

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAN BROWN and RANDOM HOUSE, INC.,	:	
	:	
Plaintiffs,	:	Civil Action No.
	:	04 CV 7417 (GBD)
- vs. -	:	
LEWIS PERDUE,	:	
	:	
Defendant.	:	
-----	X	
LEWIS PERDUE,	:	
	:	
Counterclaimant,	:	
	:	
- vs. -	:	
DAN BROWN, RANDOM HOUSE, INC.,	:	
COLUMBIA PICTURES INDUSTRIES, INC.,	:	
SONY PICTURES ENTERTAINMENT INC.,	:	
SONY PICTURES RELEASING CORPORATION, and	:	
IMAGINE FILMS ENTERTAINMENT, LLC,	:	
	:	
Counterclaim Defendants	:	
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**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**

Plaintiffs and Counterclaim Defendants Dan Brown ("Brown") and Random House, Inc.  
("Random House") (collectively, "Plaintiffs") and 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”) (all six entities collectively, “Plaintiffs/Counterclaim Defendants”), by their attorneys, Davis Wright Tremaine LLP, hereby submit this statement pursuant to Local Rule 56.1 of the United States District Court for the Southern District of New York, in support of Plaintiffs’ Motion for Judgment on the Pleadings or, in the alternative, Summary Judgment on Plaintiffs’ Declaratory Judgment Claim and Plaintiffs’/Counterclaim Defendants’ Motion to Dismiss or, in the alternative, for Summary Judgment on the Counterclaims (the “Motion”). The material facts as to which there is no genuine issue to be tried are as follows:

## **I. BACKGROUND INFORMATION**

### **A. The Da Vinci Code’s Success**

1. In March 2003, Doubleday, a division of Random House, published *The Da Vinci Code* (“*Da Vinci Code*”), by Dan Brown, a thriller based on clues embedded in the paintings of Leonardo Da Vinci. Complaint ¶ 11; Answer ¶ 11.<sup>1</sup>

2. Brown is the author of four acclaimed novels. His previous novels were *Digital Fortress* (1998), *Angels and Demons* (2000) and *Deception Point* (2001). *Angels & Demons* told the story of an ancient secret religious brotherhood in conflict with the Vatican that was exposed by “world renowned” Harvard symbolologist, Robert Langdon. *Da Vinci Code* is a sequel to *Angels & Demons* based on some of the same research and featuring Langdon as the hero.

3. The factual foundation to *Da Vinci Code* – from which the fictional novel emerges – is based on extensive interviews and research that Brown had conducted on subjects ranging from Da Vinci’s art, to cryptography and symbols, to recently discovered early Christian texts known as the Gnostic Gospels.

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<sup>1</sup> The books at issue in this litigation – *Da Vinci Code*, *Daughter of God* and *The Da Vinci Legacy* are annexed to the accompanying Affidavit of Elizabeth McNamara (“McNamara Aff’t”) as Exhibits A, B and C, respectively.

4. *Da Vinci Code* was a blockbuster success. The book met glowing critical acclaim and quickly became one of the most rapidly selling books ever. It debuted at the number one position on the *New York Times* bestseller list and remained in one of the top four positions on the *Times* list consecutively for an astounding 101 weeks. It has been translated into at least 40 languages and has also dominated bestseller lists worldwide, from England to France to Turkey. To date, there are 10 million copies of *Da Vinci Code* in print in the United States and 15 million copies in print abroad, numbers that only a small handful of novels have ever matched. Complaint ¶¶ 13-14; Answer ¶¶ 13-14 (sales information has been updated but immense acclaim and sales are not disputed).

5. *Da Vinci Code*'s success has led to numerous related works. Doubleday has published an illustrated edition of the thriller with over 150 color photographs of paintings and other important images. Columbia, Sony Entertainment and Imagine are currently making a motion picture based on *Da Vinci Code* starring Tom Hanks and directed by Ron Howard; filming is planned to be commenced for release of the film in the Spring of 2006. Complaint ¶ 16. Aside from these authorized derivative works, Plaintiffs are aware of at least 15 published books by others purporting to crack, debunk or otherwise comment on *Da Vinci Code* and the historical material on which it draws.

**B. Perdue's Exploitation of *The Da Vinci Code*'s Success**

6. Lewis Perdue's novels include *The Da Vinci Legacy* (1983), *The Linz Testament* (1985) and *Daughter of God* (2000), which is an updated and revised version of *The Linz Testament*. Complaint ¶¶ 19, 21; Answer ¶ 19 (partially admitting the allegations in the Complaint), 21.

7. In 2003, Perdue wrote Doubleday, citing the supposed similarities between *Da Vinci Code* and both *Daughter* and *Legacy*. A simple review of the respective works caused

Doubleday to reject his unfounded claims. Complaint ¶¶ 24-25.

8. Perdue nonetheless began a campaign to try and associate his books with *Da Vinci Code*. He issued press releases documenting the supposed “similarities,” posted similar allegations on multiple websites and made statements to various national news organizations about his intent to sue over Brown’s alleged infringement. Complaint ¶¶ 26-27; Answer ¶¶ 26-27.

9. Prior to 2003, Perdue published at least 10 novels and, on information and belief, none had achieved significant commercial success. Indeed, at the time *Da Vinci Code* was originally published, most of Perdue’s previously published works were not even in print, including *Legacy*, which had originally been published in 1983. As a result of Perdue’s effort to “link” his books and *Da Vinci Code*, sales of both *Daughter* and a re-issued, revised version of *Legacy* skyrocketed; and Perdue sold an option to acquire film rights to both books. Complaint ¶¶ 18, 28.

**C. Procedural History of the Lawsuit**

10. In early September, 2004, Perdue’s counsel wrote to Random House threatening to file suit unless Brown and Random House agreed to an immediate settlement. Complaint ¶ 29.

11. Brown and Random House responded by filing the Complaint in this action, with a single claim seeking a declaration that *Da Vinci Code* did *not* constitute an infringement of *Daughter* and *Legacy* under the Copyright Act, on September 17, 2004.

12. On January 6, 2005, Defendant filed an Amended Answer With Counterclaims. The Counterclaims assert claims against Random House and Brown, and derivative claims against the Counterclaim movie Defendants that are mirror images of the original declaratory judgment claim. In short, Perdue seeks at least \$150 million in damages based on claims that

Brown's book *does* infringe upon his copyright in *Daughter* and *Legacy* under the Copyright Act and constitutes unjust enrichment, an accounting of all income deriving from *Da Vinci Code*, and a permanent injunction against all Plaintiffs/Counterclaim Defendants, barring distribution of the book and the motion picture of *Da Vinci Code*.

13. The parties have not engaged in any discovery in this action.

## II. THE THREE NOVELS

### A. The Da Vinci Code

#### (i) The Murder of Saunière and His Trail of Ingenious Clues

14. *Da Vinci Code* begins with a murder in the Louvre Museum. Jacques Saunière, curator of the museum, has been killed by an albino monk seeking the Holy Grail. The monk is an agent of Opus Dei, a devout Catholic sect, and he is in turn acting at the behest of a mysterious figure originally known to the reader only as the "Teacher." In a dying effort to send a message to his estranged granddaughter, Saunière leaves behind an array of mysterious clues, including the inscription "P.S. Find Robert Langdon." (*Da Vinci Code*, Prologue - Ch. 2, 12).

15. Robert Langdon, a Harvard professor of religious symbology, is summoned to the Louvre to help solve the mystery, unaware that he is suspected of Saunière's murder. Also present at the crime scene are Bezu Fache, captain of the French judicial police, and, as hoped by Saunière, his granddaughter Sophie Neveu, a police cryptologist. (*Id.*, Ch. 1, 3-4, 9).

16. Neveu recognizes that the "P.S." is an abbreviation of her childhood nickname, "Princess Sophie", and warns Langdon that he is in danger. (*Id.*, Ch. 13).

#### (ii) Following the Clues to the Holy Grail

17. With Captain Fache now convinced that Langdon is the murderer and in hot pursuit, Langdon and Neveu band together to follow Saunière's clues. These include coded and invisible messages, a poem that is an anagram of "Leonardo da Vinci! The Mona Lisa!", the

Fibonacci numerical sequences (scrambled), and other brain-teasing puzzles. (*Id.*, Ch. 8-9, 12-13, 20).

18. Combined with Neveu's childhood recollections, the clues reveal that Saunière was the Grand Master of a secret society named the Priory of Sion, a real organization founded in 1099 whose members included Da Vinci and Sir Isaac Newton. (*Id.*, Ch. 23).

19. In the novel, the Priory "believes that Constantine and his male successors successfully converted the world from matriarchal paganism to patriarchal Christianity by waging a campaign of propaganda that demonized the sacred feminine, obliterating the goddess from modern religion forever." *Id.* at 124. Most critically, Langdon and Neveu learn the Priory has for centuries kept secret startling historical information and documents long suppressed by the Church – namely that Jesus was married to Mary Magdalene; they had a female child; and their descendants still live in France. The "Holy Grail" is in fact not an object, but the secret of Mary Magdalene's identity. (*Id.*, Ch. 37-38, 40, 55-56, 60).

20. Neveu follows Saunière's clues to a key with the symbol of the Priory of Sion hidden in the frame of "Madonna of the Rocks" by Da Vinci. (*Id.*, Ch. 30).

21. After escaping the Louvre, Langdon and Neveu go to the Paris branch of the Depository Bank of Zurich where they are presented with yet more riddles. They figure out the account number for Saunière's deposit box, where they find a carved wooden box with a cryptex – a stone cylinder invented by Da Vinci to store objects safely, which can only be opened by twisting five disks to spell a password. They are convinced the cryptex will lead them to the documents exposing Mary Magdalene's true identity. (*Id.*, Ch. 42-44).

22. A bank guard recognizes Langdon and Neveu as fugitives; however, they are saved by the bank president, an old friend of Saunière's. (*Id.*).

23. Langdon and Neveu escape to the home of Langdon's friend, Sir Leigh Teabing, a wealthy, eccentric Royal Historian and eminent authority on the Holy Grail. Teabing provides a necessary tutorial on the legend of the Grail, the evidence that Jesus and Mary Magdalene were married and had a child, and the clues to Magdalene's role in Da Vinci's artwork. (*Id.*, Ch. 52-61).

24. Both the French police and the albino monk trail the heroes to Teabing's estate, but Teabing saves them from the monk's attack and spirits them away to London on his jet. (*Id.*, Ch. 57, 63-68).

25. Langdon, Neveu and Teabing work together to unlock the cryptex, while Teabing expresses strong views that the information about Mary Magdalene should be made public, and voices a deep antipathy toward the Church. (*Id.*, Ch. 64, 69, 71-72, 99).

### **(iii) Outwitting the "Teacher" and Solving the Riddle of the Holy Grail**

26. Eventually it becomes clear that Teabing is the villainous "Teacher", and that he has deceived Opus Dei into murdering Saunière and the other Priory masters because he is obsessed with finding and publicizing the information about Mary Magdalene. (*Id.*, Ch. 99).

27. Fache arrests Teabing, and Langdon and Neveu finally crack the code for the cryptex. (*Id.*, Ch. 101, 104).

28. In the end, the clues lead them to the Rosslyn Chapel in Edinburgh, Scotland, where Sophie Neveu is reunited with her grandmother and brother, whom she thought had died long ago in a car crash. She learns from them that she is a descendant of Jesus and Mary. (*Id.*, Ch. 104-05).

29. At the end of the book, Langdon suspects the documents concerning Mary Magdalene are housed underground in an inverted pyramid at the Louvre, although Sophie's grandmother makes it clear that the belief in their possibility is far more important than their

actual existence. (*Id.*, Epilogue).

30. The book ends with Neveu and Langdon expressing the beginnings of some romantic interest in each other. (*Id.*, Ch. 105).

**B. Daughter of God**

**(i) The Disappearance of Zoe Ridgeway and the Second Messiah Sophia**

31. At the open of *Daughter*, two Americans, Zoe Ridgeway, an art assessor and broker, and her husband Seth Ridgeway, an ex-police officer turned professor of philosophy and comparative religion, are invited to Zurich by Willi Max, an elderly former Nazi. Faced with his imminent death, Max belatedly wishes to return his vast collection of art stolen during the war to its rightful owners and asks Zoe to assist in this endeavor. (*Daughter*, Ch. 1).

32. After their meeting, Max sends over to Zoe's hotel a small painting by a minor German artist named Frederick Stahl and gives Zoe a document which is apparently from the lost writings of Emperor Constantine's biographer. (*Id.*, Ch. 2).

33. The document reveals the existence of a second Messiah named Sophia, who lived in a small, remote village in what is now Turkey during the fourth century A.D. Later we learn that Sophia was an illegitimate child born into a family of merchants raised in isolation until age 13, when she began healing people with her touch. When the reports of Sophia's miracles reached Rome, the Church, fearful of the growing worship of her, sent a scribe to record her miracles and then massacred her entire village and buried the inhabitants in shrouds. Sophie's body disappeared from her shroud, leaving her image imprinted on it. (*Id.*, Ch. 2, 6).

34. We learn that centuries later, Hitler gained possession of the sacred shroud, the Passion of Sophia (the story of this Messiah's life) and other documents testifying to her godliness, and bribed the Vatican into silence regarding the Nazis' atrocities by agreeing to keep these artifacts secret. Church leaders bought into this Faustian bargain in order to uphold



Christian teachings and the Church's authority. Hitler hid this evidence of the second Messiah in salt mines in Austria. (*Id.*, Ch. 1).

35. Against this backdrop, we learn that powerful groups around the globe are trying to find the Sophia materials. KGB officials, working in cahoots with the Russian mafia, steal Willi Max's art, burn down Max's house, thereby killing him, and kidnap Zoe. The Russians, led by their ultranationalist leader Zhirinovsky, are looking for the Sophia shroud and Passion, since their secrets will allow them to blackmail the Russian Orthodox Church and give them great power. (*Id.*, Ch. 2-4, 9).

36. Meanwhile, Cardinal Neils Braun, a former archbishop of Vienna and head of a secretive, powerful Vatican intelligence force called the Congregation for the Doctrine of the Faith ("CDF"), tells an unnamed American about the second Messiah, and asks the American's assistance in securing the shroud and related documents so that the Church can ensure the continuing suppression of the story. (*Id.*, Ch. 3).

37. Unable to find his wife and completely in the dark about the second Messiah, Seth retreats to California. There, Seth falls into serious despondency over his wife's disappearance, and is about to lose his job when a mysterious woman arrives at his boat in Marina Del Ray. She reveals that the Stahl painting Max had sent to their Zurich hotel may help to explain his wife's capture. (*Id.*, Ch. 4).

38. Suddenly, they are attacked by unknown assailants, and the woman and her bodyguard die in the gunfight. Seth escapes. As Seth flees, he is assisted by George Stratton, purportedly of the United States National Security Agency ("NSA"). (*Id.*, Ch. 4, 7).

39. Seth realizes that the Stahl painting would be in his unopened mail at UCLA. He throws off the NSA tail, goes to his office, retrieves the painting and discovers his wounded

department head, presumably killed by the unknown assailants likewise looking for the Stahl painting. Seth leaves for Europe. (*Id.*, Ch. 9-10, 12).

**(ii) Battling Corrupt Russians and a Pretender to the Papacy**

40. Meanwhile, back in Europe, Zoe is incarcerated by the Russians in a warehouse, interrogated about the painting and forced to help the Russians value their stolen art. She is imprisoned along with a Russian Jewish woman who teaches her about the history of the “Great Goddess,” and the presence of divine feminine elements in the world’s religions and art. (*Id.*, Ch. 5, 8, 10, 16).

41. At the same time, Seth rushes through Amsterdam and Zurich, engaging in multiple gunfights with mysterious assailants, at least some of them Russian, in his quest to find his wife. (*Id.*, Ch. 13, 15, 18, 25).

42. Ultimately, Zoe escapes from the Russians with a plan that she perceives as divinely inspired, and the NSA’s Stratton shuttles her to safety at the luxury hotel in Zurich where Seth and Zoe last saw each other. The couple reunite at the hotel. (*Id.*, Ch. 17, 26).

43. Seth and Zoe then bring the Stahl painting to a bank in Zurich where bank officials use turpentine to remove the paint, revealing a gold ingot with Herman Goering’s account number and a safe deposit key. In Goering’s safe deposit box are documents leading to the Sophia cache and instructions on how to dismantle the many traps in the salt mine where the treasure is located. (*Id.*, Ch. 29-30).

44. After nearly being gunned down at the bank, Seth and Zoe, along with Stratton, go to a small Austrian town called Alt Aussee, where they join forces with a priest named Father Hans Morgen and his cadre of supporters. Morgen was active in the resistance during the Nazi era and is now a zealous Church reformer who is determined to reveal the truth concerning Sophia. (*Id.*, Ch. 31-32).

### **(iii) Finding the Shroud and Foiling Cardinal Braun's Plot**

45. Zoe, Seth, Stratton and Morgen crawl through mineshafts to the heavily fortified salt mine, and find the shroud and Passion of Sophia in a jeweled box deep within the mine. (*Id.*, Ch. 33-34).

46. Stratton – who we now realize was the American who had promised to help Cardinal Braun recover the shroud – then turns on Zoe, Seth and Morgen, and escapes with the priceless box. He brings it to his true boss, Cardinal Braun, a megalomaniac who intends to use it to blackmail the Pope into stepping down and appointing Braun as his successor. (*Id.*, Ch. 35-36).

47. Just as Cardinal Braun is preparing to head to Rome, Seth, Zoe and Morgen land on the roof of his chalet in Innsbruck and attack him. Father Morgen reveals to Cardinal Braun that Braun is his illegitimate son. However, Braun only cares about the Shroud and he dies after leaping into a fire to try and save it. (*Id.*, Ch. 37-39).

48. Zoe tells Seth that God has been good to them – she has had a spiritual reawakening since learning about the “Great Goddess” – and that he should renew his lapsed faith. They learn that as a result of the fire at Braun’s retreat, the entire structure burned except, miraculously, for a patch of flooring in the shape of a woman where Sophia’s shroud had last been. (*Id.*, Ch. Epilogue).

### **C. The Da Vinci Legacy**

#### **(i) The Missing Da Vinci Papers, and Battling the Bremen Legation and the Elect Brothers**

49. Curtis Davis, an American exploration geologist and amateur Da Vinci scholar, is a maverick working for Harrison Kingsbury, owner of Continental Pacific Oil Company in California. (*Legacy*, Ch. 2).

50. With Davis's assistance, Kingsbury acquires a portion of Da Vinci's writings, but Davis discovers (based on a diary written by Antonio de Beatis in the 1500's) that two pages of the manuscript are a forgery designed to replace a missing section. Kingsbury sends Davis on a mission to determine the reason for the cover-up. (*Id.*, Ch. 2-3).

51. Three scholars who saw the de Beatis diary have been murdered, including Geoffrey Martini, an old friend of Davis's, and yet another Da Vinci scholar, Professor Emilio Prati, is missing. (*Id.*, Ch. 3-4, 6).

52. In Italy for a Da Vinci conference, Davis encounters Suzanne Storm, a columnist for "Haute Culture" magazine. The two at first have an antagonistic relationship but soon become lovers and join in a quest to discover the truth about the missing Da Vinci pages, the murdered scholars and the kidnapping of Prati. (*Id.*, Ch. 8, 10).

53. Through the course of many chases and shootings throughout Italy, in which Davis is hunted by both the "bad guys" and the police, the reader comes to understand that there are two evil entities working together to obtain possession of the missing Da Vinci pages, which we learn contain information essential to building the most powerful weapon ever, a charged particle beam weapon.

54. The first evil entity is the secretive, excommunicated order of the Elect Brothers of St. Peter, headquartered in Como, Italy. The Brothers have been at odds with the Catholic Church for centuries and have long been plotting to take over the papacy. Over the years they have joined forces with Hitler and kidnapped and poisoned many famous scientists and others of use to their projects, including Galileo, Mozart and Amelia Earhart. (*Id.*, Ch. 10, 15).

55. When Davis infiltrates the Brothers' monastery, he discovers their evil agenda, finds Prati and Storm (who has also been kidnapped) and comes upon stores of priceless

artworks. Davis is apprehended by the Brothers, but he and Storm escape together. (*Id.*).

56. The other evil entity is the Bremen Legation, a secretive, nefarious coalition of corporate titans who seek to dominate the world. (*Id.*, Ch. 5, 10, 13).

57. One of their agents is James Elliot Kimball IV, a rich Ivy Leaguer and psychopathic killing machine who frames Davis for the murders in order to prevent him from foiling the villains' plot. (*Id.*, Ch. 5, 14).

58. The Elect Brothers and Kimball hire a Turkish assassin to kill the Pope, who holds the missing Da Vinci pages, so that they can steal the writings and exploit their secret. (*Id.*, Ch. 12).

**(ii) Defeating the Plans of the Legation, the Elect Brothers and Kimball**

59. In the end, Davis and Storm – who turns out to be an undercover CIA agent – foil the Brothers' efforts to take over the papacy, the Legation's plot to obtain the secret to the particle beam weapon and dominate the world, and Kimball's attempt to double-cross both groups.

60. Aided by Tony Fairfax, a British intelligence official and old flame of Storm's, they prevent the assassin from killing the Pope. (*Id.*, Ch. 17-18).

61. Kimball discovers that the Bremen Legation and Elect Brothers intend to kill him for botching the assassination, and consequently decides to steal the Da Vinci papers and sell them to the KGB. He also kills Brother Gregory, the leader of the Elect Brothers, who discloses to Davis in his last moments that Kimball has the papers and intends to sell them to the Russians at the Tower of Pisa. Davis and Storm race to Pisa, find Kimball and kill him. (*Id.*, Ch. 19, 21-22).

62. Fleeing with the papers, Davis and Storm are immediately kidnapped by the leader of the Bremen Legation, Merriam Larsen, who has also abducted Kingsbury. Davis and

Storm escape, but Kingsbury is fatally shot in the effort. (*Id.*, Ch. 22).

63. At home in California, Curtis settles down with Storm, runs Continental Pacific (which he has inherited from Kingsbury) and uses documents held by Kimball to root out corrupt corporate and government officials everywhere. (*Id.*, Ch. 23).

### III. DISSIMILARITY OF *DAUGHTER* AND *DA VINCI CODE*

#### A. Plot

##### (i) Overarching Structure and Sequence

64. The overarching structure and sequence of *Da Vinci Code* is built around the central quest of decoding the complex series of clues left behind by the murdered Saunière for his estranged granddaughter, Sophie Neveu. The clues incorporate Da Vinci's art, complex mathematical principles, and other bodies of esoteric knowledge into encoded messages, numerical sequences, word puzzles and the like. (See *Da Vinci Code* at 43-47, 66-70, 91-98, 124, 134, 187-89, 197-202, 274-75, 298-301, 316-21, 323-24, 377-82, 389-92, 425, 432-37 and 445-47). The clues lead the protagonists and readers to understand that Saunière was the Grand Master of the Priory of Sion, and ultimately to unlock the true secrets of the Holy Grail, kept alive by the Priory over the centuries: that Jesus and Mary Magdalene were a married couple and their descendants are alive today. (*Id.* at Ch. 23, 37-38, 40, 55-56, 60).

65. In *Daughter*, the overarching plot structure and sequence revolve around the hero's quest to find his beloved wife, who has been kidnapped by Russian mafia. In searching for Zoe, Seth learns that the Nazis found and hid documents containing a startling religious secret – the existence centuries before of a female Messiah – which they used to bribe the Vatican into secrecy regarding Hitler's atrocities. Seth and Zoe (once freed), join forces with Father Hans Morgen, the zealous Vatican reformer, to find the documents and expose this secret. To do so, they must battle an ultranationalist Russian leader in cahoots with the Russian mafia and a

megalomaniacal Cardinal, intent on taking control of the Papacy.

(ii) **The Ultimate Villain**

66. *Daughter* has two evil factions, both identified as villains early in the book, who are locked in battle to be the first to find the evidence of the second Messiah and to use such evidence to further their evil designs. The “joint fear and hatred” that these two factions feel toward each other is described as “a brotherhood of violence.” (*Daughter* at 339).

67. One villain, the Russian leader Zhirinovsky, controls “a KGB/Moscow Mafia operation involving looted Nazi art and some kind of religious artifact.” (*Daughter* at 106). Zhirinovsky envies the fact that the Nazis used one looted painting to blackmail the Vatican during World War II, and wants to obtain this work in order to neutralize the influence of the Vatican and the Russian Orthodox Church (“They figure whatever worked for Hitler might work for them”), and to consolidate his power in Russia. (*Id.* at 106-07). “Indeed, his election platform was based on taking back all of the former Soviet Union’s colonies and cleansing them to make them safe for Russians,” Stratton tells Seth. (*Id.* at 107).

68. The other villain, Cardinal Neils Braun, at first appears to be motivated by highly conservative religious values, but is in fact driven by megalomaniacal fantasies:

After Sophia’s secrets made him Pope, he would call a series of meetings with the heads of the world’s major religions. The power of the Sophia Passion and the threat it carried would force concessions of the most historical nature, not a reunification but at the very least a profound realignment, a coming together to marshal the forces of the world’s religions under his guidance....He saw nothing less than a return to the Holy Roman Empire, where emperors and Popes appointed each other and where each ruled with the authority of the other.

(*Daughter* at 228-29).

69. The ultimate villain in *Da Vinci Code* shares none of the qualities of the two villains in *Daughter*. Although the reader initially suspects that Bishop Aringarosa may be the

villain, the book's last chapters reveal it to be Sir Leigh Teabing, the eccentric, former British Royal Historian and Grail scholar with a strong anti-religious bent (*Da Vinci Code* at 406-13). Teabing first appears to be the protagonists' teacher and protector, but is ultimately exposed as being obsessed with discovering and revealing to the public the Holy Grail (*id.*). Teabing is not motivated by anything like Braun's desire to blackmail his way to power and to rule the religious world. Teabing does not die at the end of the book as Braun does.

### (iii) The Moral Hero

70. *Daughter* has a strong moral hero, a very important figure in the book's structure. Father Morgen, a former Nazi resister and priest, is a Vatican reformer who has known about Sophia's Passion since the war and who leads the protagonists and his fellow reformers into the dangerous salt mines to recover it. Morgen's goal in recovering the relics is to ensure "that no other Pope ever had to yield to such moral or theological blackmail" as occurred during the War. (*Daughter*, Ch. 32).

71. Morgen must also struggle with the fact that Cardinal Braun, the embodiment of evil incarnate, is his illegitimate son on whom he had pinned great hopes. (*Id.* at 395).

72. There is no parallel to Morgen in *Da Vinci Code* and no parallel struggle concerning a secret, illegitimate son.

### (iv) The Love Story

73. In *Daughter*, the love story between Seth and Zoe drives the plot. They are in a blissful, sexually exciting marriage at the book's open. (See *Daughter* at 9-10 (Zoe knows the "wide-eyed little boy" in Seth with "a deep soft heart capable of intense love and immense faith"; "the intense masculine fragrance [Seth] gave off triggered a long series of sensual memories" that excite Zoe), 20 (sexually charged touching and banter), 34-36 (Seth dreams of Zoe after she is kidnapped)). When Zoe is kidnapped, Seth is despondent and unable to keep his



job, and the first two-thirds of the book chronicles his desperate attempt to find her.

74. At the start of *Da Vinci Code*, Langdon is a committed bachelor pining for an ex-girlfriend. (See *Code* at 16, 33 (“His lifelong affinity for bachelorhood and the simple freedoms it allowed had been shaken somehow...replaced by an unexpected emptiness that seemed to have grown over the past year”)). For the vast majority of the book, he and Sophie, who he has never met before, work side by side but do not develop a romantic relationship. It is only at the very end that they recognize feelings for each other and even then, they merely kiss on the lips and agree to meet for a week in Florence. (*Da Vinci Code* at 448-49).

**(v) The Murder and Its Victim**

75. Perdue alleges that in each book:

“[t]he quest is launched by the murder of an art expert who is dying when we first see him in the book, and who has a very nice office. The art expert is the fourth member of his group to be killed. The art expert is about the same age and appearance and knows the hero. The hero is accused of the art expert’s murder.”

Counterclaim ¶ 73.

76. In both novels an older man – Saunière in *Da Vinci Code* and Willi Max in *Daughter* – is murdered, and the hero is, at very different points in the thrillers, accused of the murder. Any similarities in the murders end there.

77. *Da Vinci Code* opens with a fatally wounded curator of the Louvre, left for dead in the galleries where the Mona Lisa is stored. His last moments with his assassin -- who shot him in the stomach -- are described in detail. (*Da Vinci Code* at Prologue) His dead body appears surrounded by an ingenious trail of clues he creates while dying, including configuring his body in the form of Da Vinci’s famous Vitruvian Man, and scrawling cryptic poems and numerical sequences with a black light pen invisible to the naked eye. (*Id.*, Ch. 6).

78. In *Daughter*, Willi Max, an ex-Nazi who collected art stolen under Hitler, is alive

when the reader first meets him. His murder occurs later that night when Russian ultranationalists torch the estate while he is inside and steal his collection of art. The reader never sees his body, the murder is not described and no clues are left at the scene of the crime. (*Daughter* at 27, 90).

79. There is no similarity in appearance between Saunière and Max. Saunière is muscular and “remarkably fit for a man of his years” (*Da Vinci Code* at 35) while Max is “a wizened old man” in a wheelchair with “immobile” face whose hand feels “as if the life had already left this part of the man’s body” (*Daughter* at 2).

80. Saunière’s and Max’s relation to art is in no way similar. Saunière is the curator of the Louvre, one of the world’s great museums, and Max has hoarded for his personal pleasure roomfuls of stolen Nazi art. “Hitler had looted many of the great art collections” and stored them in Austrian salt mines. (*Daughter* at 6). Max does not have “a very nice office” (his office is not described at all). Max is the first, not the “fourth member of his group to be killed.” Max is ill but certainly alive at the opening of *Daughter* when he meets with Zoe several chapters before he is murdered (Ch. 1), whereas Saunière has already been fatally shot when we first encounter him. Finally, we are not told either man’s age.

#### (vi) The Role of Religion in the Plots

81. Perdue’s central allegation regarding the alleged parallel plots of the three books turns on the use of religion and is summarized as follows:

The books are about a quest by an identical hero, and an identical heroine, seeking extraordinary documents (158, 73, 73) that prove the divinity of (256, 175, 175) the identical sacred woman who had been wronged by the church and who is a symbol for the Great Goddess. Counterclaim ¶ 71 (emphasis added).

82. The quest for extraordinary religious artifacts that exists in *Da Vinci Code* and *Daughter* are entirely dissimilar. In *Daughter*, the quest involves Sophia, the fictional second

Messiah born in 4th Century Turkey and Sophia is not the “identical sacred woman” to Mary Magdalene, the actual biblical figure who lived in Palestine in Jesus’s time and who plays a role in the plot of *Da Vinci Code* (Counterclaim ¶ 71).

83. In *Da Vinci Code*, the great secret protected by the Priory of Sion is that Jesus and Mary Magdalene were a married couple who had offspring, and that the bloodline of Christ leads via the French Merovingians to Sophie Neveu. (*Da Vinci Code* at Ch. 37-38, 55-56, 58, 60). As Teabing puts it: “The legend of the Holy Grail is a legend about royal blood. When Grail legend speaks of ‘the chalice that held the blood of Christ’...it speaks, in fact, of Mary Magdalene – the female womb that carried Jesus’ royal bloodline.” (*Id.* at 249). He explains the historical theory:

“Mary Magdalene was pregnant at the time of the crucifixion. For the safety of Christ’s unborn child, she had no choice but to flee the Holy Land. With the help of Jesus’ trusted uncle Joseph of Arimathea, Mary Magdalene secretly traveled to France, then known as Gual. There she found safe refuge in the Jewish community. It was here in France that she gave birth to a daughter. Her name was Sarah...”

Countless scholars of that era chronicled Mary Magdalene’s days in France, including the birth of Sarah and the subsequent family tree....[I]t is purportedly one of the cornerstones of the Sangreal documents... A complete genealogy of the early descendants of Christ.”

(*Id.* at 255).

84. Far removed from Mary Magdalene, in *Daughter*, the plot turns on a wholly fictional story of a second, female Messiah named Sophia who lived, and rose, centuries after Christ. *Daughter*’s Sophia lived in a remote hamlet in Anatolia in the Fourth Century A.D. (*Daughter* at 11). She began preaching at a young age, and performed a series of miracles – healing, casting out demons, changing water to oil. (*Id.* at 14). When Emperor Constantine and Pope Sylvester I became aware of “this young girl in a distant village who performed miracles

and preached to her elders, they knew they had to act quickly to avert yet another challenge to their authority.” (*Id.* at 78). They sent emissaries who reported back that Sophia had become “the focus of a splinter religion that had captivated her native village and had started to spread to the countryside.” (*Id.*). Roman troops reacted to the perceived threat by massacring Sophia’s entire village. (*Id.* at 80). “And a week later, when the shrouded bodies were inspected in the cave that served as a mass tomb, one of the shrouds was empty. It contained the image of a fifteen-year-old girl.” (*Id.* at 80-81). The Church has suppressed the secret ever since; as Cardinal Braun explained: “Revealing this secret would tear our institutions apart and in the end open the door for the enemies of the faith. For, once people begin to question even one part, they will question every part.” (*Id.* at 81).

85. In *Da Vinci Code*, the protagonists never find the Holy Grail or any physical documents; they merely learn of the bloodline of Jesus and Mary extending to Sophie and infer that the Grail may be hidden beneath I.M. Pei’s inverted pyramid at the Louvre. (*Da Vinci Code* at Ch. 104-Epilogue).

86. In *Daughter*, a bejeweled box (“a golden box encrusted with jewels that burned green and red and white”) containing documents and Sophia’s shroud is retrieved by means of a treacherous expedition into an Austrian salt mine booby-trapped by the Nazis years ago. In the end, after the box is stolen, the artifacts (and Braun) burn in a conflagration at Braun’s chalet. (*Daughter* at 370, Ch. 34-35, 39).

87. Both sets of artifacts do not “explode” (Counterclaim ¶ 72): nothing explodes in *Code*, while the objects and documents in *Daughter* burn in a fire. (*Daughter* at \_\_\_\_).

88. The Sophia cache includes a shroud, but no bones of the second Messiah (Counterclaim ¶ 83 at 17). (*Daughter* at 143, 148, 175-180).

89. The rivals groups within the Church are also in no way similar. In *Daughter*, the CDF, which Braun leads, is “the successor to the Holy Inquisition,” a secret and powerful department within the Vatican akin to an internal intelligence agency, with “its own investigators and network of snitches that puts the former East German Stasi to shame.” (*Daughter* at 24-25).

90. In contrast, *Da Vinci Code*’s Opus Dei is a devout, but disfavored, Catholic sect which is relatively powerless within the Church (and, in fact, is on the verge of being disassociated from the Vatican). It has no element of the Inquisition, no intelligence investigations and no snitches. To the contrary, it has “residence halls, teaching centers and even universities...in almost every major metropolis.” (*Da Vinci Code* at 29).

91. The representatives of these respective organizations are not similar.

92. In *Daughter*, the CDF’s leader, Cardinal Braun, seeks the valuable documents and the shroud of Sophia in order to blackmail the Pope so that Braun himself may steal the Papacy. (*Daughter* at 226-29). To further his plot to take over the Papacy, several people die at Braun’s direction and ultimately, Braun dies trying to extract the Sophia documents and shroud from a fire in his chalet.

93. In *Da Vinci Code*, Bishop Manuel Aringosa, the leader of Opus Dei, is *not* the ultimate villain and does not seek to gain the Papacy; he is not aware of the murders committed by Silas (the albino monk) at Teabing’s instruction and in fact donates Opus Dei’s riches to the victims’ families when he discovers them. (*Da Vinci Code* at 430). Aringosa is manipulated by the anti-religious figure, Sir Leigh Teabing, who agrees to sell Aringosa the Holy Grail, and is shot accidentally at the hand of his own faithful follower, Silas, but survives. (*Da Vinci Code* at Ch. 96, 103)

94. The idea of the “sacred feminine” which plays a role in both books stems from

historical research involving the Gnostic Gospels, an ancient collection of biblical texts which were unearthed in Nag Hammadi, Egypt in 1945 but not made accessible to the public until the late 1970's. (See Counterclaim, ¶ 83 at 34-35).

95. *Daughter's* Author's Note expressly identifies its factual underpinnings. The Note explains that the novel's discussions of the Nicean Conference and "the events and religious controversies leading up to it" are true, and that Perdue's creation of a female Messiah is based on his "intriguing research about the early Christian church and the seminal roles that women played in it." (*Daughter* at 420).

96. Perdue's Author's Note in *Daughter* also reflects that, "This is a work of fiction based on fact" and goes on to detail such factual elements as early Christian historical developments; the Church's age-old pattern of discrimination against women; and "many, many more" details of "history, theology, geography, and political science." (*Daughter* at 416-22).

97. The Gnostics were early dissidents from the dominant branch of Christianity. Their gospels, written around 140 A.D, gave a far more prominent role to Mary Magdalene than other Gospels, and suggested that Jesus loved her more than other women. For example, one of the Gospels states:

And the companion of the Saviour is Mary Magdalen. But Christ loved her more than all the disciples and used to kiss her often on her mouth. The rest of the disciples were offended by it and expressed disapproval. They said to him, "Why do you love her more than all of us?" The Saviour answered and said to them, "Why do I not love you like her?"

(See McNamara Aff't Ex. E at 380-82; Ex. D at 64-65).

98. Moreover, many of these texts referred to God as having both masculine and feminine elements or spoke of the female aspect of God by using the term "Sophia". (*Id.*, Ex. D [*Gnostic Gospels*] at 48-59). As one scholar explained, "certain Gnostics suggest a third

characterization of the divine Mother: as Wisdom. Here the Greek feminine term for ‘wisdom,’ *sophia*....” (*Id.* at 53-54). Many earlier pagan traditions, including the Greeks, had worshipped a “great goddess” and the Gnostic texts reflect a similar aspect of a “sacred feminine.” (*Id.* at 48-59).

99. Both *Da Vinci Code* and *Daughter* use the term Sophia in an entirely distinct way. The protagonist of *Da Vinci Code*, Sophie Neveu (whose name is Sophie, not Sophia) is a contemporary heroine and Sophia in *Daughter* is a second Messiah who dies in the 4th century. Sophie Neveu is never identified as “Sophia.” Rather, in *Da Vinci Code*, the name arises in a different context. Further, both *Daughter* and *Da Vinci Code* expressly acknowledge that they have used the term “Sophia” precisely because the name Sophia is the feminine Greek term for “wisdom”, used to refer to the “divine Mother” in the Gnostic Gospels. (*See Da Vinci Code* at 320 (the cryptex is opened by using the password Sophia, which “literally means *wisdom* in Greek”); *Daughter* at 205 (Thalia explains that Gnostics believed in women as equals, as reflected in certain of the scriptures: “The Book of Proverbs and the Wisdom of Solomon are pretty clear when they refer to Wisdom as female. ‘Sophia’ is the Greek word for wisdom.”)).

100. The discovery of the Gnostic Gospels and their publication in English in 1977 led to a flood of writing on their import in both scholarly and more popular publications, including *The Gnostic Gospels* by Princeton professor Elaine Pagels, winner of the National Book Award, and *Holy Blood, Holy Grail*, the bestseller which posited that Jesus and Mary may have been married and spawned descendants, and became the subject of front page news articles. (McNamara Aff’t Exs. D & E). Both Perdue and Brown relied, in part, on facts and theories from published works on the Gnostic Gospels. (Counterclaim ¶ 83 at 34-35).

**(vii) Additional Alleged Plot Similarities**

101. Swiss bank accounts. Any similarity in the use of this standard feature in

international thrillers ends with the abstract concept “Swiss bank.” In *Da Vinci Code*, the bank is located in Paris and entry to the bank is down a “cement-lined ramp” and a “gold laser-pocked key” is required for entry. (*Da Vinci Code* at 176-177). In *Daughter*, the bank is on the main street of Zurich and Seth and Zoe simply walk in. (*Daughter* at 303-306). In *Da Vinci Code*, the bank president helps Langdon and Sophia escape from the bank in an armored truck. In *Daughter*, the Bank Vice President assisting Seth and Zoe is shot dead as assailants attack them in a blazing gunfight. (*Da Vinci Code* at 176, 192-194; *Daughter* at 303-22). In *Da Vinci Code*, access to the safe deposit box is obtained by entering the Fibonacci sequence, solved by rearranging numbers left by Saunière at his death scene. (*Da Vinci Code* at 188-189). In *Daughter*, access to Goering’s safe deposit box is obtained by scraping away paint on Hitler’s painting and finding the gold key embedded in its wood. (*Daughter* at 312-315).

102. Gold keys. In *Daughter*, a regular safe deposit key (formerly owned by Herman Goering) is hidden under a gold ingot fixed into the front of a mediocre painting of a salt mine by a friend of Hitler’s painted to depict the “Home” of “the Lady our Redeemer” (i.e., the home or resting place of the Sophia cache); to find the ingot requires applying turpentine to wipe off the paint. (*Daughter* at Ch. 29). In *Da Vinci Code*, a remarkable key with the symbols of the Priory and a series of laser-burned pockmarks is tucked into the slit where the canvas met the wood frame in the back of Da Vinci’s *Madonna of the Rocks*. Da Vinci’s painting is not described as being on wood, as Perdue alleges. (*Da Vinci Code* at 132, 139, 144-45).

## **B. Themes**

103. Perdue expressly articulates the themes of *Daughter* in the Author’s Note:

[T]he truth I have tried to write is the spiritual imperative to question and to search for a relationship with God. And further, to know that this relationship does not exclude different relationships that others have established. No faith has a monopoly on God....Finally, the Golden Rule rests at the spiritual heart of all



major religions, a heart frequently ignored by those who preach and claim to practice it....As the Jewish sage Hillel said, you should love your neighbor as yourself.

(*Daughter* at 421-22).

104. In keeping with this overtly religious theme, the two protagonists go through personal religious journeys: Zoe starts out contemptuous of religion in reaction to her fundamentalist mother, stating at one point:

Religion kills, it divides people. It lies and cheats and steals and spends a lot of time covering up its crimes. Just look everywhere: Jews and Arabs, Orthodox rabbis setting themselves up as Hebrew ayatollahs to excommunicate other Jews, Sunni Muslims who kill Shiites, Catholics and Protestants killing each other....

(*Daughter* at 13). Yet she gains a spiritual faith once she reconceives of God as a woman. She relies on God in escaping from captivity and by the end of the book, she is uttering pious statements such as “God has been good to us.” (*Daughter* at 410-412). Conversely, Seth starts out as a believer (“Maybe what God really wants is not blind acceptance of dogma but a lifetime of searching...”, *id.* at 18) but his faith is shaken by Zoe’s kidnapping and as he learns about the Church’s efforts to suppress the existence of the second Messiah. In the last scene, Seth says, “I’ve never felt so rudderless my entire life . . .so untethered inside.” (*Id.* at 410-412).

105. No comparable gaining and losing of faith exists in *Da Vinci Code*. While it takes a secular interest in the history of religion, it does not in any way suggest any imperative to search for a relationship with God. Nor does the Golden Rule play any role in the book.

### C. Characters

#### (i) **The Heroes**

106. Far from the alleged “identical hero” (Counterclaim ¶ 71), Robert Langdon and Seth Ridgeway are different in virtually every way.

107. Ridgeway of *Daughter* is an ex-policeman with several gunshot scars. He is

“down-to-earth” and his friends are “SWAT team commanders” and “beefy squad commanders”. (*Daughter* at 35). A classic adventure hero, he engages in many gunfights and other physical exploits. After injuries forced his retirement from the police force, he became a mid-level professor of philosophy and religion at UCLA. (*Id.*). Before the events in the novel shake his faith, he is very religious. He is married, deeply in love and very sexually active with his wife.

108. Langdon, the hero of *Da Vinci Code*, is also an attractive male professor, but the similarity ends there. Featured in *Boston Magazine* as one of the city’s top ten most intriguing people, Langdon is bookish and erudite, not macho, wearing professorial attire of Burberry turtlenecks and Harris tweed. (“Harrison Ford in Harris tweed”) (*Da Vinci Code* at 8-9). He operates by wits, not brawn. His field at Harvard is religious symbology (a made up discipline involving the study of religious symbols) and he is quite renowned. (*Id.* at 7-9). He is secular, not religious and has no crisis of faith in the novel. Unlike the married Ridgeway, Langdon has a “life long affinity for bachelorhood and the simple freedoms it allowed,” although he develops a relationship with Sophie Neveu by the end of *Da Vinci Code*. (*Id.* at 33).

109. Sophie Neveu and Zoe Ridgeway are also far from the alleged “identical heroine[s].” (Counterclaim ¶ 71). Contrary to Perdue’s allegation that Sophie Neveu is “physically *identical* to the heroines in Perdue’s books and also shares a *near-identical* educational background and other close parallels” (Counterclaim ¶20 (emphasis added)), Neveu has nothing in common with Zoe Ridgeway.

110. Zoe Ridgeway in *Daughter* “had a quiet beauty that didn’t advertise itself...a subtle foreshadowing of the deep beauty that lay beneath the skin.” (*Daughter* at 120). She is described as a “pale, athletically trim American.” (*Id.* at 200). She grew up in Southern California in a blue collar household. Her father, a welder and mechanic who later became a

sculptor, refused to go to the “small brick church” with her mother, a “strict fundamentalist Protestant;” the gap drove her parents apart: “One Sunday after a particularly heated breakfast argument, her mother went to church and never came home. Neither, apparently, did one of the baritones in the men’s choir. Zoe never heard from her mother again.” (*Id.* at 136).

111. Zoe is a self-employed appraiser, expert in detecting forgeries. She went to UCLA for college and worked as a summer intern at a museum in Amsterdam. During that time, she had an affair with Erik von Broek, a Dutch painter with expertise in forgery; when she discovered his forged works, Zoe pressed Erik to teach her the tricks of the trade. (*Id.* at 111-17). Her work is also aided by her synaesthesia, a neurological condition which allows her to hear sounds when she see colors. (*Id.* at 94-97).

112. In stark contrast, Sophie Neveu, the heroine in *Da Vinci Code*, is an attractive woman with thick, unstyled burgundy hair and olive-green eyes. (*Da Vinci Code* at 50). She is French, not American, and comes from an extremely privileged family. She was raised and educated by her grandfather, curator of the Louvre. Her parents were killed in a car crash. (*Id.* at 70, 75-76). Because Saunière thought this was caused by enemies of the Priory of Sion, he sent her brother and grandmother away to Scotland, telling Zoe they had died as well. (*Id.* at 442-43). Far from UCLA, Sophie studied cryptography at Royal Holloway, an English University. When we meet her, she is a cryptographer working for the French Judicial Police. (*Id.* at 49).

113. Finally, *Daughter* has an important moral hero, Hans Morgen, a reformist priest, who has a familial conflict as a good father with his evil, illegitimate son, Braun. (*Daughter* at Ch. 11, 32-39). *Da Vinci Code* has no parallel figure or conflict.

## **(ii) The Villains**

114. Perdue attempts to draw a comparison between Sir Leigh Teabing of *Da Vinci*

*Code* and George Stratton of *Daughter* by labeling both “shapeshifters” – characters who are apparently good but turn out to be evil. (Counterclaim, ¶ 76-77, 87). Such characters are a standard literary ploy in mysteries and thrillers to build suspense.

115. Other than this stock feature, Teabing and Stratton are not similar in any way. The eccentric Teabing is vividly described when he joins Langdon and Neveu for the first time: “Portly and ruby-faced, Sir Leigh Teabing had bushy red hair and jovial hazel eyes that seemed to twinkle as he spoke....Despite the aluminum braces on his legs [he is crippled from polio], he carried himself with a resilient, vertical dignity that seemed more a by-product of noble ancestry than any kind of conscious effort.” (*Da Vinci Code* at 227-28). Teabing is a former British Royal Historian, a knight and a descendant of Britain’s First Duke of Lancaster – and the “Teacher” who manipulates all of the other evil forces in *Da Vinci Code*. (*Id.* at 216-17). He is also extremely wealthy, owning a palace and a private jet. (*Id.* at 217). His obsession is the Holy Grail, about which he “spent his life trying to broadcast the truth” (*Da Vinci Code* at 218).

116. Stratton does not share Teabing’s style, station, nationality, riches or obsession. More important, Stratton is a pawn in *Daughter*’s evil plot rather than its leader. When introduced, it is immediately clear that he bears no resemblance to Teabing: “The American was a lean young man in his thirties with the sort of New England skin that burned too easily in the Roman sun. [H]e held one hand on his new summer hat while the other securely gripped his thin shiny aluminum briefcase. He wore cordovan loafers with tassels, a khaki poplin suit, a blue pinpoint oxford cloth button-down, and a Yale school tie.” (*Daughter* at 23). Unlike the crippled Teabing, Stratton plays tennis. (*Id.* at 40). He works for the NSA, poses as an American diplomat to gain Ridgeway’s trust and is a secret ally of Cardinal Braun in Braun’s attempt to usurp the Papacy. (*Id.* at 40; Ch. 6, 9, 35-36).

117. Teabing is motivated by hatred of the Church, while Stratton worships the Church (Counterclaim, ¶ 87 at p. 47).

118. The religious leaders in each book are also entirely dissimilar. Bishop Manuel Aringosa has an awkward, dark and oblong face, dominated by a crooked nose flattened in a fight (*Code* at 30); Cardinal Neils Braun is sturdy, wiry, chiseled and in excellent shape (*Daughter* at 25-26). Cardinal Braun is a megalomaniac and head of the CDF, an all-powerful agency within the Church. He controls the evildoers in *Daughter*, directing others to kill in service to his own agenda of becoming Pope, while Bishop Aringosa is the head of Opus Dei, an order which is about to be disassociated from the Catholic Church. He succumbs to the Teacher's manipulation so that he can find the Holy Grail, but he is kept unaware of, and horrified by, the murders Teabing instructs Silas to commit. Braun is ultimately destroyed in a fire as a result of his thirst for power, while Aringosa is somewhat redeemed by his faith. (*Da Vinci Code* at 431).

119. While both are murdered early in the respective books, Saunière -- the curator of the Louvre, head of the Priory of Sion and Sophie Neveu's grandfather in *Da Vinci Code* -- shares no characteristic with *Daughter*'s Willi Max, the former Nazi who owns a collection of stolen art and lives in a Swiss mansion. Counterclaim ¶ 83 at 21.

120. The "evil servants" Silas and George Stratton are likewise entirely distinct. Silas is an albino monk assassin who engages in ritualistic self-abuse. Stratton is the preppy American who poses as an NSA official. Counterclaim ¶ 83 at 23.

121. It is acknowledged that there are no counterparts to certain key characters in *Da Vinci Code*, including: Bezu Fache, the police captain who pursues Langdon (Counterclaim, ¶ 83 at 22); Sophie Neveu's grandmother and brother, who play brief but significant roles at the

conclusion of *Da Vinci Code* (Counterclaim, ¶ 83 at 30); and Rémy, Leigh Teabing's chauffeur and accomplice (Counterclaim, ¶ 83 at 29).

**D. Setting**

122. *Da Vinci Code* is set against the backdrop of Paris and many of its iconic locations, including the Louvre, Tuileries, and Saint Sulpice. Later scenes in the book take place in London and Scotland, also at well known landmarks, including St. James Park, Westminster Abbey and Rosslyn Chapel.

123. *Daughter* is set all over the world – that is, except in Paris, London and Scotland. Many of the scenes in the first third of the book occur in California, where Seth is attacked on his sailboat and one of his colleagues at UCLA is murdered. The chase scenes race through Amsterdam, Zurich, and Italy, among other locals. Finally, the climax to the work takes place in Austria, in the mountains and salt mines of the Austrian Tyrol.

**E. Time Sequence**

124. While both works have the fast pace of thrillers, the time sequence of the novels is dramatically different. In keeping with its tight structure, *Da Vinci Code* takes place over about one week, whereas *Daughter* stretches out over six months.

**F. Style and Tone**

125. The books differ markedly in style, tone and “total concept and feel”.

126. *Daughter* is a standard thriller, filled with violent gunfights, bloody deaths and other daring physical feats, as well as sex scenes. The book's descriptions of art and religious history are brief and simple. The writing style is similarly straightforward and undistinguished.

127. *Da Vinci Code* is more cerebral than *Daughter*. The reader and protagonists are focused more on the clues leading to the Grail – codes, number sequences, cryptexes, messages written in invisible ink and symbols – than on physical fights or gun battles that are routine in

*Daughter.*

128. *Da Vinci Code* is also distinguished by its detailed, scholarly discussions of art, history and religion, which add an unusual richness to the thriller and largely account for its astonishing success. McNamara Aff’t. Ex. G (describing *Da Vinci Code* as an “exhilaratingly brainy thriller” and “gleefully erudite suspense novel”).

129. There are no sex scenes in *Da Vinci Code*, just a simple kiss.

#### **IV. DISSIMILARITY OF *LEGACY* AND *DA VINCI CODE***

##### **A. Plot**

130. The books’ central quests are entirely different and share nothing more than stock thriller elements. Brown and Perdue both obviously reference Leonardo Da Vinci – perhaps the most famous artist in the world – but their references are fundamentally different.

131. In *Legacy*, missing pages from Da Vinci’s notebooks contain information necessary to build a charged-particle beam weapon – the “ultimate death ray” with a force that “dwarf[s] even nuclear blasts.” (*Legacy* at 355). The hero’s efforts to locate the missing pages pit him against the corrupt Bremen Legation and the evil Elect Brothers, who both seek to construct the weapon. Ultimately, Davis succeeds in finding the missing pages. (*Legacy* at CH. 22, 23).

132. In *Da Vinci Code*, the art of Da Vinci -- not his scientific writings -- play a role in the plot. Thus, Vitruvian Man is the template for Saunière’s death scene imagery, the Madonna on the Rocks hides the key that gives Langdon and Neve entry to a bank and The Last Supper is used to reveal a key piece of evidence concerning Mary Magdalene’s role as Jesus’s wife. While the paintings expose critical evidence, the Holy Grail is never found.

133. Except for the backdrop of the Catholic Church, religion plays almost no role in *Legacy*. *Legacy* does not refer to the notion of a “sacred woman” or “Great Goddess”; involve

any religious secret; or allude to the concealment or distortion of information relating to Mary Magdalene or the Church's discrimination against women.

134. Both books do feature religious brotherhoods on the side of the villains, but the similarity ends there. In *Legacy*, the Elect Brothers, who purport to be descendants of St. Peter, have been plotting for centuries to regain the Papacy. To the extent they have any purported laudable goal, it is to reverse the Church's "substitut[ion of] icons and sacred images for the true faith." A secret organization with a fortress-like headquarters in Lake Como, they have banded together with Hitler in the past, and are now allied with the Bremen Legation, a coalition of power-hungry corporate leaders (with no counterpart at all in *Da Vinci Code*). In the course of these alliances, they have systematically kidnapped famous artists, scientists and scholars useful to their cause (ranging from Galileo to Amelia Earhart), and kept them captive by surgically implanting deposits of drugs under their skin which necessitate daily injections of an antidote held only by the Brothers. During the course of the book, they seek the charged-particle beam weapon to advance their cause and ultimately hire an assassin to kill the Pope. (*Legacy*, Ch. 10, 15).

135. Brown's Opus Dei (a real organization) has headquarters in New York City and was founded in 1928 in Spain to promote a return to conservative Catholic values. (*Da Vinci Code* at 29). Opus Dei does not condone any murders, seek to kill off the Pope, have any affiliation with Hitler or kidnap famous individuals and implant drugs in them. Instead, motivated by the desire to suppress the secrets concerning Mary Magdalene, the head of Opus Dei is manipulated by the secular "Teacher."

136. The books' romantic plotlines are distinct as well. When *Legacy* begins, Suzanne Storm is rude toward Curtis Davis and critical of his expertise regarding Da Vinci. Her opening



line in the novel – directed at Davis as he gives a press conference about the search for the missing Da Vinci pages – is: “We all know most of that already...That’s past history. We can look it up in our clips if we need to. Why don’t you get to the point?” (*Legacy* at 18). Davis instantly recognizes her as “the bitchiest woman he had ever met.” (*id.*). Although Storm has borne this grudge for years, the two characters fall in love early in the novel and the sexy romance plays out throughout the work. Langdon and Neveu, in sharp contrast, have a professional and positive relationship throughout *Da Vinci Code*. It is only on the last pages of the book that a budding romance is revealed and a single kiss is shared. (*Da Vinci Code* at 449).

137. Perdue alleges that in both books, “The art expert, who is the fourth of his type [to be murdered], writes his last message on his own body in his own blood.” (Counterclaim ¶ 74). While messages in blood written by murder victims are a stock element in thrillers and mysteries, the depictions here differ significantly. Saunière draws a pentacle on his body, a multifaceted symbol reflecting pagan worship of nature as well as the sacred feminine – which ties into his other clues and messages – while Perdue’s Martini just writes another victim’s name. (*Da Vinci Code* at 35; *Daughter* at 35).

138. Perdue alleges that *Da Vinci Code* duplicates a mistake of fact in *Legacy* by stating that Leonardo’s Codex Leicester is on parchment – a “mistake” Perdue claims is unique to these two books. (Counterclaim ¶ 78). However, many publications describe the Codex as being on parchment, including an article by the Chief of Information Technology of the Seattle Art Museum on its recent conservation there. (See McNamara Aff’t ¶ 9).

## **B. Themes**

139. *Legacy*’s theme is that corruption, greed, and hypocrisy are destructive forces whether in religion (as demonstrated by the Elect Brothers), business (as exemplified by the Bremen Legation, Merriam Larsen, and certain back-stabbing employees in Davis’s company) or

government (the C.I.A. and other government agencies are revealed to be under the sway of the Bremen Legation). Davis, the renegade with an anti-establishment spirit, is the embodiment of good and fights all of these forces, exposing one after another corrupt executive and official. He begins the novel chafing against bureaucracy, “systems and regulations” in ConPacCo (*Legacy* at 12) and ends it by using his powerful new position as head of ConPacCo and his ownership of many of the Bremen Legation papers, which contain “[s]taggering indictments of government officials and multinational corporate executives,” to root out corporate and government corruption (*id.* at 386).

140. No correlation of these themes exist in *Da Vinci Code*.

**C. Characters**

141. Far from the alleged “identical hero” and “identical heroine” the respective characters in the two works share almost no qualities. (Counterclaim ¶ 71).

142. Robert Langdon and Curtis Davis are entirely distinct. Davis is a tough man of action, much unlike the cerebral Langdon. In contrast to Langdon’s tweedy style, Davis wears “faded jeans, muddy hiking boots, ...[a] plaid shirt...[and] the cracked brown leather Air Force flight jacket he always wore when he rode his [motorcycle].” (*Legacy* at 9-10, 13). He has a “muscular body, hardened by a rugged life in the outdoors.” (*Id.* at 13). While both Langdon and Davis are knowledgeable about Da Vinci, Langdon is a polished, much published and renowned Harvard professor while Curtis Davis is an “exploration geologist” for an oil company with a self-taught knowledge of Da Vinci. (*Id.* at 14-15).

143. Sophie Neveu and Suzanne Storm are also unlike. Suzanne had a protected childhood as the daughter of prestigious, upper-class American parents who only “wanted [her] to get married to some nice, acceptable, wealthy young man and become a society matron”. (*Legacy* at 83). Sophie, who was raised in France by her grandfather when the rest of her family

died, had an unconventional childhood in which Saunière exposed her to all sorts of rarefied knowledge. (*Da Vinci Code* at 76-77). Suzanne is a journalist, first at the *International Herald Tribune* and then a fashion magazine called *Haute Culture*, and is also a secret agent skilled in combat and marksmanship (*Legacy* at 83; Ch. 11, 16, 22). Sophie is a cryptologist adept at deciphering codes. (*Da Vinci Code* at 49-50). Most significantly, Sophie, unlike Suzanne, is a descendant of Jesus and Mary. (*Id.* at Ch. 105).

144. The evil characters in *Legacy* comprise an alliance of the Bremen Legation and the Elect Brothers. There is no counterpart in *Da Vinci Code* to *Legacy*'s secular villains – the Bremen Legation or its ruthless agent, Elliott Kimball (nor to the book's Nazis and KGB agents).

145. The religious characters have no similarity. Brother Gregory of *Legacy* is a Machiavellian leader with no compunction about killing and poisoning in order to gain power. He implants drugs in his prisoners to prevent them from fleeing, plans to use Suzanne as a "breeder" for several years and then killed, threatens to kill Davis if he impedes the "Transaction" and conspires with the Bremen Legation to assassinate the Pope. (*Legacy* at Ch. 10, 15). He meets his own bloody demise at the end of *Legacy*. (*Id.* at Ch. 21). By contrast, Aringosa of *Da Vinci Code* shares none of these qualities. He vehemently opposes the murders orchestrated by Teabing when he learns of them, does not kidnap anyone or implant drugs and is somewhat redeemed at the end of *Da Vinci Code*. (*Da Vinci Code* at 429-31).

146. Brother Gregory and the Elect Brothers willingly ally with the Nazis and the despicable Bremen Legation to achieve their centuries-old agenda. Aringosa has no connection to the Nazis or an evil corporation. Instead, he allies with the "Teacher" only because he fears that Opus Dei's internal scandals will lead to their disassociation from Rome, and Teabing manipulates him into believing that they will find and keep secret the Holy Grail, which will

reelevate Opus Dei's status. (*Da Vinci Code* at Ch. 41, 100).

147. The alleged comparison of *Legacy's* Kimball to *Da Vinci Code's* Teabing does not withstand even the slightest scrutiny. Teabing is old and crippled while Kimball is a physically fit mercenary; Teabing is a mastermind who manipulates others to do evil, while Kimball is a killing machine at the service of others; Teabing is driven by his antipathy toward the Church, while Kimball acts out of sadism and greed. (Counterclaim ¶ 87).

148. Nor does the effort to compare Teabing, the old, crippled "Teacher", who is a central, powerful character in *Da Vinci Code*, with the "hulking" "Schoolmaster" work. The Schoolmaster has the build of a Bremen steelworker (*Legacy* at 7) and – despite the similar nickname – is a very minor character in *Legacy*, a low-level assassin who appears for just two pages in the book's first chapter before Kimball kills him off (*id.* at 7-8). (Counterclaim ¶ 83 at 25).

149. The alleged comparison of Bezu Fache and Enrico Carducci is equally unfounded. Fache is a high-ranking police chief and major character who pursues Langdon throughout *Da Vinci Code*. Enrico Carducci, in contrast is a hapless policeman and insignificant character who appears fleetingly in one chapter of *Legacy* (*Legacy* at Ch. 20). (Counterclaim ¶ 83 at 22).

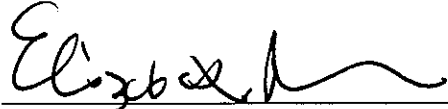
#### **D. Other Elements**

150. Both books are fast-paced thrillers, but beyond the conventions of this genre they vary in setting, time sequence, and tone and style. While *Da Vinci Code* rings with its Parisian backdrop and takes place over a week, *Legacy* hops all over Italy, with key opening and closing scenes in California, and takes place over 6 to 7 weeks.

151. *Legacy* is a much more of a standard, violent action-packed thriller than *Da Vinci Code*. *Legacy* lacks the progression of puzzling intellectual clues, or the scholarly, detailed discussions of art and religion that distinguish *Da Vinci Code*.

Dated: New York, New York  
February 25, 2005

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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

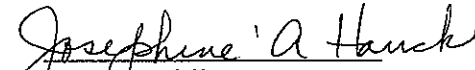
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155266

JOSEPHINE A. HAUCK  
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No. 01-4797784  
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Term Expires April 30, 20 07