not limited to, recoupment from Sherman of hundreds of thousands of dollars of commissions that he was no longer entitled to receive following his gross misconduct and material breaches.

**COUNT II**  
**BREACH OF CONTRACT**  
**(Gross Misconduct)**

38. TBA hereby realleges and incorporates the allegations in the preceding paragraphs of the Counterclaims as if fully set forth herein.

39. The Agency Engagement Agreements are valid and enforceable contracts between TBA and Sherman that impose upon Sherman contractual obligations.

40. TBA has complied with the terms of the Agency Engagement Agreements at all relevant times.

41. Sherman has violated the Agency Engagement Agreements by engaging in gross misconduct, including, among other things, by (i) divulging confidential information about deals and offers received by certain clients to other clients, (ii) engaging in a pattern of grossly inappropriate, unprofessional, and entirely unacceptable behavior with certain clients, and (iii) failing to fulfill the basic duties of a literary agent by failing to respond to submissions and communications from clients and potential clients and falsely representing to certain clients that he had performed work on their behalf when he had not in fact done so.

42. By reason of the foregoing, Sherman has materially breached, among other provisions of the Agency Engagement Agreements, those pursuant to which he agreed to (i) "operate and provide customary agency services in accordance with industry and [TBA]



standards,” (ii) not divulge confidential information obtained during the course of his engagement with TBA to any person or company outside TBA at any time for any purpose, and (iii) not engage in gross misconduct.

43. As a direct result of Sherman’s breach, TBA has sustained damages, including but not limited to actual and compensatory damages, in an amount to be determined at trial, as well as interest, costs and fees incurred by TBA in connection therewith. Such damages include, but are not limited to, recoupment from Sherman of hundreds of thousands of dollars of commissions that he was no longer entitled to receive following his gross misconduct and material breaches.

**COUNT III**  
**DECLARATORY RELIEF**

44. TBA hereby realleges and incorporates the allegations in the preceding paragraphs of the Counterclaims as if fully set forth herein.

45. Declaratory relief is available which shall have the effect of a final judgment as to the rights and other legal relations of the parties to a justiciable controversy.

46. The 2015 Agency Engagement Agreement provides that in the event Sherman committed “gross misconduct,” he would forfeit his right to receive his share of any commissions received by TBA after the conclusion of his engagement with the agency.

47. Sherman has forfeited his right to receive any future commission payments as a result of his gross misconduct, including by (i) divulging confidential information about deals and offers received by certain clients to other clients, (ii) engaging in a pattern of grossly inappropriate, unprofessional, and entirely unacceptable behavior with certain clients, and (iii) failing to fulfill the basic duties of a literary agent by failing to respond to submissions and communications from clients and potential clients and falsely representing to certain clients that he had performed work on their behalf when he had not in fact done so.

48. The 2015 Agency Engagement Agreement also provides that Sherman was to (i) “operate and provide customary agency services in accordance with industry and [TBA] standards,” (ii) “secure a signed agency agreement in line with [TBA’s] standard agency agreement for each Client [he] represent[ed],” and (iii) not divulge sensitive or confidential client information. The 2013 Agency Engagement Agreement similarly provides that Sherman was to “operate under the same guidelines as any other agent of” TBA.

49. TBA seeks a declaration that it has no obligation to pay any future commissions to Sherman under either the 2013 Agency Engagement Agreement or the 2015 Agency Engagement Agreement as a result of Sherman’s material breaches of both contracts.

50. An actual, substantial and justiciable controversy has arisen and presently exists between TBA and Sherman concerning their respective rights, duties and obligations and a determination is necessary and appropriate at this time in order that TBA and Sherman may ascertain their respective rights under the Agency Engagement Agreements.

**PRAYER FOR RELIEF**

**WHEREFORE**, Defendants and Counterclaim Plaintiff TBA respectfully request that the Court:

- A. Dismiss Plaintiff’s Amended Complaint in its entirety with prejudice;
- B. Deny each and every demand and prayer for relief contained in Plaintiff’s Amended Complaint;
- C. Grant relief in favor of Defendants with respect to each of Plaintiff’s purported causes of action;
- D. Enter a judgment in favor of TBA and against Sherman under each of TBA’s Counterclaims as set forth above;

- E. Award actual and compensatory damages to TBA in an amount to be proven at trial, including but not limited to recoupment from Sherman of hundreds of thousands of dollars of commissions that he was no longer entitled to receive following his gross misconduct and material breaches;
- F. Order Sherman to pay to TBA the costs of this action and the reasonable attorney's fees incurred in, respectively, defending against Sherman's claims and in prosecuting TBA's Counterclaims;
- G. Issue a declaration that TBA has no obligation to pay any future commissions to Sherman under the 2013 Agency Engagement Agreement;
- H. Issue a declaration that TBA has no obligation to pay any future commissions to Sherman under the 2015 Agency Engagement Agreement;
- I. Grant to TBA such other and additional relief as is just and proper.

Dated: June 16, 2021

Respectfully submitted,

DLA PIPER LLP (US)

By: /s/ Brian S. Kaplan

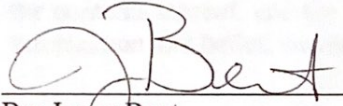
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Plaintiff The Bent Agency, Inc. and  
Defendant Jenny Bent*

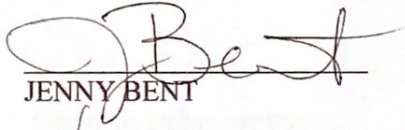
VERIFICATION

I have read the foregoing DEFENDANTS' VERIFIED ANSWER AND SEPARATE DEFENSES TO PLAINTIFF'S VERIFIED AMENDED COMPLAINT AND DEFENDANT TBA'S VERIFIED COUNTERCLAIMS and know the contents thereof to be true to my knowledge, except as to matters therein alleged on information and belief, and that as to those matters I believe them to be true.

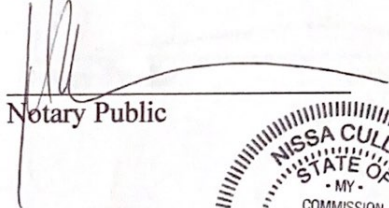
THE BENT AGENCY, INC.



By: Jenny Bent

  
JENNY BENT

Sworn to me before this  
16 day of June, 2021

  
Notary Public

