

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

SHELDON BLAU, individually and on behalf of all others  
similarly situated,

Plaintiffs,

- against -

SIMON & SCHUSTER, INC., and any related companies,

Defendants.

Index No.:

Date Filed: May 19, 2016

Plaintiff designates the County  
of New York as the place of trial

**SUMMONS**

TO THE ABOVE NAMED DEFENDANTS:

You are hereby summoned to serve upon Plaintiffs' attorneys an answer to the complaint in this action within 30 days after service of this summons. In case of your failure to answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: Carle Place, New York  
May 19, 2016

LEEDS BROWN LAW, P.C.

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*Attorneys for Plaintiff and putative class*

TO: Simon & Schuster, Inc.  
c/o The Prentice-Hall Corporation System  
80 State Street  
Albany, New York 12207

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**CLASS ACTION COMPLAINT**

Plaintiff SHELDON BLAU, by his attorneys Leeds Brown Law, P.C., allege upon knowledge to himself and upon information and belief as to all other matters as follows:

**PRELIMINARY STATEMENT**

1. This action is brought on behalf of the Named Plaintiff Sheldon Blau and a putative class of individuals (collectively “Plaintiffs”) who authored literary works and entered into contracts with SIMON & SCHUSTER, INC. and/or any of its subsidiaries (“Simon & Schuster” or “Defendants”) for the publication of those literary works.

2. The publishing agreements (the “Agreements”) entered into between Simon & Schuster and Plaintiff, as well as others similarly situated, contained specific provisions detailing the rates of royalty payments to be made to Plaintiff and others similarly situated for various types of transactions regarding the published work. As relevant here, the royalty payment rate for “rights” or “licensing” transactions is higher than the royalty payment for “sales” of copies of the published work.

3. Beginning in approximately April of 2010 and, upon information and belief, continuing through the present, Simon & Schuster has engaged in a pattern and practice of paying Plaintiff and others similarly situated royalty payments for the distribution of licenses for electronic books, or “e-books,” at a rate for book “sales,” or some other rate lower than that required for “license” transactions.

4. Plaintiff has initiated this action seeking for himself, and on behalf of all similarly situated authors and content creators who entered into publishing agreements with Defendants, all compensation, including underpayment of royalties, which they were deprived of, plus interest, attorneys' fees, and costs.

### **THE PARTIES**

5. Plaintiff Sheldon Blau is an individual who is currently a citizen of the State of New York and entered into a publishing agreement with Simon & Schuster for the publication of a book entitled "How to Get Out of the Hospital Alive."

6. Upon information and belief, Defendant Simon & Schuster is a domestic business corporation organized and existing under the laws of the State of New York, with its principal place of business at 1230 Avenue of the Americas, New York, New York, 10020, and is engaged in the publishing business.

### **CLASS ALLEGATIONS**

7. This action is properly maintainable as a class action pursuant to Article 9 of the New York Civil Practice Law and Rules.

8. This action is brought on behalf of the Plaintiff and a putative class consisting of each and every other person who entered into a contract with Simon & Schuster and/or any of its subsidiaries for the publication of books which contained a provision requiring a higher rate of royalty payments for licensing of rights than for "sales," and for whom Simon & Schuster provided e-books to the public at any time between April of 2010 and the present.

9. The putative class is so numerous that joinder of all members is impracticable. The size of the putative class is believed to be in excess of 100 individuals. In addition, the names of all potential members of the putative class are not known.

10. The questions of law and fact common to the putative class predominate over any

questions affecting only individual members.

11. The claims of the Plaintiffs are typical of the claims of the putative class.

12. The Plaintiffs and their counsel will fairly and adequately protect the interests of the putative class.

13. A class action is superior to other available methods for the fair and efficient adjudication of this controversy.

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#### **FACTS**

15. Defendants entered into publishing agreements with Plaintiff and, upon information and belief, others similarly situated, which permitted Defendants to publish works authored by Plaintiffs and others similarly situated.

16. The Agreements entered into by Plaintiff and others similarly situated required that royalties be paid at a certain rate for the distribution of licenses or rights, and at a different, lower, rate for the “sale” of books.

17. Upon information and belief, beginning in or around April of 2010 and continuing through the present, the Defendants marketed and distributed – either directly or through third-party retailers – e-book copies of books written by Plaintiff and others similarly situated, to end users.

18. The distribution of e-book copies of books written by Plaintiff and others similarly situated to end users constitutes a “license” provided to the end user, rather than a “sale.”

19. Upon information and belief, Simon & Schuster breached the Agreements by paying to Plaintiff and others similarly situated royalty payments at the lower rate required under

the publishing agreements for “sales,” rather than the higher rate required for “licenses.”

**FIRST CAUSE OF ACTION AGAINST DEFENDANTS:  
BREACH OF CONTRACT**

20. Plaintiff repeats and re-allege the allegations set forth in paragraphs 1 through 19 hereof.

21. Plaintiff and others similarly situated entered into the Agreements allowing Simon & Schuster to publish their works.

22. Plaintiff and others similarly situated provided works to Defendants for publication.

23. Defendants, either directly or through third-party retailers, marketed and licensed e-book copies of the works produced by Plaintiff and others similarly situated to end users.

24. Defendants failed to fully pay Plaintiff and others similarly situated royalties for their work at the rate required for the distribution of licenses to that work.

25. This failure to fully pay the royalties owed for the distribution of licenses of e-books constituted a breach of the Agreements.

26. Consequently, Plaintiff and others similarly situated suffered damages in the amount of the difference between the royalty payments owed for the distribution of licenses and the royalty payments actually made.

27. By the foregoing reasons, Defendants are liable to Plaintiff and members of the putative class in an amount to be determined at trial, plus interest, attorneys’ fees, and costs.

**WHEREFORE**, Plaintiff, individually and on behalf of all other persons similarly situated demand judgment:

(1) on their first cause of action against Defendants in an amount to be determined at trial, plus interest, attorneys’ fees and costs; and

(2) such other and further relief the Court may deem appropriate.

Dated: Carle Place, New York  
May 19, 2016

LEEDS BROWN LAW, P.C.

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