

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:19-cv-1197-LO-TCB
)	
EDWARD SNOWDEN,)	
)	
Defendant,)	
)	
and)	
)	
MACMILLAN PUBLISHING GROUP, LLC)	
d/b/a HENRY HOLT AND COMPANY,)	
)	
Relief-Defendant.)	
_____)	

**JOINT MOTION FOR ENTRY OF FINAL JUDGMENT AND PERMANENT
INJUNCTION AGAINST DEFENDANT EDWARD SNOWDEN**

In order to facilitate the conclusion of proceedings before this Court without the need for summary judgment motion practice or trial, the parties hereby jointly request that the Court enter a Final Judgment and Permanent Injunction against Defendant Edward Snowden in the form attached hereto as Exhibit A. In stipulating to the entry of this Final Judgment and Permanent Injunction, the parties do not amicably resolve all of their differences this matter. Instead, the attached form of Final Judgment embodies the parties’ agreement as to the relief that flows from the Court’s earlier summary judgment ruling on liability, *United States v. Snowden*, No. 1:19-CV-1197, --- F. Supp. 3d ---, 2019 WL 8333546 (E.D. Va. Dec. 17, 2019), and the Court’s ruling imposing discovery sanctions pursuant to Fed. R. Civ. P. 37, and thus would likely be granted the United States upon summary judgment motion practice. Accordingly, each party maintains

its respective litigation positions and reserves all rights with regard to the issues of liability presented in the earlier summary judgment filings, ECF Nos. 21-22, 51-52, 58. Defendant Snowden expressly reserves his right to appeal from the Court's December 17, 2019 liability ruling, and if he obtains any favorable ruling on appeal, reserves all rights as to the effect of that ruling on each and every provision of the attached Final Judgment; however, execution of such Judgment shall not be stayed pending any appeal. All rights with regard to the enforcement of such Final Judgment in the future are likewise reserved.

Respectfully Submitted,

DATED: September 18, 2020

JEFFREY BOSSERT CLARK
Acting Assistant Attorney General

G. ZACHARY TERWILLIGER
United States Attorney

ALEXANDER K. HAAS
Director, Federal Programs Branch

ANTHONY J. COPPOLINO
Deputy Director, Federal Programs Branch

ANTONIA KONKOLY
Trial Attorney
SERENA ORLOFF
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L St. NW, Room 12024
Washington, DC 20530
Tel.: (202) 305-8693
Fax: (202) 616-8470
Email: antonia.konkoly@usdoj.gov

/s/ Lauren A. Wetzler

LAUREN A. WETZLER
Chief, Civil Division
Assistant United States Attorney

Office of the United States Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314
Tel: (703) 299-3752
Fax: (703) 299-3983
Email: Lauren.Wetzler@usdoj.gov

Counsel for the United States

LAWRENCE S. LUSTBERG
Gibbons P.C.
One Gateway Center
Newark, New Jersey 07102
(973) 596-4731/Fax: (973) 639-6285
llustberg@gibbonslaw.com

/s/ Victor M. Glasberg
Victor M. Glasberg, #16184
Victor M. Glasberg & Associates
121 S. Columbus Street
Alexandria, VA 22314
(703) 684-1100 / Fax: 703-684-1104
vmg@robinhoodesq.com

Counsel for Defendant Edward Snowden

with the prepublication review requirements set forth in his non-disclosure agreements. *Id.* The First Amended Complaint seeks declaratory and injunctive relief, and the recovery of all proceeds earned by Snowden from these unauthorized intelligence-related disclosures. *See Am. Compl., Prayer for Relief ¶¶ (A)-(J).*

On October 23, 2019, the United States moved for partial summary judgment on the issue of liability. Snowden opposed that motion on grounds that, *inter alia*, the Secrecy Agreements did not apply to his public remarks, and that he should have been permitted discovery with regard to the meaning of the Secrecy Agreements and as to certain potential defenses prior to any ruling on the Government's motion for summary judgment. On December 17, 2019, the Court granted the United States' motion for summary judgment as to Snowden's liability as to both the *Permanent Record* claim and the speeches claim. *United States v. Snowden*, No. 1:19-CV-1197, - -- F. Supp. 3d ---, 2019 WL 8333546 (E.D. Va. Dec. 17, 2019). Specifically, the Court held that "there is no genuine dispute of material fact that Snowden publicly disclosed the type of information and materials . . . in *Permanent Record* and his speeches" that his Secrecy Agreements required to be submitted for prepublication review, and that therefore "the Government is entitled to summary judgment on both Counts." *Id.* at *6. The Court then entered a scheduling order governing discovery on the scope of the relief to which the Government is entitled on its claims.

Snowden declined to participate in discovery, and on August 7, 2020, the Court granted the United States' motion for sanctions. Dkt. No. 20. Specifically, pursuant to Federal Rule of Civil Procedure 37(b)(2)(A)(i)-(ii), and in consequence of Snowden's refusal to participate in civil discovery in this matter, the Court entered an order:

- Prohibiting Snowden from introducing, at any stage of this case, any rebuttal evidence relating to his compensation for *Permanent Record*;

- Deeming all information set forth in the spreadsheet furnished to the United States by Snowden's speaker's bureau American Program Bureau ("APB" and the "APB spreadsheet," respectively), as established facts for purposes of this action;
- For every speech or speaking engagement for which Snowden is liable to the United States under Count Two, but for which the United States lacks evidence of how much Snowden was paid, deeming as established that Snowden was paid his median speech earnings, as calculated by the subset of speeches documented in the APB spreadsheet;
- Prohibiting Snowden from introducing, at any stage of this case, any evidence relating to whether any given speech referred to intelligence-related activities of the CIA or NSA, materials that purport to be classified, or information that is or was in the process of a classification determination; or whether during the speech Snowden displayed any material that was marked and purported on its face to be classified; and how much Snowden was paid for each speech; and
- For the subset of speeches as to which the United States has been unable to locate any public recording or transcription, deeming as established that in at least 31% of them he displayed slides or other visual aids purporting to depict or be based upon classified information.

Dkt. No. 120 p. 12-13.

In lieu of time-consuming and expensive summary judgment motion practice based upon the above-described orders on liability and discovery sanctions, and notwithstanding the parties' ongoing disagreement as to the correctness of the Court's underlying liability determination, as a result of which Snowden has reserved his right to appeal therefrom, the parties nevertheless agree upon the scope and nature of relief if the liability determination is affirmed, and accordingly stipulate to the following Final Judgment and Permanent Injunction Against Defendant Edward Snowden:

It is hereby **ORDERED, ADJUDGED, and DECREED** that:

1. The Defendant has breached his contractual and fiduciary obligations to the CIA and the NSA by publishing *Permanent Record* and giving prepared remarks within the scope of

his prepublication review obligations without first submitting those preparations to the CIA and/or the NSA for prepublication review and obtaining written authorization for the disclosures.

2. A constructive trust for the benefit of the United States is hereby imposed over any and all monies, gains, profits, royalties, and other financial advantages derived by the Defendant, at any time, from the sale, serialization, adaptation, republication rights in any form, television or movie rights, and other distribution for profit, of the work entitled *Permanent Record*.

3. The Defendant shall relinquish to the United States any and all monies, gains, profits, royalties, and other financial advantages derived by him, at any time, from the sale, serialization, adaptation, republication rights in any form, television or movie rights, and other distribution for profit of *Permanent Record*, which to date total \$4.2 million.

4. The Defendant, his assigns, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Permanent Injunction through personal service or otherwise, are hereby permanently enjoined from disbursing or agreeing to disburse any monies, gains, profits, royalties, or other financial advantages derived from the sale, serialization, adaptation, republication rights in any form, television or movie rights, and other distribution for profit of *Permanent Record* to anyone other than the United States. Any and all such monies, gains, profits, royalties, and other financial advantages derived from the sale, serialization, adaptation, republication rights in any form, television or movie rights, and other distribution for profit of *Permanent Record* shall be paid to the United States.

5. A constructive trust for the benefit of the United States is hereby imposed over the monies, gains, profits, royalties, and other financial advantages derived by the Defendant from

his presentation of the 56 speeches listed in Addendum A, attached hereto, each of which the Court finds was made in contravention of the terms of his Secrecy Agreements and fiduciary obligations, and for which the Court finds that Snowden was compensated in the corresponding amounts also listed in Addendum A.

6. The Defendant shall relinquish to the United States an aggregate amount of \$1,027,800 for his presentation of the speeches listed in Addendum A.

7. The Defendant, his assigns, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Permanent Injunction through personal service or otherwise, are hereby permanently enjoined from disbursing or agreeing to disburse any monies, gains, profits, royalties, or other financial advantages that would otherwise flow to the Defendant from the presentation of the speeches listed in Addendum A to anyone other than the United States. Any and all such monies, gains, profits, royalties, and other financial advantages derived from the presentation of speeches listed in Addendum A that would otherwise flow to the Defendant shall be paid to the United States.

8. All payments to be made under this Final Judgment shall be made in accordance with instructions and procedures provided to Defendant by counsel for the United States from the Department of Justice, Civil Division, Federal Programs Branch.

9. The Defendant, his assigns, agents, servants, employees, and attorneys, and those persons in active concert or participation with him who receive actual notice of this Final Judgment and Permanent Injunction through personal service or otherwise, are hereby permanently enjoined from further breaching the terms and conditions of the Defendant's Secrecy Agreements and his fiduciary duties to the CIA and NSA, including by publishing

further written works, or giving further speeches or prepared remarks, that are within the scope of the Defendant's prepublication review obligations without first completing the prepublication review process and obtaining written permission to make the disclosures.

10. This Final Judgment and Permanent Injunction becomes an Order of the Court on the date it is approved by the Court.

11. If any provision of this Final Judgment and Permanent Injunction is determined to be invalid or unenforceable for any reason, then such provision shall be treated as severed from the remainder of the Final Judgment and Permanent Injunction and shall not affect the validity and enforceability of all of its other provisions, as long as such severance does not materially change the parties' rights and obligations.

12. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Final Judgment and Permanent Injunction.

13. Each of the parties to this Final Judgment and Permanent Injunction shall bear its/his own fees and costs for proceedings to date.

IT IS SO ORDERED this _____ day of _____ 2020.

Hon. Liam O'Grady
United States District Judge

20	University of Arizona Foundation	3/25/2016	\$16,000
21	Simon Fraser University	4/5/2016	\$20,000
22	Evil Twin Booking, Roskilde	6/28/2016	\$16,000
23	McGill University	11/2/2016	\$12,000
24	Start Page	11/10/2016	\$18,000*
25	University of Waterloo	1/9/2017	\$25,000
26	CANTECH	1/17/2017	\$18,000*
27	Middlebury College	3/16/2017	\$18,000
28	Free Library of Philadelphia	3/11/2017	\$16,800
29	William and Mary College	4/8/2017	\$18,000*
30	One World Identity for K(NOW) Identity	5/15/2017	\$25,000
31	Estoril Global, Portugal	7/13/2017	\$18,000*
32	London Speakers Bureau for Innovera	11/21/2017	\$15,000
33	Tulane University	1/29/2018	\$18,000
34	Blockstack Signature Berlin	3/2/2018	\$20,000
35	University of Alberta	3/27/2018	\$18,000
36	Windman LTD, Tel Aviv	11/6/2018	\$15,000
37	Dalhousie University	5/30/2018	\$18,000*
38	BTC Media, San Francisco	6/29/2019	\$15,000
39	Web3 Technologies Foundation, Berlin	9/24/2019	\$20,000
40	Columbia University	10/31/2019	\$18,000*
41	WebSummit	11/4/2019	\$18,000*
42	Campus Party Official	7/11/2020	\$18,000*
43	Imputed from R. 37 sanction**	n/a	\$18,000*
44	Imputed from R. 37 sanction**	n/a	\$18,000*
45	Imputed from R. 37 sanction**	n/a	\$18,000*
46	Imputed from R. 37 sanction**	n/a	\$18,000*
47	Imputed from R. 37 sanction**	n/a	\$18,000*
48	Imputed from R. 37 sanction**	n/a	\$18,000*
49	Imputed from R. 37 sanction**	n/a	\$18,000*
50	Imputed from R. 37 sanction**	n/a	\$18,000*
51	Imputed from R. 37 sanction**	n/a	\$18,000*
52	Imputed from R. 37 sanction**	n/a	\$18,000*
53	Imputed from R. 37 sanction**	n/a	\$18,000*
54	Imputed from R. 37 sanction**	n/a	\$18,000*
55	Imputed from R. 37 sanction**	n/a	\$18,000*
56	Imputed from R. 37 sanction**	n/a	\$18,000*
	TOTAL		\$1,027,800

* In the Court's order granting the United States' motion for discovery sanctions pursuant to Fed. R. Civ. P. 37, the Court held that "[f]or every speech or speaking engagement for which Snowden is liable to the United States under Count Two, but for which the United States lacks evidence of how much Snowden was paid, the Court deems as established that Snowden was

paid his median speech earnings, as calculated by the subset of speeches documented in [a spreadsheet the United States obtained through third-party discovery].” ECF No. 120 at 12 ¶ 3. The parties agree that this median amount is \$18,000. All speeches on this spreadsheet for which the United States is relying on the sanctions amount are denoted with an asterisk (*).

As a further discovery sanction, the Court held that, “[f]or the subset of . . . speeches as to which the United States has been unable to locate any public recording or transcription, the Court deems as established that in at least 31% of them . . . [Snowden] displayed slides or other visual aids” that fell within the scope of his prepublication review obligations. ECF No. 120 at 13 ¶ 5. At the time the Court issued its ruling, there were 61 speeches in this subcategory. The United States subsequently updated its list based on further publically available information, and 45 speeches now fall into this category. The parties agree that pursuant to the Court’s sanctions ruling, the United States should obtain relief for 31 percent, or 14, of those speeches, and these speeches are denoted with a double asterisk ().