

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is made as of the last day appearing below, by and among plaintiff John R. Lott, Jr. (“Lott”) and defendants Steven D. Levitt (“Levitt”) and HarperCollins Publishers L.L.C. (“HarperCollins”).

### RECITALS

A. On April 10, 2006, Lott filed a two-count complaint for defamation (“Complaint”) against Levitt and HarperCollins in the United States District Court for the Northern District of Illinois, in an action entitled *John R. Lott, Jr., v. Steven D. Levitt and HarperCollins Publishers, Inc.*, Case No. 06 C 2007 (the “Lawsuit”). In Count I of the Complaint, Lott alleges defamation by both Levitt and HarperCollins arising out of statements appearing in the book entitled *Freakonomics*. In Count II of the Complaint, Lott alleges defamation against Levitt arising out of an e-mail exchange between Levitt and John McCall (the “McCall E-mails”).

B. Both Levitt and HarperCollins deny that any of the statements that form the basis for the Lawsuit are actionable, deny that Lott is entitled to any of the relief sought in the Complaint, and each moved to dismiss the Complaint in its entirety pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Lott opposed that motion. By Order dated January 11, 2007, the Court granted the motion as it pertained to Count I, but denied it as it pertained to Count II. The Court’s Memorandum Opinion and Order provided (a) at page 12, “Defendants’ motion to dismiss Count I of Lott’s Complaint is granted, and Count I is dismissed with prejudice,” and (b) at page 16, “Since HarperCollins is only mentioned in Count I, it is hereby dismissed with prejudice.” The Court’s Docket Entry stated “Defendant HarperCollins Publishers, Inc.’s motion to dismiss Count I of Plaintiff’s complaint is granted. Defendant Levitt’s motion to dismiss is granted as to Count I and denied as to Count II. Defendant HarperCollins Publishers, Inc. is hereby dismissed with prejudice.”

C. Thereafter, Levitt filed an Answer and Corrected Answer, in which he denied the allegations of Count II of the Complaint, and the parties proceeded to conduct both written and oral discovery on Count II. Lott and Levitt each represent and warrant that he has produced all documents in his possession that are responsive to discovery requests served upon him in this Lawsuit except for those documents withheld on the basis of an asserted attorney-client privilege.

D. The parties desire to compromise and settle the disputes among them, and, to that end, and after consultation with attorneys of their own choosing and full knowledge and awareness of the pertinent facts, have agreed as follows.

### AGREEMENT

NOW, THEREFORE, in consideration of the promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, it is agreed as follows:

**1. Incorporation of Recitals**

The Recitals set forth above are incorporated herein and are made part of the parties' Agreement.

**2. McCall Letter**

A. Within five (5) days of the date of this Agreement, Levitt shall sign and transmit to John McCall, via U.S. Mail as well as via e-mail transmission, the letter attached hereto as Exhibit A clarifying and correcting certain statements made by Levitt in the McCall E-mails (the "McCall Letter"). At the same time, Levitt shall also send to Lott, via U.S. Mail as well as via e-mail transmission, a signed copy of the McCall Letter.

B. There shall be no limit whatsoever on the disclosure or publication of the McCall Letter, and Lott is entitled to disclose and publish the McCall Letter or its contents in any manner he chooses.

**3. Dismissal of Count II**

Lott and Levitt, through their respective counsel, shall sign the Stipulated Dismissal of Count II with prejudice (a copy of which is attached hereto as Exhibit B), to become effective upon the receipt by Lott of a signed copy of the McCall Letter. Within five (5) days of the receipt of a signed copy of the McCall Letter, Lott shall file with the Court the Stipulated Dismissal of Count II, thereby dismissing Count II with prejudice.

**4. Lott's Right to Pursue Count I**

Lott may pursue his claims in Count I of the Complaint, through any or all of the following: (i) a motion to reconsider the prior dismissal of Count I; (ii) a motion for leave to file an amended Count I; and (iii) an appeal of the prior dismissal of Count I. If either or both of the foregoing motions are filed and denied, Lott may also appeal such denial(s). Nothing contained herein shall limit Levitt's and HarperCollins' right to oppose any motion pertaining to Count I that Lott may choose to file, or to oppose any appeal that Lott may pursue.

**5. Releases**

**A. Lott**

- (i) Except for the obligations of the parties set forth in this Agreement, Lott releases and forever discharges: (i) HarperCollins and each of its past, present and future divisions, units, subsidiaries, parents, and affiliates, and each of its and their respective officials, shareholders, officers, partners, members, attorneys, directors, employees, insurers, predecessors, successors, assigns, agents, and representatives; and (ii) Levitt and his attorneys, agents, representatives, executors, heirs, and successors (the "Levitt/HarperCollins Released Parties") from any and all claims, actions, causes of action, debts, fees, attorneys' fees, costs, expenses, contracts, promises, liens, liabilities, losses, demands, and damages, of any nature

whatsoever, whether asserted or unasserted, known or unknown, fixed or contingent, in law or in equity, and under statute, that Lott may now have or may hereafter claim to have against the Levitt/HarperCollins Released Parties from the beginning of time until the date of this Agreement *except that HarperCollins and Levitt acknowledge that Lott has not released his claim under the presently-dismissed Count I of the Complaint and that he has not released any right he may have to assert other arguments or claims under Count I of the Complaint insofar as such additional arguments or claims relate to the paragraph (the "Paragraph") in the book Freakonomics (the "Book") that discusses Lott.* HarperCollins and Levitt expressly deny the validity of the presently dismissed Count I of the Complaint and of any such additional arguments or claims Lott might in the future assert as to the Paragraph. Further, HarperCollins and Levitt expressly reserve their right to oppose any application or motion by Lott to amend Count I of the Complaint or to add any additional arguments or claims to the Complaint.

- (ii) It is expressly understood and acknowledged by the parties that, notwithstanding the foregoing release, the parties do not intend to limit, and this release shall not be construed as limiting, Lott's ability to use in the pursuit of claims that are the subject of the presently-dismissed Count I of the Complaint or of other potential claims arising from the Paragraph, any statement, document, or other information learned through discovery conducted in the Lawsuit, subject to the provisions of the protective order signed by the Court in the Lawsuit.

#### **B. Levitt**

Except for the obligations of the parties set forth in this Agreement, Levitt releases and forever discharges Lott and his attorneys, agents, representatives, executors, heirs, and successors (the "Lott Released Parties") from any and all claims, actions, causes of action, debts, fees, attorneys' fees, costs, expenses, contracts, promises, liens, liabilities, losses, demands, and damages, of any nature whatsoever, whether asserted or unasserted, known or unknown, fixed or contingent, in law or in equity, and under statute, that Levitt may now have or may hereafter claim to have against the Lott Released Parties from the beginning of time until the date of this Agreement.

#### **C. HarperCollins**

Except for the obligations of the parties set forth in this Agreement, HarperCollins releases and forever discharges the Lott Released Parties from any and all claims, actions, causes of action, debts, fees, attorneys' fees, costs, expenses, contracts, promises, liens, liabilities, losses, demands, and damages, of any nature whatsoever, whether asserted or unasserted, known or unknown, fixed or contingent, in law or in equity, and under statute, that HarperCollins may now have or may hereafter claim to have against the Lott Released Parties from the beginning of time until the date of this Agreement.

**6. Due Authority**

Each party has all requisite power and authority to execute, deliver, and perform his or its obligations under this Agreement and no other proceedings are necessary for the execution and delivery of this Agreement or the performance of his or its obligations contemplated here.

**7. All Terms and Provisions Binding**

Each and every term and provision of this Agreement is contractual and binding and is not a mere recital.

**8. No Reliance on Other Representations**

Each party represents and acknowledges that in executing this Agreement, he or it does not rely and has not relied upon any representation, promise, or statement not set forth herein with regard to the subject matter, basis, or effect of this Agreement or otherwise.

**9. Preparation of Agreement and Construction**

This Agreement has been prepared jointly by respective counsel for each of the parties, with a full opportunity for the parties to negotiate its terms. Accordingly, any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is hereby waived.

**10. Entire Agreement**

This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, written or oral, relating to the subject matter of this Agreement. This Agreement may be changed, waived, or canceled only by an instrument in writing signed by each of the parties.

**11. Severability**

All sections, clauses, and covenants contained in this Agreement are severable, and in the event any of them shall be held to be invalid by any court, this Agreement shall be interpreted as if such invalid sections, clauses or covenants were not contained herein, unless to do so would clearly violate the parties' intent and the fundamental purpose of this Agreement.

**12. Representation by Counsel**

Each party to this Agreement acknowledges that he or it has had the opportunity to consult independent and experienced counsel of his or its own choice in connection with the negotiation and preparation of this Agreement and to seek advice as to the legal effect of this Agreement. Each party to this Agreement represents that he or it has entered into this Agreement without coercion or undue influence.

**13. Successors and Assigns**

This Agreement is intended to bind each of the parties' respective successors, assigns, executors, administrators, trustees and representatives.

**14. Counterparts**

This Agreement may be executed in counterparts, which counterparts together shall have the same force and effect as a single original Agreement executed by all the parties.

**“LOTT”**

JOHN R. LOTT, JR.

\_\_\_\_\_

Date: \_\_\_\_\_

**“LEVITT”**

STEVEN D. LEVITT

\_\_\_\_\_

Date: \_\_\_\_\_

**“HARPERCOLLINS”**

HarperCollins Publishers L.L.C.

By: \_\_\_\_\_

Its:

Date: \_\_\_\_\_

EXHIBIT A

July 26, 2007

John B. McCall, Ph.D.  
576 Rocky Branch  
Coppell, Texas 75019

Dear Dr. McCall:

You may recall that I sent you emails on May 25 and 26, 2005, which made certain statements about the Conference Issue of the Journal of Law and Economics (“JLE”) which was dated October 2001 (the “Conference Issue”). I now want to clarify and correct some of the statements I made in, and impressions I may have created by, those emails.

In those emails, I did not mean to suggest that Dr. John R. Lott, Jr., or anyone acting on his behalf, engaged in bribery or exercised improper influence on the editorial process with respect to the preparation and publication of the Conference Issue. I acknowledge that the articles that were published in the Conference Issue were reviewed by referees engaged by the editors of the JLE. In fact, I was one of the peer referees. As far as I know, all papers published in the JLE are refereed.

At the time of my May 2005 emails to you, I knew that scholars with varying opinions had been invited to participate in the 1999 conference and had been informed that their papers would be considered for publication in what became the Conference Issue. Along with other people, I received an email from Dr. Lott inviting my own participation in that conference. I also was aware at the time of the May 2005 emails to you that in connection with the preparation of conference issues for the JLE, that the organizer of each conference issue needs to provide funding to the JLE to cover publication and mailing expenses. I did not mean to suggest that Dr. Lott did anything unlawful or improper in arranging for the payment of the publication expenses for the Conference Issue. I have discussed the wording of this letter with my counsel and am willingly signing it.

I hope the foregoing clarifies and corrects my statements contained in the emails which I sent only to you.

Very truly yours,

Steven D. Levitt

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JOHN R. LOTT, JR.	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 06 C 2007
	)	
	)	Hon. Judge Castillo
STEVEN D. LEVITT and	)	
HARPERCOLLINS PUBLISHERS, INC.	)	
	)	
Defendants.	)	

**RULE 41(a)(1) STIPULATION OF DISMISSAL OF COUNT II OF THE COMPLAINT**

Plaintiff John R. Lott, Jr. and defendant Steven D. Levitt, through their respective counsel, hereby jointly stipulate pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure to the dismissal of Count II of the Complaint with prejudice, pursuant to a Settlement Agreement and Release, with each party to bear his own attorneys' fees and costs.

JOHN R. LOTT, JR.

STEVEN D. LEVITT

By: \_\_\_\_\_

By: \_\_\_\_\_

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