# Exhibit 6

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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|---|---|---|
| ROBERT STEINBUCH, | : | |
| Plaintiff | : | |
| - against - | : | 1:05-cv-00970 (PLF)(JMF) |
| JESSICA CUTLER, | : | |
| Defendants. | : | |

MEMORANDUM DESCRIBING THE IMPROPER
NATURE OF DEFENDANT'S SUBPEONA & MOTION

Plaintiff files this memorandum, pursuant to this Court's Order to Show Cause issued to the Defendant, describing why Cutler's filing of its discovery motion is in violation of this Court's stay of proceedings.

Given Cutler's misleading description of the procedural history of this case, Plaintiff briefly outlines an accurate description here. Plaintiff filed the instant action pursuant to his Constitutional rights under the First and Fourteenth Amendments, because Cutler committed several torts against Plaintiff, including violating his right to privacy. During this action, each and every time Plaintiff raised the issue of the tortious book that Cutler wrote and Hyperion/Disney published, Cutler objected—stating that this case did not involve her privacy-invading book. Plaintiff, thereafter, filed an action for the torts occasioned by Cutler's continued exploitation of and

injury to Plaintiff through the publication of her privacy-invading book, for which she earned hundreds of thousands of dollars.

Cutler's contract with the Hyperion/Disney *required* the book to be based on her real-life blog.[1] According to the advertisement of Hyperion/Disney, the book is an "utterly unrepentant roman a clef exposing the scandalous truth. . . . [Cutler] uses her 'real life experience. . . for a sexy, semi-autographical novel that is sure to initiate a . . . game of Who's Who.'" Hyperion/Disney specifically advertised the book as being in "a witty, unapologetic voice, the novel's narrator . . . tells the story of . . . the staff counsel [i.e., Plaintiff] whose taste[s] . . . she 'accidentally' leaks to the office."

Cutler's ill-gotten booty apparently did not sustain the lifestyle that she desired,[2] and shortly after this Court announced that it would be ruling of Plaintiff's motion to compel in the instant action, Cutler filed for bankruptcy. Pursuant to the bankruptcy process, Plaintiff filed papers with the Bankruptcy Court indicating that Cutler's debts resulting from her repeated exploitation of Plaintiff were not dischargeable in bankruptcy because Cutler's actions were "willful and malicious." 11 U.S.C.

[1] Cutler commented in the press that she feels sorry for those people that write blogs for years and never obtain a book deal.

[2] In responding to what she has done with her new found wealth resulting from her lucrative book deal, Cutler said "I guess you can buy more drugs."

§523(a)(6). Upon such a filing by a creditor—i.e., Plaintiff in the instant action—the Bankruptcy Court's *sole* issue relative to that creditor is to determine whether the Debtor (Cutler) acted "willfully and maliciously." The Bankruptcy Court allows for limited discovery only on this issue—i.e., whether the Debtor (Cutler) acted "willfully and maliciously." 11 U.S.C. §523(a)(6).

That notwithstanding, Cutler contacted Plaintiff in the Bankruptcy action and sought discovery of his medical records. Plaintiff's bankruptcy counsel *repeatedly* informed Cutler that such information was wholly unrelated to the Bankruptcy Court's *sole* inquiry into whether Cutler acted "willfully and maliciously" in committing her torts. 11 U.S.C. §523(a)(6). Cutler's counsel's[3] "response" was that he wanted to use any evidence that he garnered for "impeachment." Plaintiff's bankruptcy attorney explained that even if there were "impeachment" evidence—which there is not—Cutler could not "impeach" on issues wholly unrelated to the *only* issue before the Bankruptcy Court and the only issue on which Cutler could seek discovery—whether the Cutler acted "willfully and maliciously." 11 U.S.C. §523(a)(6). The law is simple—Cutler may not seek discovery on any issue

[3] Cutler's counsel in the Bankruptcy action was initially a bankruptcy attorney in the jurisdiction in which she filed. Cutler's counsel in this case has since joined the Bankruptcy action and has since been filing on Cutler's behalf—including filing the current motion giving rise to the current issue before this Court. As the public record in the Bankruptcy action demonstrates, the parties were actively seeking settlement (non-economic, in fact). Cutler ended that process after the introduction of additional counsel.

other than whether the Cutler acted "willfully and maliciously." 11 U.S.C. §523(a)(6). Cutler seeks information that could never be admissible or lead to admissible evidence in the Bankruptcy action. The sought discovery is solely for the purpose of harassment and is in explicit contravention of this Court's stay.

Cutler's actions are not accidental or result of a misunderstanding of the scope of discovery in the Bankruptcy Court, but, rather, are part of an effort to misuse the discovery process. For example, as the public record in the Bankruptcy action demonstrates, Cutler refused to answer Plaintiff's interrogatories, including the interrogatories that requested:

> 13. Describe in detail all interactions that Defendant had with Plaintiff.
>
> 6. Describe in detail every statement in the Washington Post Magazine cover story that Defendant was interviewed for that is inaccurate and how it is inaccurate. The article is available, inter alia, at: http://www.washingtonpost.com/wp-dyn/articles/A54736-2004Aug10.html.

The irony is that not only do these interrogatories directly bear on whether the Cutler acted "willfully and maliciously," 11 U.S.C. §523(a)(6), they mimic requests that Cutler asked in this Court and moved to compel on. *See* 12/08/06 Order from this Court. Moreover, Cutler made no effort to even partially respond to these requests—asserting that no portion of the very requests that it sought of Plaintiff are fair game to ask of Cutler. *See*

FRCP 33(b)(3). Indeed, in both this Court and the Bankruptcy Court, Cutler has consistently stonewalled and refused to produce any relevant discovery.

Finally, Cutler's attempt to subvert this Court's stay not only violates this Court's order, it explicitly violates the Bankruptcy Court's Order as well. On August 22, 2008, the Bankruptcy Court conducted a hearing in which Cutler's counsel here also appeared for her in the Bankruptcy Court. The Bankruptcy Court ordered that over the ensuing 30 days, the parties shall confer on all discovery issues that the parties had been discussing. Rather than doing so, the same day—one hour after the Bankruptcy Court issued its ruling directly to Cutler's counsel—that same counsel filed its motion to compel before this Court. Not only did Cutler's counsel not wait 30 days, her counsel never contacted Plaintiff's bankruptcy counsel on this issue after the Court issued its explicit ruling.

Cutler's actions are, thus, not only in violation of this Court's stay, they are in violation of the Bankruptcy Court's Order, as well.

## Conclusion

For the foregoing reasons, Cutler's attempt to file its motion to compel should be denied and stricken as a violation of both this Court's and the Bankruptcy Court's Orders.

Respectfully submitted,

September 5, 2008

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## CERTIFICATE OF SERVICE

I certify that on September 5, 2008, I presented the forgoing to the Clerk of Court for filing via uploading on the CM/ECF system, which shall send notification to:

Mathew Billips
John Ates

/s/Jonathan Rosen/
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