UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK	X
DAN BROWN and RANDOM HOUSE, INC.,	:
Plaintiffs,	: Civil Action No. : 04 CV 7417 (GBD)
- VS	:
LEWIS PERDUE,	
Defendant.	; ; ;
LEWIS PERDUE,	: :
Counterclaimant,	: :
- VS	
DAN BROWN and RANDOM HOUSE, INC., COLUMBIA PICTURES INDUSTRIES, INC.,	· : :
SONY PICTURES ENTERTAINMENT INC., SONY PICTURES RELEASING CORPORATION,	: :
IMAGINE FILMS ENTERTAINMENT, LLC,	:
Counterclaim Defendants	: :
	- X

## **NOTICE OF MOTION**

PLEASE TAKE NOTICE that upon the annexed Affidavit of Elizabeth McNamara, the exhibits annexed thereto, and the Memorandum of Law and Local Rule 56.1 Statement submitted herewith, Plaintiffs Dan Brown ("Brown") and Random House, Inc. ("Random House") (collectively, "Plaintiffs") will move this Court, before the Honorable George B. Daniels, at a time and date to be set by the Court, for an Order, pursuant to Federal Rule of Civil Procedure 12(c) or 56, for judgment on the pleadings or, in the alternative, summary judgment on their declaratory judgment claim, or such other further relief as the Court deems just and proper. Plaintiffs will further move the Court, along with additional Counterclaim Defendants Columbia Pictures Industries, Inc. ("Columbia"), Sony

Pictures Entertainment Inc. ("Sony Entertainment"), Sony Pictures Releasing Corporation ("Sony Releasing") and Imagine Films Entertainment, LLC ("Imagine"), pursuant to Federal Rule of Civil Procedure 12(b)(6) or 56, to dismiss all counterclaims asserted by Lewis Perdue for failure to state a claim, or in the alternative for summary judgment, or such other further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that pursuant to the agreement of the parties and the Order of this Court, opposing affidavits and answering memoranda of law shall be served on or before March 25, 2005; reply affidavits and memoranda of law shall be served on or before April 8, 2005; and oral argument shall be heard at 10:00 a.m. on April 19, 2005.

Dated: New York, New York February 25, 2005

## DAVIS WRIGHT TREMAINE LLP

Elizabeth McNamara (EAM 1987)

Linda Steinman (LJS 5906) James Rosenfeld (JR 2256)

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Co-Counsel for Columbia Pictures Industries, Inc., Sony Pictures Entertainment Inc., Sony Pictures Releasing Corporation, Imagine Films Entertainment, LLC

Of counsel:
Katherine J. Trager
Michael I. Rudell
David DeJute

## AFFIDAVIT OF SERVICE

STATE OF NEW YORK ) : s. COUNTY OF NEW YORK )

Leslie Majer, being duly sworn and says:

I am not a party of this action, am over 18 years of age and reside in Kings County, New York.

On February 25, 2005, I caused to be served the within AFFIDAVIT OF ELIZABETH A. MCNAMARA, RULE 56.1 STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE TO BE TRIED IN SUPPORT OF PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS, OR, IN THE ALTERNATIVE, SUMMARY JUDGMENT ON PLAINTIFFS' DECLARATORY JUDGMENT CLAIM AND IN SUPPORT OF PLAINTIFFS' AND COUNTERCLAIM DEFENDANTS' MOTION TO DISMISS THE COUNTERCLAIMS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT ON THE COUNTERCLAIMS, MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE, SUMMARY JUDGMENT ON PLAINTIFFS' DECLARATORY JUDGMENT CLAIM AND IN SUPPORT OF PLAINTIFFS' AND COUNTERCLAIMS DEFENDANTS' MOTION TO DISMISS THE COUNTERCLAIMS OR, IN THE ALTERNATIVE, FOR SUMMARY JUDGMENT ON THE COUNTERCLAIMS and NOTICE OF MOTION by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to the following at the last known address set

## forth below:

Donald N. David, Esq.
Kenneth G. Schwarz, Esq.
Bruce N. Lederman, Esq.
Anna Stern, Esq.
Fischbein Badillo Wagner Harding, LLP
909 Third Avenue
New York, New York 10022

Attorneys for Defendant

Leslie Majer

LCSHC IV.

Sworn to before me this 25 th day of February, 2005

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JOSEPHINE A. HAUCK Notary Public, State of New York No. 01-4797784 Qualified in Nassau County Term Expires April 30, 20

ear 20 miles