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File Number:

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VIA E-FILING, FAX, AND HAND DELIVERY

Michael J. Rand
Principal Law Clerk
New York County Courthouse
60 Centre Street, Room 555
New York, NY 10007

Re: *Gottwald v. Sebert*, Index No. 65311/2014

Dear Mr. Rand,

We write regarding the Court's November 8, 2017 Order (Dkt. 1137) and the parties' November 15, 2017 case-management conference.

In its November 8 Order, the Court accurately characterized Entries Nos. 1-2 and 21-22 on Kesha's log of withheld Sunshine Sachs as "litigation work product." See Dkt. 1137 at n.7. Nevertheless, the Court stated that the documents constitute "material on which the court already ruled, in orders dated January 3 and March 10, 2017, and found subject to disclosure." *Id.* As we explained on November 15, however, the Court's January 3 and March 10 Orders required Kesha to produce *only* the draft complaint shown in June 2014 to Sony's General Counsel, Julie Swidler. See Dkt. 619 at 2 (ordering that the "Draft Complaint shall be produced because showing it to Sony's counsel destroyed confidentiality," but "Other Drafts are privileged, and Kesha need not produce them"); Dkt. 795 at 3 n.2 (emphasizing "drafts not shared with Sony were privileged").

Consistent with the Court's prior orders, and as explained during our recent call, the draft complaint that Kesha's former attorney, Kenneth Meiselas, showed Ms. Swidler was produced by Mr. Meiselas's law firm on March 20, 2017. A copy of the June 2014 draft complaint is enclosed as Exhibit 1.¹ Enclosed as Exhibit 2 is Mr. Meiselas's deposition transcript, which

¹ Kesha is providing the Exhibits attached to this letter to the Court via hand-delivery, because they have been designated confidential under the protective order in this case (Exhibits 1-3), or reflect confidential communications and work product over which Kesha claims privilege (Exhibits 4-5). Exhibits 1-3 will be sent to Plaintiffs' counsel via e-mail. The Court recently stated that Kesha sought to make public certain documents in the discovery record in connection with her opposition to Plaintiffs' recent motion to compel "for public relations purposes." See Dkt 1137 at 14. Kesha therefore wishes to clarify that those papers—like the exhibits to this letter—were filed under seal as were the papers supporting her September 22, 2017 motion for leave to renew and reargue. When counsel was admonished for filing the September 22, 2017 filing under seal, counsel noted that if documents were filed publicly we would be

reflects his testimony that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Moreover, as shown by the metadata pasted below, the draft complaints logged as Entries Nos. 2 and 22 on Sunshine Sachs's privilege log post-date Mr. Meiselas's meeting with Ms. Swidler by three-to-four months, and those drafts were never disclosed to Sony. Thus, in withholding and logging the draft complaints reflected in entries 2 and 22, Kesha violated no prior Court order.

Beg Doc:	CTRL00374343
Date Last Modified:	9/16/2014
Time Last Modified:	08:46:00
Date Created:	9/15/2014
Time Created:	21:09:00

Beg Doc:	CTRL00374437
Date Last Modified:	10/13/2014
Time Last Modified:	14:22:00
Date Created:	10/13/2014
Time Created:	14:22:00

accused of trying the case in the press. Kesha therefore informed the Court on October 26, 2017 that she wished to file documents designated confidential in support of her opposition to Plaintiffs' privilege challenge, and it was inconsequential to her whether they were filed publicly or under seal. Kesha's only concern was that the documents be before the Court and included in the appellate record. Kesha respectfully submits that there is thus no basis to conclude that she seeks to use the discovery record for public-relations purposes, given her repeated filings *under seal*. Rather, Kesha merely seeks to use the discovery record to respond (to the Court) to Plaintiffs' unsupported factual allegations (including the highly irresponsible and baseless allegation that Kesha's counsel is seeking to "*falsely*" brand Dr. Luke a rapist in court filings, see Dkt. 1091) in arguing the issues presented to this and any appellate court.

² While Kesha does not wish to burden the Court with voluminous papers, Kesha is including the entirety of the cited deposition transcripts in view of the Court's prior emphasis on its preference for non-excerpted exhibits. See Individual Practices p. 4.

Plaintiffs have repeatedly attempted to inject confusion into the record regarding the draft complaint's production. The sole basis for their contention that Exhibit 1 may not be the draft complaint that Mr. Meiselas showed Ms. Swidler is deposition testimony by Ms. Swidler that

REDACTED

Consistent with the Court's instruction from the parties' November 15, 2017 call, Kesha encloses the following documents for in-camera review:

- A redline of a version of the draft complaint (identified as CTRL00374343, entry 2 on Sunshine Sachs's privilege log) against the draft complaint that was shown to Ms. Swidler on June 27, 2014 (Exhibit 4).³
- A redline of a version of the draft complaint (identified as CTRL00374437, entry 22 on Sunshine Sachs's privilege log) against the draft complaint that was shown to Ms. Swidler on June 27, 2014 (Exhibit 5).

Kesha would not object to producing Entries Nos. 2 and 22, if the Court permits her to redact all paragraphs containing any revisions to the June 27, 2014 draft complaint, to protect her attorneys' work product from disclosure.

Respectfully,



James M. Pearl
O'MELVENY & MYERS LLP

Counsel for Defendant Kesha Sebert

³ The last seven pages of Exhibit 1 are California forms required for initiating a lawsuit. The enclosed redlines do not include these forms because their inclusion would have made it impractical to run a redline.