

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

DARLA YOOS, Baltimore, MD, (Baltimore
County); EDWIN MCCALL, Emmaleand,
Kentucky; and KERRI LEVINE, St. Louis,
MO, on behalf of themselves and others
similarly situated,

Plaintiffs,

v.

PUBLISHAMERICA LLLP, 230 East Patrick
St., Frederick, MD 21701; Serve on Registered
Agent: VICTOR E. CRETELLA, III, 230 East
Patrick St., Frederick, MD 21701,

Defendant.

No.

PUBLISHAMERICA CLASS ACTION
COMPLAINT

FILED ENTERED
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JUN 08 2012

AT BALTIMORE
CLERK, U.S. DISTRICT COURT
DISTRICT OF MARYLAND

BY

DEPUTY

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I. INTRODUCTION

1. Plaintiffs Darla Yoos, Edwin McCall, and Kerri Levine, bring this action on behalf of themselves and a proposed class of others similarly situated, pursuant to the Maryland Consumer Protection Act (CPA), Md. Com. Law § 13-301, the Federal Declaratory Judgment Act, 28 U.S.C. § 2201 and Maryland common law.

2. Defendant PublishAmerica LLLP is a book publisher that portrays itself as “a traditional, royalty paying publisher.”¹ But unlike traditional publishers, which profit from the sale of books, defendant profits from its own clients, *i.e.*, the authors who submit works for publication by defendant. Defendant lures these authors in by promising to publish their book at no cost, and it makes false and misleading representations that it will promote their books and support the authors’ efforts to sell their own books. But this is not the case.

3. Instead, once the authors sign the contract, which gives defendant the rights to their book for seven to ten years,² defendant does nothing constructive to promote their books, but instead offers various promotion packages on a fee-for-service basis, *e.g.*, sending the book to a book fair, sending it to the National Library of Scotland for inclusion in their collection, sending it to best-selling author J.K. Rowling for review, and the like.³ These services, which are either misrepresented or never carried out, are not reasonably designed to promote class members’ books.

4. For example, PublishAmerica was exposed recently when it falsely claimed that it had presented books to J.K. Rowling for her review, which Rowling denies, and when it claimed

¹ PublishAmerica, <http://www.publishamerica.com/facts/index.htm>.

² Until recently defendant’s contracts required authors to provide defendant the rights to publish their works for seven years. *See* Attachments 1-3; *Fact No. 10*, PublishAmerica <http://www.publishamerica.com/facts/index.htm>, (“Our contracts expire after ten years.”) (last visited May 21, 2012). Currently, defendant requires ten years.

³ *See infra* Section III.C.(3).

to have a contract with a major Canadian bookseller, which the Canadian bookseller likewise denied.⁴

5. Defendant provides very poor editing services, is slow to respond to book orders, and it routinely overprices the books it publishes. This is no accident. Defendant will only lower the price of its clients' books to a competitive rate for a \$399 fee.⁵ These practices make it difficult for even the most enterprising authors to promote their own books.

6. Defendant is not responsive to inquiries from its clients, or worse it is dismissive or belligerent.⁶

7. Like plaintiffs, thousands of other aspiring authors who signed up with PublishAmerica have become demoralized because the publishing contract appears to be little more than a pretext for selling dubious services, *i.e.*, services that are not reasonably designed to promote the books and in some cases are not even carried out.⁷ These authors also feel trapped because PublishAmerica owns the rights to their books for seven to ten years. This presents a Hobson's choice for the authors: either throw good money after bad for suspect promotional services or abandon the book that was a labor of love.

II. PARTIES, JURISDICTION AND VENUE

8. Plaintiff Darla Yoos is a resident of Baltimore, Maryland. Ms. Yoos contracted with defendant to publish her book, *Diary of a Demonologist* in 2012. A copy of the contract is attached as Attachment 1. The contract states that defendant may use its discretion in the promotion of her book. Nothing in the contract indicates that defendant would promote her book only on a fee-for-service basis.

⁴ *Id.*

⁵ *See infra* Section III.C.(1).

⁶ *See infra* Section III.D.

⁷ *See infra* Section III.C.(3).

9. Plaintiff Edwin McCall is a resident of Kentucky. Mr. McCall contracted with defendant to publish his book, *Dirty Potatoes and Other Short Stories* (written under the pseudonym Quincy Maxwell) in July 2009. A copy of the contract is attached as Attachment 2. The contract states that defendant may use its discretion in the promotion of his book. Nothing in the contract indicates that defendant would promote his book only on a fee-for-service basis.

10. Plaintiff Kerri Levine is a resident of St. Louis, Missouri. Ms. Levine contracted with defendant to publish her book, *From Catholic to Atheist: Kicking Back with a Godless Heathen*, on April 30, 2010. A copy of the contract is attached as Attachment 3. The contract states that defendant may use its discretion in the promotion of her book. Nothing in the contract indicates that defendant would promote her book only on a fee-for-service basis.

11. Defendant PublishAmerica LLLP is a Maryland Limited Liability Limited Partnership with its principal office and place of business located in Frederick, Maryland. Defendant describes itself as “a traditional, royalty paying publisher” that, unlike a vanity press, does not charge fees for publishing a book.

12. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because at least one class member is of diverse citizenship from defendant, there are more than 100 class members nationwide; and the aggregate amount in controversy exceeds \$5,000,000.

13. The amount in controversy is supported by the facts. Defendant claims to have 50,000 authors under contract.⁸ Defendant has made hundreds of offers for purported services related to the contract, with prices running from approximately \$22 to \$1,899.⁹ It also claims

⁸ *Facts*, PublishAmerica, www.publishamerica.com/facts/index.htm (last visited June 1, 2012).

⁹ *Service List*, PublishAmerica, www.publishamerica.net/service/ (last visited June 1, 2012).

annual revenues of approximately \$4-6 million.¹⁰ On information and belief, the majority, if not all of defendant's revenues arise from its publishing agreements with its authors. Plaintiffs and the proposed class period seek damages for the last three years.

14. Venue is proper in this District under 28 U.S.C. § 1391(b) because defendant resides in the State of Maryland and a substantial part of the events or omissions giving rise to the claims occurred in or emanated from this District. Defendant's publishing contracts also require all disputes arising from the formation or the performance of the contract, including tort claims, to be submitted to a court in the State of Maryland.¹¹

III. STATEMENT OF FACTS

A. Traditional Book Publishers Make their Money Selling Books, Whereas Vanity Presses Charge Authors to Publish their Books.

15. Publication is easy in the day of the internet, where anyone can post his or her work online. But publication by a traditional publisher is rare. For example, the largest publishers, Random House, Penguin Group, HarperCollins Publishing, or Simon & Schuster will not even review a manuscript unless the author is represented by a recognized literary agent.¹²

16. Traditional publishers operate by selling books. They acquire the rights to publish books from authors, employ editors who help authors revise and polish their books and come up with a marketing plan for the books. Traditional publishing houses do not take money

¹⁰ Paula Span, *Making Books*, Washington Post, (Jan. 23, 2005), <http://www.washingtonpost.com/wp-dyn/articles/A25187-2005Jan20.html>.

¹¹ See Attachments 1-3.

¹² See, e.g., *List of Publishers Who Do Not Charge*, eHow.com, http://www.ehow.com/info_8093965_list-publishers-do-not-charge.html#ixzz1tvv0zYI6; Katherine Rosman, *The Death of the Slush Pile*, Wall Street Journal, (Jan. 22, 2010), <http://online.wsj.com/article/SB10001424052748703414504575001271351446274.html>.

from the author; they pay the author an advance prior to publication, then a percentage of the royalties based on how many copies the book sells.¹³

17. Vanity presses, also known as “subsidized publishing” operate on a different model. These publishers, *e.g.*, Vantage Press, Dorrance Publishing or Ivy House, charge writers to be published, at prices that can run into thousands of dollars.¹⁴ Newer models like iUniverse and Xlibris use the digital print-on-demand technology and charge less to publish, but also tend to set book prices high to cover the cost of individual printing.¹⁵ If they are legitimate businesses, these publishers make it clear to the author that they are offering a limited set of services and that the author bears the expense.¹⁶

18. Vanity presses may provide a legitimate service, for example, a social organization planning to sell a cookbook or commemorative book, or a family elder passing her memoirs around to the grandchildren. But self-publishing does not open doors for an aspiring writer, hoping to be picked up by a mainstream publisher one day. For example, the Authors Guild does not accept self-published authors and most established publishers see prior publication in a vanity press as a drawback, not as a career asset.¹⁷

19. As a general rule, bookstores will only stock books from traditional publishers because these books can be returned to the publisher if they do not sell. Self-published books are typically printed on demand and cannot be returned. For this reason, self-published authors

¹³ *Types of Publishing Companies*, eHow.com, http://www.ehow.com/list_6850864_types-publishing-companies.html#ixzz1YhD7uRIx (last visited June 1, 2012).

¹⁴ See *FAQ*, Vantage Press, (estimating that the cost of publishing will range from \$5,000 to \$25,000), <http://www.vantagepress.com/faq#f2> (last visited June 1, 2012).

¹⁵ See *FAQ*, iUniverse, (book prices based on number of pages), <http://www.iuniverse.com/faqs/bookproduction.aspx#Question2> (last visited June 1, 2012). Note that ebooks are set at much lower prices. See, *e.g.*, book prices at <http://bookstore.xlibris.com/>.

¹⁶ Span.

¹⁷ *Id.*

cannot expect to take part in book readings or book signings at local bookstores unless they make special arrangements, like buying their own books and selling them by consignment.¹⁸

B. Defendant PublishAmerica Presents Itself as a Traditional Publisher, but It Makes Its Money off of Its Authors.

20. Defendant describes itself as a traditional publisher in the sense that it makes its money selling its authors' books, not selling them services, like a vanity press:

PublishAmerica adheres to the traditional publishing concept: we assume all financial risks and all expenses, **we earn our income by selling books, and books only.**¹⁹

PublishAmerica is **NOT in any way a POD**, vanity press, or subsidy publisher, and has nothing in common with them. None of our authors are being self-published.²⁰

21. It professes to be:

a traditional, royalty paying publisher. We charge no fees for publishing a book, ever. There's no catch, no hidden surprises. We pay small advances to indicate our principle. The author is never, ever, under any obligation to pull their wallet to make any purchase whatsoever. We don't want their money. We want their book. All expenses involved with acquiring, producing, manufacturing, and publishing a book, and marketing it to the industry's wholesale and distribution channels for full availability through all bookstores at home and abroad are underwritten by PublishAmerica solely.²¹

22. Defendant represents that it will actively promote its authors' books and assist them in their own promotions:

An author's obligations are few, since he/she already contributes the lion's part by having written the book. We are very conscious

¹⁸ Eric Erickson, *Marketing & Distribution of Self-Published Books*, Ehow, http://www.ehow.com/info_8333322_marketing-distribution-selfpublished-books.html (last visited June 1, 2012).

¹⁹ *FAQs*, PublishAmerica, <http://www.publishamerica.com/facts/index.htm> (emphasis in original) (last visited May 24, 2012).

²⁰ *Facts and Figures, Fact #5*, PublishAmerica, <http://www.publishamerica.com/facts/index.htm> (emphasis in original) (last visited May 24, 2012).

²¹ *Id.* at Fact #6.

of that fact. No book was written overnight. It has cost most authors a year or longer to write it, and often many more years to let the creative process well up.

We are also conscious of the fact that seeing your book in print is a life-defining moment. It is something an author never forgets for the rest of their lives. It is something to enjoy and celebrate. Therefore, the obligations should be minimal.

The author has really only one obligation: to provide us with the completed final-version manuscript. We'll take it from there.

Does this mean that the author must sit on his/her hands after signing the contract? Not exactly. We expect the author to actively promote the book whenever and wherever possible.²²

But separate from its website, president and co-founder of PublishAmerica, Larry Clopper concedes that the company principally relies on its authors to sell their own books.²³

23. Others see defendant in a much harsher light. For example, an L. A. Times staff reporter reports that PublishAmerica is considered by many to be "a vanity press in a different dress."²⁴

They contend PublishAmerica rejects few, if any, manuscripts, and while it might publish your book, it does no editing for style or context – a key step in the publishing process. They complain that it provides limited (some say no) copy editing, and leaves authors to do their own marketing. Books are distributed "on demand," which means a copy isn't printed until it is ordered. And since PublishAmerica won't take returns, relatively few of their 11,000 titles have made it to store shelves.

²² *Question: What are my obligations as an author?* PublishAmerica, <http://web.archive.org/web/20110716040334/http://www.publishamerica.com/benefits.htm#obligations> (last visited May 24, 2012). More recently, PA has added the statement: "Once the book is in publication, and booksellers have access to it, author promotion becomes important. PublishAmerica often offers special post-publication promotion opportunities at a fee. Those are optional and at the author's sole discretion, e.g. when we attend important trade shows such as Book Expo America or the Frankfurt Book Fair in Germany." See <https://www.publishamerica.com/faqs.htm#obligations> (last visited June 1, 2012).

²³ Span.

²⁴ Scott Martelle, *Please Publish This Dud*, L. A. Times, (Feb. 5, 2005), <http://articles.latimes.com/2005/feb/05/entertainment/et-hoax5>.

24. The article quotes Ann C. Crispin, Chair of the Science Fiction and Fantasy Writers of America's Committee on Writing Scams, who describes Defendant as one of "the biggest and most obnoxious ... author mills of them all – and one of the most successful, I imagine."²⁵ In a separate article, Crispin explains: "They claim to be a traditional publishing house, but they're not. Commercial publishing houses, as I would call them, pay a reasonable advance – measured in thousands of dollars; they pay royalties based on cover price; and they have contracts with reasonable reversion clauses, they don't take things [*i.e.* publishing rights] for an ironclad seven years."²⁶

25. A recent article in the North Country Gazette summarizes:

You've heard the saying "If it sounds too good to be true, it probably is."

For sure that fits what appears to be one of the biggest scams in the publishing industry, PublishAmerica.

They get the gold mine, you get the shaft.

There are thousands of would-be writers out there, who dream of seeing their book in print whether it's a book of poems, their biography or their first novel.

And PublishAmerica which is based in Frederick, Maryland, capitalizes on that.

They promote themselves as a traditional book publisher, touting the slogan "We treat our authors the old-fashioned way – we pay them."

But not much.

Their website is loaded with testimonials but as one victim aptly summarizes their operation, "PublishAmerica makes money, lots of it, from sales of books to their authors. Not from sales to the

²⁵ Martelle.

²⁶ Susan Pagani, *Paperback Writer*, San Antonio Current, (June 24, 2004), <http://www2.sacurrent.com/columns/story.asp?id=58606>.

public. Not from sales to bookstores. Despite the hype and clever innuendoes to the contrary, they have no interest in a market outside their stable of authors.”²⁷

The author concludes: “The best thing that a writer can do is avoid PublishAmerica like the plague.”²⁸

26. Washington Post reporter, Paula Span, explains that by misrepresenting itself as a traditional publisher, PublishAmerica obscures its fatal no return policy and its reliance on its own authors to market their books. She describes the experience of one aspiring writer who was lured in by PublishAmerica’s false promises:

Doubts first arose when she began receiving e-mailed exhortations offering special, limited-time discounts if she agreed to purchase many copies of her own book. Would Avon or Pocketbooks do that? she wondered. She grew suspicious, too, when the proofs of her novel arrived – riddled, St. Amour says, with spelling, punctuation and grammatical errors.

And when she visited her local Waldenbooks to schedule a book-signing, an assistant manager checked her computer, “looked at me and said, ‘That’s POD.’ “In industry parlance that means “print on demand,” books that are most likely self-published. “We don’t do signings for POD authors,” the employee said. . . .

St. Amour, who acknowledges being “very ignorant about the publishing industry” at the time, believed she was contracting with a press that was small but could launch her new career. Yet a major chain bookseller – and the nearby Borders concurred – was telling her it wouldn’t put her book on its shelves.

“The excitement,” she says now, “was short-lived.” PublishAmerica operates differently, she has learned.²⁹

27. Defendant’s authors invest a lot of money to promote their own books only to find that defendant stands in way of any measurable success:

²⁷ *Attention Writers: Avoid PublishAmerica*, N. Country Gazette, (Apr. 19, 2010), http://www.northcountrygazette.org/2010/04/19/writers_shaft/.

²⁸ *Id.*

²⁹ Span at ¶¶ 4-5, 7-8.

Tim Johnson, who lives in Wauchula, Fla., toiled for seven years over “a supernatural, psychological mystery/thriller.” He admits, after the fact, to naiveté: “I didn’t know how a true publishing company worked. I didn’t know anything about agents, or where to begin to find one.” Why would he? Johnson works in a fertilizer company’s shipping department. So when PublishAmerica accepted his novel, “I thought after all the hard work I’d put into it, this was the real thing.”

He bought 150 copies, printed up promotional posters, persuaded a local book and gift shop to hold a signing and bought newspaper ads to lure customers. He spent about \$2,000 and recouped about \$700, he estimates, before he realized that, without being able to penetrate more bookstores, his novel was “not going anywhere, no matter how hard I work.”

If PublishAmerica went under, “I’d be glad, because no one else could be hurt.”³⁰

28. “I couldn’t line up any book signings unless I purchased the books in advance because bookstores refused to carry books that are printed on demand,” said another author.³¹

29. Defendant’s former client, Phillip Dolan warns first-time authors: “Don’t even go near PublishAmerica.” Mr. Dolan, who spent \$7,000 promoting his own book, told the Washington Post that he prevailed in arbitration of a breach of contract claim against defendant. While the award is confidential, Mr. Dolan said he received the relief he sought, and the amount was substantial. Most importantly, he said he was no longer bound by his contract.³²

30. In 2004, scores of unsatisfied clients complained to Publishers Weekly “that PublishAmerica sells books to which it no longer holds the rights; offers authors only a 30% discount; doesn’t pay royalties it owes; engages in slipshod editing and copyediting; sets unreasonable list prices; and makes little effort (and has had little success) in getting books into

³⁰ *Id.* at 4.

³¹ Bridgette Harwood, *PublishAmerica must pay up*, Frederick News-Post, (Mar. 25, 2006), <http://www.fredericknews-post.com/sections/news/display.htm?storyid=47638>.

³² *Id.*

bookstores. PA has been nonresponsive to complaints, said the authors (most of whom have not been published by traditional houses) and refuses to release authors from their contracts. While PublishAmerica doesn't charge for printing the books, it does require authors to provide a list of friends and family, and then markets to them heavily, according to the authors."³³

31. These authors claim that defendant is worse than a vanity publisher because it misrepresents itself. "If they would just say, buy your books up front and pay X amount and we'll give you X, Y and Z, then that would be one thing," said author Kate St. Amour. "But they don't tell you those things when you sign up with them." Dee Power explained that she and other dissatisfied authors were making their complaints public because: "We hope to spare other people, perhaps thousands, the frustration and problems we've had with this deceptive company."³⁴

32. One writer explained:

What was PublishAmerica doing to make sure my book was reviewed? Nothing. I decided to contact local daily and weekly newspapers by e-mailing a press release. The only responses I got were two e-mail autoresponders announcing the editors were on vacation.

I spent \$40 on copies of my book's galley and mailed them to three national newspapers and the Library Journal magazine. Then I phoned a book reviewer at the 'San Diego Union-Tribune' and asked if he'd be interested in reviewing my book but before I could even describe what it was about, he asked who my publisher was. I told him. "We don't review books by that publisher," he stated.

I called all the local bookstores and spoke to the managers and/ or community relations people about my book, including a couple of stores who were physically located on the street I'd written about. An independent bookstore owner told me that since PA didn't have

³³ Steven Zeitchik, *Authors Allege Publisher Deception*, Publishers Weekly, (Nov. 19, 2004), <http://www.publishersweekly.com/pw/print/20041122/22907-authors-allege-publisher-deception-.html>.

³⁴ *Id.*

a return policy she was unable to stock my novel. Another said that I could sell my book on consignment. The chain stores of Borders and Barnes & Noble said my book would be available through Ingram if anyone chose to order it.³⁵

33. The PublishAmerica name and logo is a stigma to those in the media, bookstores and libraries. The books are overpriced and poorly edited and cannot be returned, making them both undesirable and difficult to order.³⁶ “Strip away all the self-proclaimed ‘traditional’ pretensions and all you are left with is a company who host[s] grossly expensive books online for sale, and provide[s] print-on-demand orders, it would seem, primarily to sell to their own authors.”³⁷

34. The PublishAmerica Message Board only includes positive messages from purported testimonials and other postings. By eliminating any negative reviews from its website and disparaging its critics, defendant perpetuates its deceptive business practices.³⁸

35. One industry review reaches the following conclusion about PublishAmerica:

A deep read through their website reveals, at best, a company with a ridiculously inflated view of what they can do for the many thousands of authors who publish with them every year, and at worst, PublishAmerica prosecute[s] a deliberately skewed and misleading model of ‘traditional publishing’ I can only equate with McDonalds announcing they are going into landscape gardening tomorrow. This is a hit and miss – what success is achieved comes by default of numbers – attempt to claim you are a large traditional publisher by exploiting the obvious and inevitable efforts of the more gifted and commercial astute authors who somehow got themselves into this unfortunate mess. They are the real foot-soldiers and force behind PublishAmerica, out on the road, signing books and beating on the closed doors of executive offices,

³⁵ Lisa Maliga, *Publish Anything: The Saga of a PublishAmerica Author*, ArticleCity, (Nov. 25, 2004), http://www.articlecity.com/articles/writing/article_314.shtml.

³⁶ *Id.*

³⁷ Mick Rooney, *PublishAmerica/Independence Books – Reviewed*, *Indep. Publ’g Magazine*, (Mar. 12, 2010), <http://mickrooney.blogspot.com/2010/03/publishamerica-reviewed.html>.

³⁸ See, e.g., Don Davidson., *The Truth About PublishAmerica*, Christianity for Thinkers, <http://christianityforthinkers.com/publishamerica.htm> (last visited June 1, 2012).

weighed down by some of the most expensively sold books in the book retail industry. They are also the same authors worn down, week after week, by requests from PublishAmerica with discount deals to buy more of their books in the hope that they can help PublishAmerica land the book on the desk of a Random House editor, or better still, Oscar Award winner, Sandra Bullock!

* * * *

While PublishAmerica is not a traditional publisher; they neither fit the strictest terms of vanity press or author solutions service. You do not become a traditional publisher by default because you do not charge an author an upfront fee. Therein is the self-created sword PublishAmerica falls upon. They believe traditional publishing is defined solely by whether the author pays for their book to be published or not, and that is fueled by the ignorance and naivety of authors combined with the greed and ignorance of a publisher. Plainly and simply; PublishAmerica [is] just a bad publisher.³⁹

C. Defendant Sells Marketing Promotion Packages for Services that Should Fall within Its Contract, that are not Reasonably Designed to Promote Its Authors' Books, or are Misrepresented.

36. Defendant is in the business of handling its authors' dreams. People lured into defendant's scheme against their better instincts: "The immortality of the book, the permanence of the book draws people in," says Paul Aiken, Executive Director, of the Authors Guild.⁴⁰ Once they agree to publication with PublishAmerica, defendant has a captive audience to offer services that are guaranteed to do nothing but enrich defendant's coffers.

37. Defendant's contracts state that defendant will promote their books at its discretion and it expects its authors to make themselves available for local book signings.⁴¹ This makes it seem like defendant is a traditional publisher. But what defendant does not disclose to its authors is that it relies on its authors to provide the names and contact information for the

³⁹ Rooney.

⁴⁰ Span.

⁴¹ See Attachments 1-3, ¶ 13.

local media to whom it submits a press release announcing the publication of the book and that the press release will rely primarily on the book blurb that the authors' themselves have written. It does not disclose that it expects its authors to arrange for their own book signing events and that bookstores will be unlikely to allow such events or to stock the authors' books unless, possibly, the authors purchase their books themselves. It also does not disclose that it will regularly solicit its authors to purchase their own books.

38. Defendant also does not tell its authors before they sign with it, that it will solicit them regularly to purchase promotion packages, such as submitting their books for consideration for literary prizes, for Hollywood production or for publication in other languages. It does not disclose that its sales solicitations are limited principally to the list of family and friends authors provide to defendant and that unless the authors purchase defendant's promotional packages, it will not promote their books to the general public, other than perhaps a perfunctory press announcement, largely drafted by the authors themselves and sent to the local media the authors have identified for the defendant.

39. Defendant's promotional fee-for-service packages fall into two principal categories. On the one hand, they withhold the services that any reputable publisher would do automatically if it was genuinely interested in promoting book sales, unless the authors pay a service fee. On the other hand, they offer services that are not reasonably designed to promote books at all. By accepting payment for such useless services, defendant preys upon the inexperience of authors, who rely on defendant's marketing expertise.

1. Defendant requires its own authors to pay for the usual and customary marketing that any reputable publisher would do as a matter of course.

40. For example, defendant sent the following solicitation to Plaintiff Kerri Levine, author of the book, *From Catholic to Atheist: Kicking Back with a Godless Heathen*:

Is this email not displaying correctly?

[View it in your browser.](#)



Dear author:

Your Christian book deserves the best Christian book distributor that the world has: **Spring Arbor**. An Ingram company (Ingram is the world's largest book wholesaler), it is Spring Arbor's mission "to provide superior distribution services for products that enhance people's relationship with God and spread Jesus Christ's message to the world."

Spring Arbor serves virtually all Christian bookstores. We recently met and talked to them at a major marketing event in Atlanta.

**We will submit your book to Spring Arbor
and ask them to carry it.**

Go to www.publishamerica.net/service/SpringArbor.html to be included in our submission, for \$49. Your book will be reviewed by our staff so that Spring Arbor only gets to consider the best that we have to offer. **Money**

back: if your book, for whichever reason, does not make the cut of what we submit to Spring Arbor, you will receive a full refund. You will be kept informed about our selection and submission process, and also when Spring Arbor lets us know that they carry your work for their Christian bookseller distribution.

Spring Arbor's mission statement ends with these words, "It is essential to our mission to enthusiastically serve our customers and to be gracious and truthful in all our interactions."

You must choose a shipping option to activate. No use of coupons is allowed.

Thank you,
--PublishAmerica Bookstore

*DISCLAIMER: PublishAmerica has no affiliation with Spring Arbor beyond that of a standard publisher-wholesaler/distributor relationship, and makes no claim to preferential access or other special treatment. No specific result from PublishAmerica's best efforts to represent and promote its authors and their books is suggested or guaranteed.*⁴²

Defendant requests \$49 merely for the author's book to be considered for submission to a bookstore that is likely to stock works with Christian themes. Setting aside the merits of defendant's suggestion (*i.e.*, that a Christian bookstore would want to stock books on atheism), a traditional publisher would not charge its authors for the "service" of evaluating the market for each book and seeking to market them to the appropriate channels. This email is just one of

⁴² Email provided to plaintiffs' counsel for review.

scores of promotions that defendant's authors receive every month, which seek to shift the cost of publication and marketing to the authors.⁴³

41. What is also remarkable about this solicitation is that it charges its authors a "shipping charge" in order to "activate" defendant's review of a book that defendant publishes. This is part of a broad scheme to deceive plaintiffs and class members by charging bogus fees.

42. In addition to its email solicitations, defendant also markets its publication and promotional services to its authors on its website. For example, it offers to reduce the price of an author's paperback books from \$24.95 to \$18.95 or to \$10.95, but only if the author pays defendant \$199⁴⁴ or \$399 respectively.⁴⁵ This is clearly a ruse to collect money from its authors. A traditional publisher interested in marketing its author's works, would price the books competitively for sale. Defendant's \$24.95 price tag for paperback books is much higher than the market will bear, especially for works by first time authors, whose works have not been properly vetted or marketed. Defendant also charges its authors \$59 if they would like their book to be available in hardback.⁴⁶ Recall these books are printed on demand, so it does not involve the production of any books. Add in two "complimentary" copies of the book and the price increases to \$89.⁴⁷

⁴³ See, e.g., Davidson, (listing by date many of the promotional offers the author received from defendant and providing PDFs of the promotions).

⁴⁴ *List Price Reduction 1*, PublishAmerica, <http://www.publishamerica.net/service/ListPriceReduction1.html> (last visited June 1, 2012).

⁴⁵ *List Price Reduction 2*, PublishAmerica, <http://www.publishamerica.net/service/ListPriceReduction2.html> (last visited June 1, 2012).

⁴⁶ *Hardcover Authors*, PublishAmerica, <http://www.publishamerica.net/service/HardStores.html> (last visited June 1, 2012).

⁴⁷ *New Hardcover*, PublishAmerica, <http://www.publishamerica.net/service/newhardcover.html> (last visited June 1, 2012).

43. Defendant charges its authors \$50 for a copy of their own contract⁴⁸ or their own manuscript.⁴⁹ If authors would like weekly statements of their book sales, defendant charges \$49.⁵⁰ Otherwise, for a sales statement outside of the normal contractual periods, defendant charges \$99.⁵¹ For \$49, defendant will also put an author's book on Facebook.⁵² These are services that any reputable company would provide free of charge. Similarly, it charges \$99 to issue a press release to the local media letting them know that the book has been published and notifying them of any book signings or readings the author may have scheduled.⁵³ Upgrade to \$399 and defendant will not only issue press releases to local media, but will "serve as a go-between," between the author and the media, to "pass on any messages readers may have for you" – services that should reasonably fall within its contractual obligations, and it promises vaguely to "contact celebrities and Hollywood studios for proposals."⁵⁴

44. It also charges for substantive editing. For \$599 to help its authors rewrite their books,⁵⁵ or \$49 just to rewrite the back cover.⁵⁶

⁴⁸ *Copy of Contract - \$50*, PublishAmerica, <http://www.publishamerica.net/service/product170.html> (last visited June 1, 2012).

⁴⁹ *PDF Copy of Manuscript*, PublishAmerica, <http://www.publishamerica.net/service/product277.html> (last visited June 1, 2012).

⁵⁰ *Weekly Sales Update*, PublishAmerica, <http://www.publishamerica.net/service/WeeklySalesUpdate.html>. (last visited June 1, 2012).

⁵¹ *Royalty Statement*, PublishAmerica, <http://www.publishamerica.net/service/product57.html> (last visited June 1, 2012).

⁵² *Facebook*, PublishAmerica, <http://www.publishamerica.net/service/MyFacebook.html> (last visited June 1, 2012).

⁵³ *Headline Publicity Package*, PublishAmerica, <http://www.publishamerica.net/service/Headline.html> (last visited June 1, 2012).

⁵⁴ *Breaking News Publicity Package*, PublishAmerica, <http://www.publishamerica.net/service/BreakingNews.html> (last visited June 1, 2012).

⁵⁵ *Re-writing Service*, PublishAmerica, <http://www.publishamerica.net/service/product195.html> (last visited June 1, 2012).

⁵⁶ *Back Cover Text Rewrite*, PublishAmerica, <http://www.publishamerica.net/service/BCTRewrite.html> (last visited June 1, 2012).

45. It even charges for status updates. For \$79 authors can purchase weekly updates on the sales of their books and defendant's promotional projects.⁵⁷ If they opt for monthly updates, the price drops to \$49.⁵⁸

2. Defendant offers services that are not reasonably designed to promote book sales.

46. Defendant does not have the means to support genuine marketing support for its authors. One industry observer concludes:

They are certainly not an author solutions service of any kind because they again lack transparency and are not even equipped with the paid-services better author solutions services offer, like a competitively priced book; a prescribed and effective template of marketing aid for an author; a properly developed network of both physical and online distribution and availability; a contract based on non-exclusive terms; a strategy that has properly considered the advent of e-books; and most importantly of all, a reputation that is remotely salvageable in the book publishing and retail industries.⁵⁹

47. Instead, defendant provides services that are not reasonably designed to market the books, like offering to send a message to government officials and the media for \$29, that the company was helping to create jobs by signing up more authors. "We're going to tell [P]resident Obama and the leaders in the House and the Senate, and your local U.S. Representative, that because of you, and authors like you, new American jobs are created. And we'll send the exact

⁵⁷ *Weekly Author Briefing*, PublishAmerica, <http://www.publishamerica.net/service/WeeklyAuthorBriefing.html> (last visited June 1, 2012).

⁵⁸ *Monthly Author Briefing*, PublishAmerica, <http://www.publishamerica.net/service/MonthlyAuthorBriefing.html> (last visited June 1, 2012).

⁵⁹ Rooney.

same message, naming you, to your local TV station,” defendant’s pitch said.⁶⁰ Along the same lines, defendant has also offered to donate books to Oprah Winfrey or Tom Hanks for a fee.⁶¹

48. Other examples include offers to “present” books (but not to provide copies) “to the newsrooms of Ladies Home Journal, Glamour, O, the Oprah Magazine, Redbook, Cosmopolitan, Marie Claire, and Martha Stewart Living” for \$22.⁶² Defendant also offers to display its authors’ book at defendant’s regional author conventions. The cost is \$149 if the book is displayed in all ten conventions, or \$79 if limited to one region.⁶³ For \$29 a book will appear on defendant’s online broadcast, showcasing its own books.⁶⁴

49. As another example of useless services, defendant states that at the Washington book festival, it distributes its own publication, the Washington Courier with “all-positive book reviews.”⁶⁵ Authors can pay \$49 to include their own 25-word entry, or for \$69, they can secure an “all-positive” review of their book.⁶⁶

50. Defendant also offers services that are wholly inconsistent with its role as a non-vanity publisher. For example, for around \$200, it previously offered to market an author’s “book to big ticket publishers such as Random House, Simon and Schuster, HarperCollins, Penguin, the new Amazon publishing company, but also university presses and independent

⁶⁰ *PublishAmerica “Promotions” Repudiated*, Publishers Weekly, (Aug. 18, 2011), <http://www.publishersweekly.com/pw/by-topic/industry-news/publisher-news/article/48403-publishamerica-promotions-repudiated.html>.

⁶¹ Victoria Strauss, *Taking Famous Names in Vain*, SFWA, (Aug. 18, 2011, 6:04 AM), <http://www.sfwaworld.com/2011/08/taking-famous-names-in-vain>.

⁶² *Mom*, PublishAmerica, <http://www.publishamerica.net/service/Mom.html> (URL no longer available).

⁶³ *All conventions*, PublishAmerica, <http://www.publishamerica.net/service/AllConventions.html> (last visited June 1, 2012).

⁶⁴ *Tues TV*, PublishAmerica, <http://www.publishamerica.net/service/TuesTV.html> (last visited June 1, 2012).

⁶⁵ *Congress Ad*, PublishAmerica, <http://www.publishamerica.net/service/CongressAd.html> (last visited June 1, 2012).

⁶⁶ *Id.*

publishers, and to a host of foreign publishers all over the world.”⁶⁷ Not only is this practice inconsistent with defendant’s role, it is highly unlikely that such select publishers – which will not even review manuscripts unless submitted by a reputable agent – would accept defendant’s recommendations. But defendant counts on its authors’ inexperience with the publishing industry. For example:

Dear Author:

PublishAmerica will submit your book to Random House! Random House, the publishing company? Yes. We’re submitting your book to the world’s most famous publisher so they get a chance to read it and see if they want your book.

Every writer dreams about becoming a published author. Once they have reached that goal, as you have, many dream of the next step up: to become a Random House author. Random House is one of the most prestigious publishing names. Their extensive operation a few miles from our own headquarters makes them virtual neighbors.

We will submit not one, but up to five copies of your book to Random House’s acquisition editors, so that they can also pass the book around their imprints if they want. They may do anything they choose with the books. We will alert you immediately if Random House shows interest, and in that case we will do everything we can to ensure a smooth transition. Since PublishAmerica is not affiliated with Random House or its owner Bertelsmann, we would totally share in your pride.

Here’s how we do it:

If you want to have books on hand, order now, and we will donate up to five copies to Random House. And you receive a 50 pct discount!

⁶⁷ Jim G. Payne, *Beware of PublishAmerica... Or be prepared to get out your checkbook!*, Jim G. Payne WordPress Blog, (July 10, 2011), <http://jimgpayne.com/2011/07/10/beware-of-publishamerica-or-be-prepared-to-get-out-your-checkbook/>. See also PA email solicitation *Live from London* (Apr. 4, 2012, 7:14 AM), <http://christianityforthinkers.com/PublishAmericaNewScan/PA-London-ns-4-14-12.pdf> (offering to talk to Amazon about publishing its authors’ books for a fee).

Go to www.publishamerica.net, find your book, click on it, then add to cart, indicate quantity, and use this coupon: Random50. Then click Recalculate and finish the transaction. Minimum volume is 10 copies.

By using the coupon you are authorizing us to donate the books to Random House. You may also request that we ship five FREE books to you instead.

Full-color and hardcovers excluded. Offer expires this weekend on Sunday night.⁶⁸

51. This service is not unlike the \$49 fee defendant charges to submit its clients' books for the Nobel Prize recommendation⁶⁹ or charging them for submitting their books to the London Review of Books.⁷⁰

52. Defendant also charges to have ebooks published on Barnes & Nobel, Amazon, Wal-Mart, Kobo, iBook, and Google, even though each of these sites allows authors to upload their works as ebooks for free.⁷¹

53. Defendant's promotions are those of a rank amateur or parodist. Consider, for example, its "Hey Amazon" promotion:

Now that **Book Expo America** has invited us to take the promotion space right across from Amazon, how about we add your book to this banner:

⁶⁸ Reprinted in Mick Rooney, *PublishAmerica Invite Themselves To Dinner At Random House*, *Indep. Publ'g Magazine*, (Feb. 25, 2010), <http://mickrooney.blogspot.com/2010/02/publish-america-invite-themselves-to.html>.

⁶⁹ Confirmed by documents provided to plaintiffs' attorneys in the preparation of this lawsuit.

⁷⁰ Strauss.

⁷¹ *Id.*

fairs, are such amateurish attempts, like its “Hey, Amazon” banner, are, moreover, only available on a fee-for-service basis.

55. Once its authors are signed up, they are directed, through defendant’s promotional emails to its online service list at <http://www.publishamerica.net/service>. There (or through the promotional emails) the authors learn, for example, that defendant will not display its authors’ books at the Book Expo unless the authors pay for that privilege: minimally \$49,⁷⁴ but if the authors pay \$79, they can have their books displayed at the front of the table,⁷⁵ and if the authors want defendant to discuss their books knowledgeably at the Expo, defendant charges an extra \$79.⁷⁶ For \$149, the authors may appear at defendant’s booth for up to an hour.⁷⁷ Make it \$299, and defendant will also throw in five “free copies” of the author’s book to be given away at the Expo.⁷⁸

3. Defendant falsely represented the services it offered.

56. Defendant’s most public false representation was its offer to present its authors’ books to J.K. Rowling. Defendant made its authors the following offer for a \$49 fee:

We will bring your book to the attention of Harry Potter’s author next week while our delegation is in her hometown, and ask her to read it and to tell us and you what she thinks. Tell her what you think: in the Ordering Instructions box write your own note for JK Rowling, max. 50-100 words. We will include your note in our presentation for her!⁷⁹

⁷⁴ *BEA*, PublishAmerica, <http://www.publishamerica.net/service/BEA.html> (URL no longer available).

⁷⁵ *BEA Front*, PublishAmerica, <http://www.publishamerica.net/service/BEAFront.html> (URL no longer available).

⁷⁶ *BEA Agent*, PublishAmerica, <http://www.publishamerica.net/service/BEAagent.html> (URL no longer available).

⁷⁷ *BEA Top*, PublishAmerica, <http://www.publishamerica.net/service/BEAtop.html> (URL no longer available).

⁷⁸ *My Book Expo America Show*, PublishAmerica, <http://www.publishamerica.net/service/MyBEAshow.html> (URL no longer available).

⁷⁹ Carolyn Kellogg, *J.K. Rowling and PublishAmerica’s Unfulfillable Promise*, L. A. Times, (Aug. 18, 2011, 5:42 PM), <http://latimesblogs.latimes.com/jacketcopy/2011/08/jk-rowling-publish-america.html>.

Not true. "A spokesperson for Rowling said the claim was 'completely false' and that Rowling would take 'appropriate action.'"⁸⁰

57. Another pitch said PA would take copies of authors' works to the Edinburgh International Book Festival, but a fair spokesperson said there was no such arrangement.⁸¹

58. Defendant's promotion had stated:

Your book. In Scotland. Next month. Edinburgh is famous for its annual August downtown book festival where it is all about authors, writing contests, literary Nobel prize winners, and the general Scottish audience who come to see who and what is new in the English language. Big publishers are everywhere. Newspaper reporters are everywhere. The famous Guardian newspaper is a top sponsor. PublishAmerica is at the festival, promoting our best authors.⁸²

Defendant offered its authors a choice of three options for them to buy space in a catalogue "that we will present to the festival."⁸³

59. A spokeswoman for the Edinburgh International Book Festival refuted defendant's claim:

There is not, nor has there ever been, any association between the Edinburgh International Book Festival Ltd and PublishAmerica. There are no meetings scheduled between any representative of the parties, and we are not aware of any participation by PublishAmerica or any of its authors or agents in this year's festival.⁸⁴

⁸⁰ *Id.*, (quoting Publishers Weekly); see also *Rowling Rep: US Publisher Wrong About Meeting*, Huffington Post, (Aug. 16, 2011), <http://www.huffingtonpost.com/huff-wires/20110816/us-books-rowling-publishamerica/>.

⁸¹ *PublishAmerica "Promotions" Repudiated*, Publishers Weekly, (Aug. 18, 2011), <http://www.publishersweekly.com/pw/by-topic/industry-news/publisher-news/article/48403-publishamerica-promotions-repudiated.html>.

⁸² Strauss (quoting article in *The Bookseller*, which is no longer available online).

⁸³ *Id.*

⁸⁴ Brian Ferguson, *Book Festival Organisers Refute US publisher's Claims of Access*, Festival News, (Aug. 25, 2011), <http://www.edinburgh-festivals.com/viewnews.aspx?id=3213>.

60. The Book Festival served a cease and desist notice on defendant and issued a statement denying the existence of a relationship between itself and PublishAmerica, and accusing defendant of “falsely portray[ing] the nature of the festival and the likelihood that the purchase and inclusion in the ‘Scotland’ catalogue will result in attention from the Festival and/or publishers.”⁸⁵ Defendant made a similar claim in 2011 about Graph Expo in Chicago. One of the organizers of that event also denied any association with defendant or that defendant would be present at the expo.⁸⁶

61. Defendant also sent another solicitation in August 2011, claiming that for \$39 defendant would send its delegation to the National Library of Scotland to “introduce them to your book.”⁸⁷ A spokesman for the National Library of Scotland denied the claim: “We can confirm we have absolutely no relationship with PublishAmerica.”⁸⁸ The press agent for the National Library further explained “our collections policy is based on the expertise of our curators rather than lobbying by any publisher.”⁸⁹

62. Defendant offered to present its authors’ books to Christian bookstores through CBA, formerly known as the Christian Booksellers Association at a cost of \$49 to \$99, depending on which option they chose.⁹⁰ Although defendant included a disclaimer that it had “no affiliation with the CBA and/or individual Christian bookstores beyond that of a regular publisher/bookseller relationship,” CBA found the solicitation sufficiently misleading that it posted a warning to Christian authors on its website:

⁸⁵ *Id.*

⁸⁶ Email provided to plaintiffs’ counsel. This email is also reproduced by Ms. Commerford on Paula’s PublishAmerica Information Site, available at <http://paulaspublishamericainformationsite.weebly.com/>.

⁸⁷ Email provided to plaintiffs’ counsel.

⁸⁸ Ferguson.

⁸⁹ Email provided to plaintiffs’ counsel.

⁹⁰ Strauss.

CBA has been informed that Christian authors are being contacted by an organization called PublishAmerica that's soliciting for authors to submit their books to a sales/marketing catalog that they claim will be going to CBA. Please be aware that CBA has no knowledge of PublishAmerica; that PublishAmerica is not connected to Christian Store Week; and that CBA has no agreement of any kind with PublishAmerica, nor is CBA affiliated in any way, shape, or form with that organization.⁹¹

63. Shortly before New Year's Day 2012, defendant sent a solicitation to its authors with the subject line "Subject: Your book in Parade magazine":

Dear author:

"Nothing happens until somebody sells something."

This famous line was coined by Parade, by far the nation's largest magazine.

Parade has a weekly circulation of 32 million, is inserted in more than 500 newspapers, and is read by 70 million Americans.

We are going to bring you and your book to the attention of Parade!

No other print medium introduces so many positive stories and positive people to its readers. Parade is beloved by everyone who finds it in their Sunday newspaper. Once somebody, or something, is presented to the American people by Parade, instant fame and recognition is virtually assured.

Your book connects to regular people on Main Street. Every-day folks can identify with your own life story. All you need is a big magnifying glass, so that a crowd gets to hear about you and your book. Parade is often such a magnifying glass.

We're going to tell Parade about you and your book.

Go to www.publishamerica.net/service/Parade.html
<<http://publishamerica.us2.list-manage2.com/track/click?u=a0d6d6a3715a8baccbe0fbb7c&id=d44ef64eef&e=ec72fff305>> to activate, for \$49. Your book and name will be included in our presentation to Parade. We will urge

⁹¹ *Warning to Christian Authors*, CBA, <http://www.cbanews.org/article.php?id=3753> (last visited May 21, 2012).

them to review and pursue your story for one of their mid-January or later issues. Parade serves America's Main Street, and so does your book!⁹²

64. While defendant disclaimed any "affiliation" with Parade or "preferential access or other special treatment," the solicitation certainly suggests that defendant has a professional relationship that would allow it to present its authors' works.

65. Parade's vice president of communications denies this is the case:

We do not, in fact, have a business relationship with PublishAmerica. Thank you for bringing this to our attention – I will be sure to share with our executive and legal teams.⁹³

66. In February 2012, defendant sent its authors an email with the subject line, "US State Department wants your book."⁹⁴



Dear author:

The U.S. State Department wants your
book.

They promote American literature abroad.

We have been contacted by the U.S. Consulate General in Leipzig,

⁹² Email provided to plaintiffs' counsel. This email is also reproduced at Paula's PublishAmerica Information Site available at <http://paulaspublishamericainformationsite.weebly.com/>.

⁹³ *Id.*

⁹⁴ Email provided to plaintiffs' counsel. This email is also at Paula's PublishAmerica Information Site available at *id.*

Germany. They want to present our best books during the **Leipzig Book Fair** next month. Last time around PublishAmerica also promoted its best books in Leipzig, together with the American consulate.

Activate today if you want your book to be sent to the
U.S. Consul General.

Go to www.publishamerica.net/service/StateDept.html to activate for **\$39**. Your book will upon being selected be sent to Leipzig for promotion and display during the Leipzig Book Fair in the U.S. Consulate General's booth. After the event it will be donated to a public or university library. If for whatever reason your book doesn't pass the selection process, you will receive a **full refund** of your activation fee.

Must choose a shipping option to activate. No use of coupons allowed.
Valid for one title at a time. Mention your book title.

Thank you,
--PublishAmerica Bookstore

Copyright © 2012 PublishAmerica, LLLP, All rights reserved. ⁹⁵

67. Ms. Paula Commerford, former PublishAmerica author, forwarded the message to the U.S. Consulate to find out whether the promotion was false. The State Department responded:

Dear Ms. Commerford,

Thank you for your email. The U.S. Consulate Leipzig is not aware of the company you wrote about, nor do we request companies or organizations to solicit books for a fee on our behalf.

⁹⁵ *Id.*

Kind regards,

U.S. Consulate General
- Public Affairs -
Wilhelm Seyffert-Str. 4
D - 04107 Leipzig Tel.: 0341 / 213 84-0

68. The State Department also sent a second email:

Dear Ms. Commerford,

As a follow up to your email, I reviewed our records again. Thank you for bringing this situation to our attention.

.... We take reports of misrepresentation very seriously and our consulate would never knowingly work with companies that solicit book donations for a fee.⁹⁶

69. In March 2012, defendant offered to convert its authors' books (starting at \$59) to ebooks for the Canadian company, Kobo, with which it falsely claimed to have a contractual relationship:

Yesterday PublishAmerica inked a deal with Kobo to make your e-book available to readers in Canada, and in 170 other countries! Kobo's majority owner is Canadian book giant, Indigo Books & Music. Indigo is Canada's largest bookseller. With its own e-reader, the company competes with Amazon's Kindle and Sony for who's #1 in the world. With Kindle and Nook you mostly only cover the U.S. market. With Kobo you add the rest of the world! And it gets even better: Best Buy now makes Kobo's e-reader available in Best Buy stores all across America. And, yes!, Target now also sells Kobo e-readers!! Oh, wait, Walmart also sells Kobo!!! PublishAmerica will convert your book to a Kobo e-book, immediately available in Canada, 170 other countries, and through Walmart, Best Buy and Target. Our expert e-book conversion team will upload your new e-book format quickly to Kobo for prompt availability in Canada, 170 other countries, and

⁹⁶ Emails provided to plaintiffs' counsel.

through Walmart, Best Buy and Target!! You will receive notice as soon as Kobo has made your e-book "live."⁹⁷

70. Former PublishAmerica author Paula Commerford forwarded the solicitation to Kobo who responded:

Thank you for your patience. I can confirm that Kobo does not have a signed agreement with PublishAmerica. The internal Kobo team is investigating this claim at present.⁹⁸

71. Also in March of this year, defendant falsely claimed that for a \$25 fee it would present its authors' books in all of the Florida bookstores: "we'll cover every bookstore, and that includes every Costco and Sam's."⁹⁹ Again Ms. Commerford sought confirmation. Costco affirmatively denied any "affiliat[ion] with this program."¹⁰⁰

4. **To perpetuate its fraud, defendant scrubs its website of any negative comments and attacks the credibility of its detractors.**

72. Consumers looking to publish their books for the first time may not know what to look for in a publisher:

Do you have a book you want to see published? If you type "book publishers" (or, as I did, "Christian book publishers") into your search engine, one of the first entries is likely to be PublishAmerica. Their motto sounds great: "We treat authors the old-fashioned way—we pay them."¹⁰¹

Unless authors actively search for reviews of PublishAmerica, they may not ever learn of its deceptive business practices.

⁹⁷ Emails provided to plaintiffs' counsel, also partly reproduced on Paula's PublishAmerica Information Site, available at <http://paulaspublishamericainformationite.weebly.com/>.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ Davidson.

73. Defendant also takes care to limit its exposure. The testimonials and postings on the PublishAmerica Message Board say wonderful things about PublishAmerica, but on other websites PublishAmerica authors complain that PublishAmerica prohibits negative postings.¹⁰²

74. Many PublishAmerica authors believe that defendant arranges for trolls on websites that criticize defendant, *i.e.* people who respond to negative comments about PublishAmerica by disparaging the commenters.¹⁰³

75. Former PublishAmerica author, Paula Commerford, has forwarded several of defendant's solicitations, *e.g.* the offer to send books to the American Consulate or the offer to promote books at the Edinburgh International Book Festival, to the organizations or persons involved, to see whether there was any truth to defendant's claim. Defendant sent Ms. Commerford a "cease and desist" letter on February 20, 2012, claiming that she sent a "false and disparaging email" about defendant to the "American Consulate in Leipzig," "Maryland agencies," and "media organizations."¹⁰⁴ Ms. Commerford has declined, noting that the documents she posts on her website, *i.e.* defendant's solicitations and the responses from the relevant parties, speak for themselves.¹⁰⁵

76. Defendant even demanded that J.K. Rowling issue a "retraction" to her statement disavowing any connection with defendant.¹⁰⁶ J.K. Rowling apparently also declined.

¹⁰² *Id.*

¹⁰³ See, *e.g.*, daisyf1305, *PublishAmerica Scam*, Hubpages, <http://daisyf1305.hubpages.com/hub/Publish-America-scam> (comments by and about blogger Larry Chiapelli); <http://absolutewrite.com/forums/showthread.php?t=166870> (referring to Rebecca and Larry as possible trolls) (last visited June 1, 2012).

¹⁰⁴ Paula's PublishAmerica Information Site, available at <http://paulaspublishamericainformationite.weebly.com/>.

¹⁰⁵ *Id.*

¹⁰⁶ See *infra* J.K. Rowling and PublishAmerica's Unfulfillable Promise.

D. Plaintiffs were Duped by Defendant.

1. Darla Yoos lost her publication rights and roughly \$1,500 for bogus services.

77. Ms. Yoos spent years writing *Diary of a Demonologist* before she agreed to be published by defendant. She sought out defendant because she wanted a local publisher and defendant purported to be a traditional publisher. She purchased many services from defendant to promote her book, including:

- a) **March 7, 2012:** the Breaking News Publicity Package \$399 with tax and shipping \$427.93;
- b) **March 7, 2012:** My Own Literary Agent \$99 with tax and shipping \$109.93;
- c) **March 12, 2012:** Kindle, Nook, Google publication \$149 with tax and shipping \$162.93.
- d) **March 16, 2012:** 1500 Bookstores Promotion \$149 with tax and shipping \$164.93;
- e) **March 16, 2012:** All Conventions Promotion \$149 with tax and shipping \$164.93;
- f) **March 16, 2012:** Hollywood Resources Promotion \$69 with tax and shipping \$80.13;
- g) **March 21, 2012:** Author Efficiency Package \$59 with tax and shipping \$67.53;
- h) **March 21, 2012:** Screenplay Promotion \$89 with tax and shipping \$99.33;
- i) **March 23, 2012:** Softcover Option \$79 with tax and shipping \$88.73; and
- j) **March 23, 2012:** Big Cities Promotion \$29 with tax and shipping \$35.73.

Plaintiff objected to shipping and handling service charges, since these services did not involve any shipping. Defendant did not respond to her objections, so she paid the fees to obtain the services.

78. As part of the "Breaking News Publicity Package," defendant agreed to provide "[p]rofessionally written press releases."¹⁰⁷ PublishAmerica issued the following press release:



Immediate Release For

Contact: Shawn Street – Public Relations
pr@publishamerica.com
www.publishamerica.com

PublishAmerica Presents *Diary of a Demonologist* by
Darla Broadwater

Frederick, MD April 2, 2012 -- PublishAmerica is proud to present
Diary of a Demonologist by Darla Broadwater.

People dream of second chances. We all long for a warning of the consequences of direction our life is heading. For Liz Pearson, this longing was answered in ways she would never have imagined.

What if you had plenty of second chances? What if you were warned what would happen if you kept in the direction that you were currently on in your life? For Liz Pearson, that prayer was answered in ways she would never have imagined. You've been warned...

Darla Broadwater lives in Maryland with her husband, son and dog.

¹⁰⁷ Document provided to plaintiffs' counsel.

PublishAmerica is the home of more than 50,000 talented authors. PublishAmerica is a traditional publishing company whose primary goal is to encourage and promote the works of new, previously undiscovered writers. Like more mainstream publishers, PublishAmerica pays its authors advances and royalties and makes its books available through all bookstores. PublishAmerica offers a distinctly personal, supportive alternative to vanity presses and less accessible publishers.

Visit us online at
<http://www.facebook.com/publishamerica.publisher> and
www.publishamerica.com.

END¹⁰⁸

79. Ms. Yoos soon came to realize she had been conned. The only signs of the Breaking News Publicity Package were a single canned email from March 8 and the bare bones press release. Ms. Yoos contacted the point of contact for the package by the only means available (email) and received no responses. With respect to her literary agent, she received only a single email on March 7, purportedly showing that her book was being presented to a publisher in Athens, Greece, which did not seem like an action reasonably likely to promote her book. She was provided no contact number and received no other responses from her purported literary agent. She received a single canned response on March 19 from the Hollywood Resources Promotion and one from the Screenplay Promotion on March 21. Otherwise, she received no updates or status confirmations from any other promotions.

80. By late March, Ms. Yoos also realized that defendant had priced her book at \$24.95, a price too high to compete with other books by first-time or little known authors. Defendant informed her that she would be charged \$399 to lower the price of her book to \$10.95, and that the charge would be applied twice to cover both the printed and ebook editions.

¹⁰⁸ Document provided to plaintiffs' counsel.

Plaintiff objected to the charge. She also questioned whether the promotions she purchased had been performed and asked to be released from her contract so that she could pursue a genuine traditional publisher.

81. Defendant ignored her request to be released and responded only to her other objections:

Dear Darla Broadwater [*i.e.* Yoos]:

Thank you for your inquiry. No, what you say is false. All services that you paid for have either been performed, or are being performed. You will not be given any refund, at all. Please do not ask us again.

We do not know what you mean by \$800. Please do not send us such a message again. If you do, we will delete it. If you want to lower the price of your book, please read the following carefully. If you ask us questions, in a coherent, normal, and polite manner, then we will help you. Otherwise we will not.

We will agree to lower the price, even though it goes against our experience over the past 12 years in this industry.

You are not alone in your thinking. Price is not the reason that your book is not selling, but if you think that it is, we have a solution for you. But, we have a responsibility to our employees, to ensure that we make a profit. If we do not do that, we would go out of business very quickly.¹⁰⁹

82. Ms. Yoos asked to be released from her contract. Defendant responded:

We have received your request to terminate your book's contract. As a general rule, publishers are not in favor of that. When a publisher agrees to contract a book, it is done with an expectation of entering into a profitable venture. PublishAmerica never charges any of its authors any money in return for producing and publishing their book and making it available to a worldwide audience. This is why we enter into contracts with a seven-year lifetime, which affords the book ample opportunity to turn a profit.

¹⁰⁹ Document provided to plaintiffs' counsel.

If your request was granted, PublishAmerica would be denied, prematurely, any hope of recovering its expenses. This is why we would prefer to keep the contract in place until its expiration date.

Therefore, if you were to persist on wishing to relinquish your status as a published author, we can only grant your request if you agree to a \$299 compensation payment, which will help to offset some of our losses. If you want to proceed with termination, please go to:

<http://www.publishamerica.net/service/product9.html>. Be sure to enter your book's title in the "order comments" field. If not, we will both understand and applaud your decision. As said, we prefer to keep the book under contract.

Thank you,

PublishAmerica Support
<http://publishamerica.com/support/>

Please do not reply to this message. If you have a further question, please use the form link above, and we will be happy to answer.¹¹⁰

83. Ms. Yoos objected:

Good morning,
I received the link to the reverting rights- thank you. My question: why is the price so high? I have spent so much money already and cannot see what the loss would be (other than my own) that it would incur a \$299 (plus tax and shipping) charge. This price was \$99 and \$149 not too much more than a year ago.

Thanks!
Darla

84. Defendant responded:

Thank you for your inquiry. Actually, that fee is very low. What we have done for you already costs about \$1500 in the vanity publishing industry. But, because we believe that your book deserves to be published, we published your book for free, in the traditional manner, for free.

¹¹⁰ Document provided to plaintiffs' counsel.

As far as publishing your book goes, you don't have to spend a cent to get published. All is included. All other services are entirely optional.

We have done quite a bit of marketing for you already, although we are not required to do so. We acquired, vetted, designed, produced, published, and made your book available to booksellers worldwide at exactly zero cost to you. We took care of all the technical and graphical details, we issued your book's unique ISBN, we produced a beautiful book with high quality cover art, and we put it in the hands of five printing companies on four continents, all at no cost to you. Although the contract does not require us to do any marketing, as you can see, we usually go above and beyond what the contract requires.

Separately, we do offer optional fee-based marketing services, to give your book a wider audience, and to make you and your book more popular.

PublishAmerica is hosting authors conventions!
Register at <http://www.authorsconvention.com/>

PublishAmerica Support
<http://publishamerica.com/support/>

Follow us on Twitter at @PublishAmerica!
Like us on Facebook: <http://www.facebook.com/PublishAmerica>
We have 16,000 Likes!¹¹¹

85. On April 9, 2012, defendant charged Ms. Yoos \$320.93 to be released from her contract.

86. Ms. Yoos seeks the return of the price she paid for of all defendant's purported services, including the release from her contract.

2. **Defendant published Edwin McCall's book riddled with errors and then refused to correct them unless he paid for it.**

87. Plaintiff Edwin McCall spent years writing *Dirty Potatoes and other Short Stories* and was initially thrilled when defendant agreed to publish it. He believed that defendant was a

¹¹¹ Email provided to plaintiffs' counsel.

traditional publisher and that it would do its part to promote his book. Soon after signing, he learned that this was not the case.

88. Mr. McCall was forced to publish his work with errors on over 40 pages. When Mr. McCall pointed out these errors prior to publication, defendant refused to correct them unless he paid defendant:

If you insist on us making these changes anyway, we must charge you \$99 for rescheduling text department assignments. For that fee we will be able to make up to 5 pages of changes. You have submitted more than 5 pages. Please let us know if you wish to have all of the pages considered, so we can let you know the cost. Please let us know how you would like us to proceed. If you opt for having the change implemented, we will call you for your credit card information.¹¹²

Because he could not afford to pay for the corrections, Mr. McCall's book was published with multiple errors.

89. A couple of months later, defendant sent him the following solicitation in which it offered to make limited changes if he purchased at least nine of his own (print on demand) books, which again Mr. McCall could not afford:

From: support@publishamerica.com
To: [email]
Date: Tue, 27 Oct 2009 10:45:52 -0400
Subject: Make Text Changes to Your Book at PublishAmerica

Dear Author,

Want to make changes to the text of your book? You can make them now!

First, PublishAmerica lowered all retail prices. Next, we slashed shipping fees by 75 pct.

Now we will accept **limited** text changes!

¹¹² Document provided to plaintiffs' counsel in the preparation of this complaint.

If you are among those who wanted to tweak their book's text after it had already gone to print, we have heard you. We understand the frustration of those who aspire to perfection. So, with the holiday gift season rapidly approaching, we're going to work with you.

Go to www.publishamerica.net, find your reduced-priced book, click on it, then add to cart, indicate quantity, and use this coupon: Correct40. Then click Recalculate and finish the transaction. Minimum order volume is only 9 copies. Plus you qualify for a wholesome 40 pct discount on the already reduced price! Fullcolor books are included.

The coupon indicates that you want to make text changes to your book. No need to leave any instructions; we will automatically contact you to coordinate production. Nature and quantity of the changes must be limited (spelling, grammar, no major overhaul).

We will not charge for making the changes. And **the books you order will be printed with the corrected text!** To allow for a timely production before the holiday season starts, this offer must expire this Sunday, November 1. With your help we will make every effort to have the books on your doorstep expeditiously.

Happy Halloween!

PublishAmerica Author Support Team¹¹³

90. Despite his misgivings, Mr. McCall fulfilled his end of the contract. He sent his friends and family hundreds of emails about his book and where to find it. He also took it upon himself to contact many other people about his book, including newspapers, magazines, radio and TV stations. Mr. McCall found the process counterproductive, that having the author, rather than the publisher contact the media smacked of desperation. Defendant also listed the book in the wrong category on its website. Mr. McCall's efforts to have it changed went unheeded.

¹¹³ Document provided to plaintiffs' counsel in the preparation of this complaint.

91. Mr. McCall had trusted that defendant was a traditional publisher with an interest in selling his books. Instead, he soon found that defendant continuously solicited him with promotional offers that involved buying his own books.

92. Mr. McCall was required to locate the local media for defendant for the press release, although he had understood that it was the publisher's job to present the book to the media. While defendant sent him a copy of the press release, he was not included on the communication and had no assurance that defendant had in fact sent it to anyone. Instead, Mr. McCall sent the press release himself.

93. While defendant offered to provide him a "website type page," this promise did not materialize. Defendant did not reply or even acknowledge the emails he sent requesting help to set up the webpage. This was part of a general pattern of disregarding Mr. McCall's communications. In some cases he received auto-generated emails referring him to the FAQ page on defendant's website, which was not responsive to his questions, in other instances he received no response at all.

94. Defendant has refused to release Mr. McCall from his contract unless he pays defendant \$149. Mr. McCall refuses. Defendant falsely represented itself to him as a traditional publisher and has not taken any reasonable steps to promote his book and ensure the quality of his book.

95. Mr. McCall seeks the return of his publication rights.

3. Defendant took Kerri Levine's publishing rights and charged her for bogus services and then failed to deliver.

96. Plaintiff Kerri Levine put in a great deal of time and effort writing her book, *From Catholic to Atheist: Kicking Back with a Godless Heathen*, and wanted to publish with a

traditional publisher, not a vanity press. On April 30, 2010, she contracted with defendant to publish her book. Ms. Levine worked hard to write her book and to promote it. She entrusted defendant with her dream of publication and finds it outrageous how defendant has treated her and other PublishAmerica authors. In the two years of dealing with defendant, she has sold only three books (according to defendant's records), and she has not received any royalties. Ms. Levine also believes that defendant has not provided the services she purchased:

- a. Purchase six (6) books and have it featured in a book fair being held in Germany in 2010;
- b. Purchase four (4) books (Correct 30 was the code) and get some typos corrected; and
- c. Purchase five (5) books for the Zoftcover promo and drop the price of my book from \$24.99 to \$7.99.

97. Defendant has provided no proof that her book was featured at the book fair in Germany or that the publication errors were corrected.

98. In January 2012, approximately a year after she purchased the service to lower the price from \$24.99 to \$7.99, Ms. Levine learned from some of her friends, who tried to order her book that the price was still listed at \$24.99. She immediately wrote to defendant to demand that it change the price as promised. Defendant ignored her request and instead suggested she pay another fee to "convert" her softcover book to a hardback:

From: PublishAmerica Author Support
<noreply@publishamerica.com>
Date: January 18, 2012 9:40:10 AM CST
To: [email address]
Subject: Kerri Levine: Book price / Your book in hardcover for same price
Dear Kerri Levine:

Thank you for asking about the price of your book. Your say that your book is priced too high? How about we change the format to

hardcover? The retail price will remain unchanged, but the sharply increased value of a hardcover leaves every customer satisfied.

Our pricing has been tried and tested over the course of twelve years. We have sold millions of books, which solidly supports how we read the market. So, you may be happy to hear that PublishAmerica is moving from softcovers to hardcovers. All of our 2012 releases will be hardcovers only, and will retail for the same price as our softcovers. You may activate the conversion here:

<http://www.publishamerica.net/service/newhardcover.html>

PublishAmerica already carries more than 10,000 titles in hardcover. Everybody loves them. So will you. Especially because customers will pay the same for your book in high-value hardcover.

Thank you for filling out the form, and helping us to help you faster!

PublishAmerica Support
<http://publishamerica.com/support/>

Follow us on Twitter at @PubAmericaNews!
Like us on Facebook: <http://www.facebook.com/PublishAmerica>

Thank you for filling out the form, and helping us to help you faster!

PublishAmerica Support
<http://publishamerica.com/support/>

Follow us on Twitter at @PublishAmerica!
Like us on Facebook:
<http://www.facebook.com/PublishAmerica>¹¹⁴

99. Although the books are not printed until they are ordered, defendant charges an \$89 fee to “convert” a softcover book to hardcover.¹¹⁵

¹¹⁴ Email provided to plaintiffs’ counsel.

100. On January 22, 2012, Ms. Levine asked defendant to release her from her contract. She reminded defendant that it had received money from her for services: "PA took money from me twice, once for having my book displayed in Germany at the Book Fair you claimed to have a large booth at, and second for re-adjusting the price of my book down from \$24.99 to \$7.99. If you cannot provide proof that I received these services for which I can prove I paid for, then you also engaged in theft by deception."¹¹⁶

101. Defendant responded with the subject line "Kerri Levine: nonsense email ignored / cannot backup her own words":

From: PublishAmerica Author Support
<noreply@publishamerica.com>
Date: January 23, 2012 8:27:41 AM CST
To:[email]
Subject: Kerri Levine: nonsense email ignored / cannot backup her own words

Dear Kerri Levine:
>>you also engaged in theft by deception

Do you have any proof of this? Do NOT send us a message again making such a fool of yourself. You cannot even back up you own words. Yes, we did all we claimed to do, and more. Please contact an attorney prior to sending us such nonsense. Your attorney will tell you that your contract remains fully in effect and legally enforceable. Your attorney will also tell you that the contract has not been breached, in any way.

Our reputation is stellar! We have been growing, for 12 years! We have 57,000 titles under contract. And THOUSANDS of the authors keep telling the world how happy they are:
<http://www.publishamerica.com/testimonials/index.php>. Over 4,000 now, unsolicited. That, of course, is the real story.

All those anonymous posts you see online, most often from people who have never had any connection to PublishAmerica: all lies

¹¹⁵ *New Hardcover*, PublishAmerica, <http://www.publishamerica.net/service/newhardcover.html> (last visited June 1, 2012).

¹¹⁶ Email provided to plaintiffs' counsel.

and half-lies. If even ten percent of it were true, PublishAmerica would have been out of business a long time ago.

Per your contract no payment is due to you until your royalties due have accumulated the dollar amount in royalties that is described in your contract. This threshold is probably the same for other books that you may have published with us as well.

Also, please understand that although there may indeed have been recent sales, our statements will only show sales from that royalty period for which we have been paid. Some retailers and distributors have a grace period of 30, 60, or even 90 days. Any sales not shown on one statement should certainly be included on the next.

The BBB also gave F ratings to Starbucks, Disneyland, and the Los Angeles Times. The BBB has lost credibility, and we can understand why. But at least we are in good company, and the Attorney General's office says that what we do is just fine. Please check the August 2011 Reader's Digest for more information: <http://www.rd.com/money/grading-the-better-business-bureau/>.

Seems you're a bit behind the times!

Thank you for filling out the form, and helping us to help you faster!

PublishAmerica Support
<http://publishamerica.com/support/>
Follow us on Twitter at @PublishAmerica!
Like us on Facebook:
<http://www.facebook.com/PublishAmerica>¹¹⁷

102. Defendant's contention that its F grade puts it in the same class as Starbucks, Disney and the Los Angeles Times is false. The Better Business Bureau grades these companies as B, A+, and A+ respectively.¹¹⁸

103. Ms. Levine seeks the release of her publishing rights and the return of the payment for defendant's publishing and promotional services.

¹¹⁷ *Id.*

¹¹⁸ *PublishAmerica CEO Makes Excuses for F rating*, Bogus Barrister Blogspot, (May 18, 2012), <http://bogusbarrister.blogspot.com/2012/05/publishamerica-ceo-makes-excuses-for-f.html>.

IV. CLASS ACTION ALLEGATIONS

104. Plaintiffs bring this action against defendant pursuant to Rule 23 on behalf of themselves and as representatives of the following class:

All people who are currently under contract with PublishAmerica for the first time for the publication of their literary work(s) and all people formerly under contract with PublishAmerica for the publication of their literary work(s), who have purchased its publication, production or promotion services within the last three years.

Excluded from the class are: the defendant, defendant's employees and any entity in which the defendant has a controlling interest, and their legal representatives, officers, directors, assignees and successors.

105. The class consists of thousands of class members geographically dispersed throughout the United States and the world, making individual joinder impractical, as required by Rule 23(a)(1). These class members may be identified from information and records maintained by defendant.

106. Plaintiffs are a member of the proposed class. Plaintiffs' claims are typical of those of the class because all members of the class were similarly affected by defendant's wrongful conduct.

107. Plaintiffs, as representatives of all class members, will fairly and adequately protect the interests of the class. Plaintiffs have engaged counsel who are highly experienced and competent in class action and complex litigation, including litigation involving the healthcare industry. Plaintiffs' interests are consistent with, and not antagonistic to, those of the members of the class. An effective and practicable manner of notice to such members of the class can be fashioned by the Court.

108. Common questions of law and fact exist as to all class members and predominate over any questions solely affecting individual class members. Such common questions of law and fact include:

- a. Whether defendant's representation that it is a traditional publisher has the capacity, tendency, or effect of deceiving or misleading consumers;
- b. Whether defendant's representations of its publishing or promotional services have the capacity, tendency, or effect of deceiving or misleading consumers;
- c. Whether defendant's representations of its publishing or promotional services suggested a sponsorship, approval, status, affiliation, or connection which it does not have;
- d. Whether plaintiffs and class members were misled by defendant;
- e. Whether plaintiffs and class members were injured as a result of defendant's deceptive conduct;
- f. Plaintiffs and class members have conferred a benefit upon defendant;
- g. Whether it is inequitable for defendant to retain the publishing rights of plaintiffs and members of the proposed class; and
- h. Whether it is inequitable for defendant to retain payment for services that it misrepresented or failed to carry out.

109. Prosecution of separate actions by individual class members would create the risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for defendants.

110. Defendant has acted on grounds generally applicable to all class members in that defendant has engaged in the deceptive business practices described herein, which have

uniformly impacted all class members. Accordingly, injunctive relief is necessary to protect all class members from further injury.

111. Plaintiff knows of no difficulty that would prevent this case from being maintained as a class action. Class action treatment is a superior method for the fair and efficient adjudication of this controversy. Class action treatment will, among other things, allow a large number of similarly situated class members to prosecute their common claims in a single forum, thus avoiding the unnecessary duplication of resources that numerous individual actions would require. Moreover, class action treatment allows injured consumers the ability to seek redress on claims that might be impracticable to pursue individually.

V. CLAIMS FOR RELIEF

A. COUNT ONE

THE FEDERAL DECLARATORY JUDGMENT ACT (28 U.S.C. § 2201)

112. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows:

113. Plaintiffs seek a declaratory judgment that defendant's publishing contracts violate the Maryland Consumer Protection Act ("MCPA").

114. The MCPA prohibits commercial entities from engaging in any "unfair or deceptive trade practice" in "[t]he sale ... of any consumer goods or consumer services."¹¹⁹

115. The MCPA defines "unfair or deceptive" trade practices to include:

- a. "false ... or misleading oral or written statement[s] ... or other representations ... [that have] the capacity, tendency, or effect of deceiving or misleading consumers."

¹¹⁹ Md. Code Ann., Com. Law § 13-303 (2012).

- b. Representations that “[a] merchant has a sponsorship, approval, status, affiliation, or connection which [it] does not have;
- c. Representations that “[c]onsumer goods ... or consumer services have a sponsorship, approval, ... characteristic, ... use, [or] benefit, ... which they do not have”; and
- d. “Deception, fraud, false pretense, false premise, misrepresentation, or knowing concealment, suppression, or omission of any material fact with the intent that a consumer rely on the same in connection with the promotion or sale of any consumer goods ... or consumer service ... or the subsequent performance of a merchant with respect to an agreement of sale.”¹²⁰

116. Defendant uses a standard contract with all of its authors. On information and belief, defendant has made no material changes to its publishing contracts in the last three years other than the duration of the contract, which does not affect this lawsuit.

117. Defendant’s publishing contract and its representations on its website and other promotional materials falsely claim or convey the false impression that defendant will engage in reasonable marketing efforts and will provide reasonable support to its authors in their efforts to promote their works. Defendant does not disclose to its authors that it will only promote their works on a fee-for-service basis, nor does it reveal to its authors that it lacks the reputation, skills and connections to provide reasonably effective marketing services.

118. Defendant has a well-documented history of deceiving its authors by false promises of a traditional publishing relationship and by its deceptive services. Defendant’s story of deception can be found in many news articles, websites and writers’ forums. Plaintiffs are just a few of potentially thousands of authors who have been deceived by defendant’s false promises.

¹²⁰ *Id.* at § 13-301.

119. Defendant's fee-for-service offers form a part of defendant's deceptive scheme to lure its authors in with false promises of publication by a traditional publisher. They also independently violate the MCFA because they conceal, suppress, misrepresent or omit material facts that render these services useless. Defendant lacks the infrastructure, transparency, business model or revenue to operate as a traditional publisher at their level of book output. It also lacks the reputation to promote books effectively.

120. Many of defendant's promotions suggest sponsorship, approval, status, affiliation, or connection with other entities that defendant does not have, *e.g.* booksellers, publishers, trade fairs, and the U.S. State Department, in violation of the MCFA.

B. COUNT TWO

MARYLAND CONSUMER PROTECTION ACT (MD. COM. LAW § 13-301)

121. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows:

122. Defendant's publishing services violate the MCFA's prohibition against deceptive trade practices.

123. Plaintiffs and the proposed class are consumers, who relied on defendant's representations and have sustained injuries or losses as a result of defendant's deceptive conduct.

124. Plaintiffs seek the recovery of such damages on behalf of themselves and the class.

C. COUNT THREE
UNJUST ENRICHMENT

125. Plaintiffs incorporate by reference all preceding paragraphs as if fully set forth herein and further allege as follows:

126. Plaintiffs and class members have conferred a benefit upon defendant in the form of rights to publish their works or in the form of payment for one or more of the dubious services defendant offers concerning the publication, production or promotion of their books.

127. Defendant acknowledges the benefits received. Defendant seeks to hold the publication rights to the works written by plaintiffs and class members. Defendant has also retained payments from plaintiffs or class members for services relating to the publication, production or promotion of their books.

128. Defendant has represented itself as a traditional publisher, rather than a vanity press. As such, it created expectations that it would provide some minimal services to produce and market the books to the public.

129. The books are not properly edited and are poorly marketed. Defendant's no-return policy and pricing policies also make the books unmarketable to the general public. Because defendant represented itself as a traditional publisher and then failed to provide the minimal services that a traditional publisher would provide, retention of the publication rights to the works of plaintiffs and class members would be inequitable. For the same reason, it is inequitable for defendant to retain payment for services related to the production and promotion of books published by plaintiffs and members of the class. It is also inequitable for defendant to retain payment for services that it misrepresented or failed to carry out.

VI. PRAYER FOR RELIEF

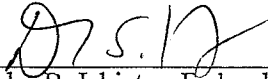
WHEREFORE, plaintiffs, on behalf of themselves and the other members of the class, respectfully pray:

- A. That the Court determine that this action may be maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action be given to the class;
- B. That the acts alleged herein be adjudged and decreed to be unlawful in violation of Maryland law;
- C. That the Court order defendant to release the publication rights of plaintiffs and all class members who so desire;
- D. That plaintiffs and the class recover damages determined to have been sustained by them, and that judgment be entered against defendant in favor of the class;
- E. That plaintiffs and the class recover the costs and expenses of suit, pre- and post-judgment interest, and reasonable attorney fees as provided by law;
- F. That defendant be ordered to pay restitution to plaintiffs and the class; and
- G. That plaintiffs and the class be granted such other, further relief as may be determined to be just, equitable and proper by this Court, including but not limited to punitive damages; and that the Court order such other and further relief as the Court deems just, necessary and appropriate.

VII. JURY DEMAND

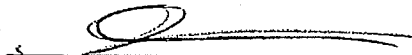
Plaintiffs demand a trial by jury.

Respectfully submitted,



John B. Isbister, Federal Bar No. 00639
Daniel S. Katz, Federal Bar No. 01148
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and



Steve W. Berman (pro hac to be filed)
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Seattle, WA 98101
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Attorneys for Plaintiffs

ATTACHMENT 1

PublishAmerica

PublishAmerica, LLLP
POST OFFICE BOX 151
FREDERICK, MARYLAND 21705-0151

AUTHOR CONTRACT

This AGREEMENT is made as of the latest date indicated on the signature page below ("Effective Date") by and between party of the first part, Daral Yoos, hereinafter called the "Author", and PublishAmerica, LLLP, a book publishing company with its principal office located in the State of Maryland, party of the second part, hereinafter called the Publisher.

RECITALS

WHEREAS, the Author is Proprietor of a literary work (the "Work") at present known as: Diary of a Demonologist, which work has been submitted to the Publisher for publication;

WHEREAS, Publisher hereby agrees to produce and publish the Work on the terms and conditions specified hereinafter;

In consideration of the Recitals and the mutual exchange of promises contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Rights Granted: The Author grants and assigns to the Publisher during a period of ten years from the Effective Date the exclusive right to produce, publish, sell or export, or cause to be produced, published, sold or exported, the Work in book form in any language or languages, in the United States of America, its Dependencies, and in Canada; and the exclusive right to arrange for the publication of the Work in book form in any language or languages in all foreign countries, and/or to export copies to those territories and countries. The Author and the

Publisher agree that this agreement is renewable upon the date of its expiration and will remain enforceable during an additional and successive period of ten years, on the same terms and conditions as specified hereinafter, unless either party to this agreement shall decline such renewal in writing at least three months prior to the date of expiration as hereinbefore set forth.

2. Manner of Publication: Publisher agrees to produce the said literary Work in book form, in such format, type and style of paper, jacket and binding as will make the volume(s) attractive and substantial-looking. Subject to the conditions specified below, it is specifically understood and agreed, that the said volume(s) will contain all manuscript pages as submitted by the Author, and will be printed on good quality paper with the bound size to be, approximately, 5½ x 8½ or 6 x 9 inches, or such other sizes selected by Publisher at its discretion. Publisher agrees to cause all copies of said literary Work to be printed and bound as the market demands and in sufficient quantities to supply purchasers of said literary Work therewith. Subject to these guidelines, Author agrees that all matters dealing with the design, production, sales and publication of said literary Work shall be at the discretion of the Publisher.

3(a) Royalties: The Publisher shall pay to the Author the following royalties for sales of any regular edition of the Work or translation thereof in the United States and elsewhere:

For the first 500 copies sold by Publisher or on its behalf: 8 percent of the sales price received by Publisher;

For the next 1500 copies sold by Publisher or on its behalf, 12 percent of the sales price received by Publisher;

For the next 3000 copies sold by Publisher or on its behalf, 25 percent of the sales price received by Publisher;

After 5,000 copies have been sold by Publisher or on its behalf, 50 percent of the sales price received by Publisher.

(b) Exclusions and Deductions: Publisher shall have no obligation to pay Author for any copies of the Work that may be used or distributed for review, publicity, advertising or promotional purposes, that may be lost in transit, destroyed, or damaged, that the Publisher may deliver to the Author without receiving payment in money, that the Publisher may deliver to the

Author at a discount from the regular retail price, or that are returned by retailers or distributors. In the event that Publisher pays royalties on copies of books that are returned by retailers or distributors, Publisher has the right to deduct those amounts from future royalty payments. Any and all advance payments made by Publisher will be charged against royalties due to the Author.

(c) No payment shall be made to the Author for permission gratuitously given to others to publish extracts from said literary Work to benefit the sale thereof, but all compensation received by the Publisher for the publication of extraction therefrom, or for serial use after publication in book form, or for abridgments, or as a book club selection, shall be divided in the proportion of 50% to the Author and 50% to the Publisher. All compensation received by the Publisher in exchange for the dramatic or motion picture rights, or for the first serial rights prior to book publication, or for foreign, translation, radio, dramatic, cheap edition, television and/or all other rights in the said literary Work shall be similarly divided between the Author and the Publisher, as set forth in this paragraph 3(c). All gross monies and compensation received in payment for such sale, lease, assignment, license or other disposition of the rights in the Work shall be collected and disbursed by the Publisher, and all contracts for such sale, lease, assignment, license or other disposition shall provide that such monies and compensations are to be paid to the Publisher; and the Publisher is authorized to receive, collect and disburse same and to endorse and deposit all checks and/or drafts for such payment. All payments due from the Publisher to the Author hereunder shall be made within ninety (90) days from the receipt thereof by the Publisher, accompanied by statements of the amounts received and disbursed. Royalties shall be paid at the times indicated in paragraph 15.

4. Author Copies: Should the Author wish to purchase copies of the said literary Work directly from the Publisher, the Publisher agrees to supply the Author with such copies at a discount of 20% from the regular retail price per copy, if the Author orders up to 20 copies at a time, and at a discount of 30% from the regular retail price per copy, if the Author orders 21 copies or more at a time. The Author may dispose of these copies in any manner, and, if re-sold, may retain all monies derived therefrom.

5. Copyright and Right to Publicity: Any copyright registrations for the Work shall be taken out in the name of the Author in the United States of America, and in foreign countries as the Publisher may deem advisable. Publisher is authorized to credit Author with authorship of the Work and to use Author's name, picture, and likeness for advertising purposes or purposes of trade in connection with the Work.

6. Joint Ownership: If the Work is authored or owned by more than one person, the word Author, as used herein, shall be deemed to include all authors or owners who are parties hereto, jointly and severally, and all sums payable to the Author shall be divided equally between or among them and the Publisher shall render separate accounts and make separate payments to each of them unless herein otherwise provided.

7. Commencement: The Publisher agrees to commence production of the Work within 365 days from the Effective Date, provided Publisher is not hindered by causes beyond its own control, or by the Author. In the event Publisher fails to commence production within this deadline, Author may terminate this Agreement. In such instance, however, such payments as shall have been made to Author as advances shall constitute full payment to Author for all his rights, efforts and all materials supplied under this Agreement and no other damages, claims, actions or proceedings, either legal or equitable, founded on such breach, default or failure to publish by Publisher may be claimed, instituted or maintained by Author against Publisher.

8. Delivery and Advance: Author agrees to deliver to Publisher the final version of the manuscript (hereinafter referred to as the "Completed Manuscript"), as an electronic file, within 15 days of the Effective Date. Until the Completed Manuscript is submitted, Publisher Agrees that Author may make changes and/or corrections to the Work. After the Author's submission of the Completed Manuscript, no changes and/or corrections shall be made except to correct Publisher errors. Upon receipt of the Completed Manuscript, Publisher shall pay the Author an advance dollar amount of \$ 1 (one), which will be charged against royalties due to the Author. Unless postponed by mutual agreement, failure to make delivery of the manuscript of the Work by the deadline specified herein shall be deemed just cause for Publisher, at its option, to terminate this Agreement by giving written notice. The foregoing does not exclude any other remedies at law or equity that the publisher may have. Payment of the advance or any part thereof or any other sums to Author hereunder, including any payment upon or following delivery of the Work, shall not be deemed to be evidence either that the Work is satisfactory to Publisher, that Author has fulfilled his obligations hereunder, or that Publisher has waived any of its rights hereunder.

9. Rejection of Manuscript: If, in the opinion of Publisher, the Completed Manuscript is unacceptable or unsatisfactory to Publisher, Publisher may reject it by sending written notice to Author at any time before the Work is placed on the market, in which event this

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11. Page Proofs: Publisher shall furnish the Author with an electronic page proof of the Work which conforms to the Completed Manuscript as submitted by the Author, and which is formatted for publication by Publisher. The Author agrees to notify the Publisher of any nonconformity between the electronic page proof and the Completed Manuscript within forty-eight (48) hours after the electronic page proof is sent by Publisher to Author. All formatting decisions shall be made solely by the Publisher.

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13. Promotion: Sales promotion, advertising and publicity of the Work shall be at the Publisher's election and discretion as to the extent, scope and character thereof and in all matters pertaining thereto. It is furthermore agreed upon that the Publisher may, at the Publisher's sole expense and discretion, create, maintain, and solely own a separate domain on the Internet, exclusively dedicated to promoting the said literary Work and/or the Author and/or the Publisher, and that the domain name and content may contain any combination of words and/or names, including the said literary Work's title and/or the Author's legal or pen name, that the Publisher

may deem benefiting the sales promotion, advertising and publicity as hereabove set forth, at the Publisher's sole discretion. The Publisher may also distribute, at its discretion, for purposes of publicity and/or review, promotional information pertaining to said literary Work, to publications throughout the United States and/or Canada, or elsewhere. Distribution of this promotional material shall be at the Publisher's own cost and expense and to media outlets of the Publisher's own choice. The Author agrees that excerpts of said literary Work may be included in this promotional information, and agrees, furthermore, that the Publisher may, at the Publisher's election and discretion, cause to promote the said literary Work, as designated, in any electronic format, and that the Publisher shall have the exclusive right to distribute or cause to distribute, and to sell or cause to sell, at the Publisher's election and discretion, copies of the said literary Work in any electronic format. The Publisher agrees to pay to the Author a return as specified in Provision number 3(a) of this agreement of the sales price of every copy in any electronic format that may be sold and for which the Publisher shall receive payment in money. The Author agrees to actively participate in promoting the sales of the said literary Work in his home town area and elsewhere, by making himself available to media interviews, book readings and/or signings, and other public sales promotion appearances AT TIMES REASONABLY ACCEPTABLE TO THE AUTHOR.

14. Record Keeping: The Publisher agrees to keep and maintain true and accurate records relating to the distribution of copies of the Work, including reports of all sales and collections therefrom.

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16. Accounting: Author may, at his or her own expense, audit the books and records of Publisher relating to the sales of the Work at the place where Publisher maintains such books and records in order to verify statements rendered to Author. Any such audit shall be conducted only by a reputable public accountant during reasonable business hours in such manner as not to interfere with Publisher's normal business activities. An audit with respect to any statement shall not commence later than six (6) months from the date of dispatch to Author of such statement, nor shall audits be made more frequently than twice annually, nor shall the records supporting any statement be audited more than once. All statements rendered hereunder shall be binding upon Author and not subject to objection for any reason unless such objection is made in writing stating the basis thereof and delivered to Publisher within twelve (12) months from delivery of such statement, or if an audit is commenced prior thereto, within thirty (30) days from the completion of the relative audit.

17. Assignment and Subcontracting: The performance of the terms of this Agreement are personal to Author and may not be assigned or transferred in any way without the written consent of the Publisher; provided, however, that Author may assign or transfer (including to Author's executors, administrators and heirs) any monies due, or to become due to Author hereunder. Author hereby agrees that Publisher may assign, sell, lease, license or otherwise dispose of its rights hereunder, including its right to publish the Work in hard cover, soft cover, reprint, and translation editions or as an extraction, serial, abridgement or book club selection; Publisher may also perform some or all of its obligations hereunder through contractors.

18. Subsidiary Rights: Publisher agrees that Author shall exclusively retain the rights to the motion picture, dramatic, radio, television, and/or all other fields not specifically transferred herein for the duration of this Agreement; provided however that if the parties subsequently agree to the contrary in writing, Publisher may negotiate for the sale, lease, license or other disposition of the Work in the motion picture, dramatic, radio, television, and/or all other fields. In such event, Publisher may engage an agent, or agents, to negotiate, or assist in negotiating, for such sale, lease, license or other disposition. Approval of all terms, provisions and conditions of any and all contracts in connection with any such sale, assignment, lease, license or other disposition under this paragraph or paragraph number 17 shall be given by the Author upon the recommendation of the Publisher; and, for that purpose, the Author agrees to duly execute any and all contracts, assignments, instruments and approved papers submitted by the Publisher. Author agrees to notify Publisher promptly of the disposition of any subsidiary rights which the Author makes on his or her own behalf.

19. Copyright Infringement: In the event of the infringement, by others, of the copyright, or other rights, in the Work, the Publisher may, in its discretion, sue, or employ other remedies as it may deem expedient, and shall pay to the Author 50% of the net proceeds of any recovery.

20. Non-Competition: During the term of this agreement, Author shall not, without the written consent of Publisher, write, print, or publish or cause to be written, printed, or published, any part of the Work in any format, including as another edition of the Work, revised, corrected, enlarged, abridged, or otherwise.

21. Integrated Agreement: This agreement is entered into by both parties in good faith, with the mutual understanding that neither party has guaranteed, or is to guarantee, the sale of any specific number of copies of the Work, it being impossible to predict, before publication, what success any book may attain. The Author acknowledges that the Publisher has not made any prior pledges, promises, guarantees, inducements, of whatever nature, either in writing, by word of mouth, or in any form, that are not contained in the terms of this agreement, including representations regarding bookstore placement or quality of the manuscript.

22. Reversion of Rights: When in the judgment of the Publisher, the public demand for the Work is no longer sufficient to warrant its continued manufacture, the Publisher may discontinue further manufacture and may, at its discretion, destroy any or all materials used for the production of the Work without any liability in connection therewith to the Author. Publisher agrees to notify the Author of its decision to discontinue production upon discontinuation, and offer to transfer to the Author the materials in its possession, if any, before destroying any stock or materials, on the following terms F.O.B. point of shipment: the plates at their value for old metal, the engravings (to be used only in the work) at one-half (1/2) their original cost, the bound stock at one-half (1/2) the list price, and the sheet stock at cost of gathering, folding, sewing and preparing for shipment, all without royalties. Unless the Author shall, within 30 days, accept said offer and pay the amount set forth in said writing, the Publisher may dispose of the plates, book stock, sheets and other property without further liability for royalties or otherwise. Notwithstanding the reversion of publishing rights to Author, Author's remaining obligations to Publisher, including the warranties and indemnifications provided in paragraph 23 shall survive the discontinuation of the book pursuant to this paragraph.

23. Warranties and Indemnification: The Author covenants and represents that the

Work contains no matter that, when published, will incite prejudice, amount to an invasion of privacy, be libelous, obscene, or otherwise unlawful, or which will infringe upon any proprietary interest at common law, trademark, trade secret, patent or copyright; that the Author is the sole proprietor of the Work and all parts thereof (or has obtained all necessary permissions), has reached the age of majority and has full power to make and perform this grant and agreement, and that the Work is free of any lien, claim, charge or debt of any kind, and that the Author and his legal successors and/or representatives will hold harmless and keep indemnified the Publisher from all manner of claims, proceeding and expenses, including attorneys' fees, which may be taken or incurred by Publisher on the ground that the covenants above are not true or that the Work is subject to any such lien, claim, charge or debt, or that it is such violation, or that it contains anything defamatory or illegal.

In defending any claim, demand, action or proceeding within the scope of paragraph 23, Publisher shall have the right to select counsel and the right to withhold amounts otherwise payable to Author under this or any other agreement and to apply such amounts (as required) in satisfaction of the foregoing indemnities. If monies are withheld under this clause, they shall be set aside in an interest bearing account, and any balance after payment of legal fees, expenses, settlement costs and/or judgments shall be paid to Author along with the interest on such amount. The foregoing warranties and indemnities shall be effective without regard to any representations, recommendations, reviews, or modifications to the manuscript made by Publisher prior to or after publication and shall survive the termination of this Agreement.

24. Disputes: All unresolved disputes, matters and controversies of any kind and nature arising from, relating to or involving this agreement (including questions about the existence, validity, construction, performance, nonperformance, operation, or breach of the agreement, fraud in the inducement of the agreement, mistakes relating to the formation of the agreement, and torts committed during the performance of the agreement), including claims against employees, agents, representatives, officers, directors and/or attorneys of Publisher, shall be submitted, if at all, to a court in the State of Maryland. This agreement shall be governed and construed in accordance with the laws of the State of Maryland. This clause shall survive the termination of this agreement.

25. Notice: Any written notice required under any of the provisions of this agreement shall be deemed to have been properly served by delivery in person, by mailing same to the parties hereto at their addresses as of the date set forth above, except as the addresses may be changed by notice in writing, or by sending by electronic mail to their e-mail addresses, provided, however, that notices of termination shall be sent by registered mail.

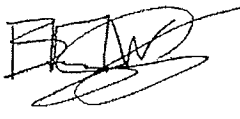
26. Waiver: A waiver of any breach of this agreement or of any of the terms or conditions by either party hereto, shall not be deemed a waiver of any repetition of such breach or in any way affect any other terms or conditions hereof; no waiver shall be valid or binding unless it shall be in writing, and signed by the parties.

27. Severability: The invalidity, illegality, or unenforceability of any provision hereof shall not in any way affect, impair, invalidate or render unenforceable this Agreement or any other provision hereof.

28. Contract Documents: The Parties acknowledge that they are free to sign this Agreement electronically, that Publisher is authorized to send this Agreement to Author in two separate files, including a pdf file containing the body of the Agreement and Publisher's signature and a Word/WordPerfect file containing the Author's signature line, and that this Agreement shall be comprised of both files.

IN WITNESS WHEREOF, the parties hereto set their hands and seal the day first above written.

PUBLISHAMERICA, LLLP

by: 

representative for
PublishAmerica, LLLP

2/3/2012
Date

AUTHOR'S SIGNATURE SENT BY SEPARATE FILE:

ATTACHMENT 2

PublishAmerica

PublishAmerica, LLLP
POST OFFICE BOX 151
FREDERICK, MARYLAND 21705-0151

AUTHOR CONTRACT

This AGREEMENT is made as of the latest date indicated on the signature page below (“Effective Date”) by and between party of the first part, Quincy Maxwell, hereinafter called the “Author”, and PublishAmerica, LLLP, a book publishing company with its principal office located in the State of Maryland, party of the second part, hereinafter called the Publisher.

RECITALS

WHEREAS, the Author is Proprietor of a literary work (the “Work”) at present known as: Dirty Potatoes, which work has been submitted to the Publisher for publication;

WHEREAS, Publisher hereby agrees to produce and publish the Work on the terms and conditions specified hereinafter;

In consideration of the Recitals and the mutual exchange of promises contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Rights Granted: The Author grants and assigns to the Publisher during a period of seven years from the Effective Date the exclusive right to produce, publish, sell or export, or cause to be produced, published, sold or exported, the Work in book form in any language or languages, in the United States of America, its Dependencies, and in Canada; and the exclusive right to arrange for the publication of the Work in book form in any language or languages in all foreign countries, and/or to export copies to those territories and countries. The Author and the Publisher agree that this agreement is renewable upon the date of its expiration and will remain

enforceable during an additional and successive period of seven years, on the same terms and conditions as specified hereinafter, unless either party to this agreement shall decline such renewal in writing at least three months prior to the date of expiration as hereinbefore set forth.

2. Manner of Publication: Publisher agrees to produce the said literary Work in book form, in such format, type and style of paper, jacket and binding as will make the volume attractive and substantial-looking. Subject to the conditions specified below, it is specifically understood and agreed, that the said volume will contain all manuscript pages as submitted by the Author, and will be printed on good quality paper with the bound size to be, approximately, 5½ x 8½ or 6 x 9 inches, or such other sizes selected by Publisher at its discretion. Publisher agrees to cause all copies of said literary Work to be printed and bound as the market demands and in sufficient quantities to supply purchasers of said literary Work therewith. Subject to these guidelines, Author agrees that all matters dealing with the design, production, sales and publication of said literary Work shall be at the discretion of the Publisher.

3(a) Royalties: The Publisher shall pay to the Author the following royalties for sales of any regular edition of the Work or translation thereof in the United States and elsewhere:

For the first 2000 copies sold by Publisher or on its behalf: 8 percent of the sales price received by Publisher;

For the next 4000 copies sold by Publisher or on its behalf, 25 percent of the sales price received by Publisher;

After 6,000 copies have been sold by Publisher or on its behalf, 50 percent of the sales price received by Publisher.

(b) Exclusions and Deductions: Publisher shall have no obligation to pay Author for any copies of the Work that may be used or distributed for review, publicity, advertising or promotional purposes, that may be lost in transit, destroyed, or damaged, that the Publisher may deliver to the Author without receiving payment in money, that the Publisher may deliver to the Author at a discount from the regular retail price, or that are returned by retailers or distributors. In the event that Publisher pays royalties on copies of books that are returned by retailers or distributors, Publisher has the right to deduct those amounts from future royalty payments. Any and all advance payments made by Publisher will be charged against royalties due to the Author.

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throughout the United States and/or Canada, or elsewhere. Distribution of this promotional material shall be at the Publisher's own cost and expense and to media outlets of the Publisher's own choice. The Author agrees that excerpts of said literary Work may be included in this promotional information, and agrees, furthermore, that the Publisher may, at the Publisher's election and discretion, cause to promote the said literary Work, as designated, in any electronic format, and that the Publisher shall have the exclusive right to distribute or cause to distribute, and to sell or cause to sell, at the Publisher's election and discretion, copies of the said literary Work in any electronic format. The Publisher agrees to pay to the Author a return as specified in Provision number 3(a) of this agreement of the sales price of every copy in any electronic format that may be sold and for which the Publisher shall receive payment in money. The Author agrees to actively participate in promoting the sales of the said literary Work in his home town area and elsewhere, by making himself available to media interviews, book readings and/or signings, and other public sales promotion appearances.

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17. Assignment and Subcontracting: The performance of the terms of this Agreement are personal to Author and may not be assigned or transferred in any way without the written consent of the Publisher; provided, however, that Author may assign or transfer (including to Author's executors, administrators and heirs) any monies due, or to become due to Author hereunder. Author hereby agrees that Publisher may assign, sell, lease, license or otherwise dispose of its rights hereunder, including its right to publish the Work in hard cover, soft cover, reprint, and translation editions or as an extraction, serial, abridgement or book club selection; Publisher may also perform some or all of its obligations hereunder through contractors.

18. Subsidiary Rights: Author agrees that Publisher shall have the exclusive right for the duration of this Agreement to negotiate for the sale, lease, license or other disposition of the Work in the motion picture, dramatic, radio, television, and/or all other fields only if Author so consents in writing. In such event, Publisher may engage an agent, or agents, to negotiate, or assist in negotiating, for such sale, lease, license or other disposition. Approval of all terms, provisions and conditions of any and all contracts in connection with any such sale, assignment, lease, license or other disposition under this paragraph or paragraph number 17 shall be given by the Author upon the recommendation of the Publisher; and, for that purpose, the Author agrees to duly execute any and all contracts, assignments, instruments and approved papers submitted by the Publisher. Author agrees to notify Publisher promptly of the disposition of any subsidiary rights which the Author makes on his or her own behalf.

19. Copyright Infringement: In the event of the infringement, by others, of the copyright, or other rights, in the Work, the Publisher may, in its discretion, sue, or employ other remedies as it may deem expedient, and shall pay to the Author 50% of the net proceeds of any recovery.

20. Non-Competition: During the term of this agreement, Author shall not, without the written consent of Publisher, write, print, or publish or cause to be written, printed, or published, any part of the Work in any format, including as another edition of the Work, revised, corrected, enlarged, abridged, or otherwise.

21. Integrated Agreement: This agreement is entered into by both parties in good faith, with the mutual understanding that neither party has guaranteed, or is to guarantee, the sale of any specific number of copies of the Work, it being impossible to predict, before publication, what success any book may attain. The Author acknowledges that the Publisher has not made any prior pledges, promises, guarantees, inducements, of whatever nature, either in writing, by word of mouth, or in any form, that are not contained in the terms of this agreement, including representations regarding bookstore placement or quality of the manuscript.

22. Reversion of Rights: When in the judgment of the Publisher, the public demand for the Work is no longer sufficient to warrant its continued manufacture, the Publisher may discontinue further manufacture and may, at its discretion, destroy any or all materials used for the production of the Work without any liability in connection therewith to the Author. Publisher agrees to notify the Author of its decision to discontinue production upon discontinuation, and offer to transfer to the Author the materials in its possession, if any, before destroying any stock or materials, on the following terms F.O.B. point of shipment: the plates at their value for old metal, the engravings (to be used only in the work) at one-half ($\frac{1}{2}$) their original cost, the bound stock at one-half ($\frac{1}{2}$) the list price, and the sheet stock at cost of gathering, folding, sewing and preparing for shipment, all without royalties. Unless the Author shall, within 30 days, accept said offer and pay the amount set forth in said writing, the Publisher may dispose of the plates, book stock, sheets and other property without further liability for royalties or otherwise. Notwithstanding the reversion of publishing rights to Author, Author's remaining obligations to Publisher, including the warranties and indemnifications provided in paragraph 23 shall survive the discontinuation of the book pursuant to this paragraph.

23. Warranties and Indemnification: The Author covenants and represents that the Work contains no matter that, when published, will incite prejudice, amount to an invasion of privacy, be libelous, obscene, or otherwise unlawful, or which will infringe upon any proprietary interest at common law, trademark, trade secret, patent or copyright; that the Author is the sole proprietor of the Work and all parts thereof (or has obtained all necessary permissions), has reached the age of majority and has full power to make and perform this grant and agreement, and that the Work is free of any lien, claim, charge or debt of any kind, and that the Author and his legal successors and/or representatives will hold harmless and keep indemnified the Publisher

from all manner of claims, proceeding and expenses, including attorneys' fees, which may be taken or incurred by Publisher on the ground that the covenants above are not true or that the Work is subject to any such lien, claim, charge or debt, or that it is such violation, or that it contains anything defamatory or illegal.

In defending any claim, demand, action or proceeding within the scope of paragraph 23, Publisher shall have the right to select counsel and the right to withhold amounts otherwise payable to Author under this or any other agreement and to apply such amounts (as required) in satisfaction of the foregoing indemnities. If monies are withheld under this clause, they shall be set aside in an interest bearing account, and any balance after payment of legal fees, expenses, settlement costs and/or judgments shall be paid to Author along with the interest on such amount. The foregoing warranties and indemnities shall be effective without regard to any representations, recommendations, reviews, or modifications to the manuscript made by Publisher prior to or after publication and shall survive the termination of this Agreement.

24. Disputes: All unresolved disputes, matters and controversies of any kind and nature arising from, relating to or involving this agreement (including questions about the existence, validity, construction, performance, nonperformance, operation, or breach of the agreement, fraud in the inducement of the agreement, mistakes relating to the formation of the agreement, and torts committed during the performance of the agreement), including claims against employees, agents, representatives, officers, directors and/or attorneys of Publisher, shall be submitted, if at all, to a court in the State of Maryland. This agreement shall be governed and construed in accordance with the laws of the State of Maryland. This clause shall survive the termination of this agreement.

25. Notice: Any written notice required under any of the provisions of this agreement shall be deemed to have been properly served by delivery in person, by mailing same to the parties hereto at their addresses as of the date set forth above, except as the addresses may be changed by notice in writing, or by sending by electronic mail to their e-mail addresses, provided, however, that notices of termination shall be sent by registered mail.


26. Waiver: A waiver of any breach of this agreement or of any of the terms or conditions by either party hereto, shall not be deemed a waiver of any repetition of such breach or in any way affect any other terms or conditions hereof; no waiver shall be valid or binding unless it shall be in writing, and signed by the parties.

27. Severability: The invalidity, illegality, or unenforceability of any provision hereof shall not in any way affect, impair, invalidate or render unenforceable this Agreement or any other provision hereof.

28. Contract Documents: The Parties acknowledge that they are free to sign this Agreement electronically, that Publisher is authorized to send this Agreement to Author in two separate files, including a pdf file containing the body of the Agreement and Publisher's signature and a Word/WordPerfect file containing the Author's signature line, and that this Agreement shall be comprised of both files.

IN WITNESS WHEREOF, the parties hereto set their hands and seal the day first above written.

PUBLISHAMERICA, LLLP

by: 

representative for
PublishAmerica, LLLP

____ 7/13/2009 _____
Date

AUTHOR'S SIGNATURE SENT BY SEPARATE FILE:

ATTACHMENT 3

PublishAmerica

PublishAmerica, LLLP
POST OFFICE BOX 151
FREDERICK, MARYLAND 21705-0151

AUTHOR CONTRACT

This AGREEMENT is made as of the latest date indicated on the signature page below ("Effective Date") by and between party of the first part, Kerri Levine, hereinafter called the "Author", and PublishAmerica, LLLP, a book publishing company with its principal office located in the State of Maryland, party of the second part, hereinafter called the Publisher.

RECITALS

WHEREAS, the Author is Proprietor of a literary work (the "Work") at present known as: From Catholic to Atheist, which work has been submitted to the Publisher for publication;

WHEREAS, Publisher hereby agrees to produce and publish the Work on the terms and conditions specified hereinafter;

In consideration of the Recitals and the mutual exchange of promises contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Rights Granted: The Author grants and assigns to the Publisher during a period of seven years from the Effective Date the exclusive right to produce, publish, sell or export, or cause to be produced, published, sold or exported, the Work in book form in any language or languages, in the United States of America, its Dependencies, and in Canada; and the exclusive right to arrange for the publication of the Work in book form in any language or languages in all foreign countries, and/or to export copies to those territories and countries. The Author and the

Publisher agree that this agreement is renewable upon the date of its expiration and will remain enforceable during an additional and successive period of seven years, on the same terms and conditions as specified hereinafter, unless either party to this agreement shall decline such renewal in writing at least three months prior to the date of expiration as hereinbefore set forth.

2. **Manner of Publication:** Publisher agrees to produce the said literary Work in book form, in such format, type and style of paper, jacket and binding as will make the volume(s) attractive and substantial-looking. Subject to the conditions specified below, it is specifically understood and agreed, that the said volume(s) will contain all manuscript pages as submitted by the Author, and will be printed on good quality paper with the bound size to be, approximately, 5½ x 8½ or 6 x 9 inches, or such other sizes selected by Publisher at its discretion. Publisher agrees to cause all copies of said literary Work to be printed and bound as the market demands and in sufficient quantities to supply purchasers of said literary Work therewith. Subject to these guidelines, Author agrees that all matters dealing with the design, production, sales and publication of said literary Work shall be at the discretion of the Publisher.

3(a) **Royalties:** The Publisher shall pay to the Author the following royalties for sales of any regular edition of the Work or translation thereof in the United States and elsewhere:

For the first 2000 copies sold by Publisher or on its behalf: 8 percent of the sales price received by Publisher;

For the next 4000 copies sold by Publisher or on its behalf, 25 percent of the sales price received by Publisher;

After 6,000 copies have been sold by Publisher or on its behalf, 50 percent of the sales price received by Publisher.

(b) **Exclusions and Deductions:** Publisher shall have no obligation to pay Author for any copies of the Work that may be used or distributed for review, publicity, advertising or promotional purposes, that may be lost in transit, destroyed, or damaged, that the Publisher may deliver to the Author without receiving payment in money, that the Publisher may deliver to the Author at a discount from the regular retail price, or that are returned by retailers or distributors. In the event that Publisher pays royalties on copies of books that are returned by retailers or

distributors, Publisher has the right to deduct those amounts from future royalty payments. Any and all advance payments made by Publisher will be charged against royalties due to the Author.

(c) No payment shall be made to the Author for permission gratuitously given to others to publish extracts from said literary Work to benefit the sale thereof, but all compensation received by the Publisher for the publication of extraction therefrom, or for serial use after publication in book form, or for abridgments, or as a book club selection, shall be divided in the proportion of 50% to the Author and 50% to the Publisher. All compensation received by the Publisher in exchange for the dramatic or motion picture rights, or for the first serial rights prior to book publication, or for foreign, translation, radio, dramatic, cheap edition, television and/or all other rights in the said literary Work shall be similarly divided between the Author and the Publisher, as set forth in this paragraph 3(c). All gross monies and compensation received in payment for such sale, lease, assignment, license or other disposition of the rights in the Work shall be collected and disbursed by the Publisher, and all contracts for such sale, lease, assignment, license or other disposition shall provide that such monies and compensations are to be paid to the Publisher; and the Publisher is authorized to receive, collect and disburse same and to endorse and deposit all checks and/or drafts for such payment. All payments due from the Publisher to the Author hereunder shall be made within ninety (90) days from the receipt thereof by the Publisher, accompanied by statements of the amounts received and disbursed. Royalties shall be paid at the times indicated in paragraph 15.

4. Author Copies: Should the Author wish to purchase copies of the said literary Work directly from the Publisher, the Publisher agrees to supply the Author with such copies at a discount of 20% from the regular retail price per copy, if the Author orders up to 20 copies at a time, and at a discount of 30% from the regular retail price per copy, if the Author orders 21 copies or more at a time. The Author may dispose of these copies in any manner, and, if resold, may retain all monies derived therefrom.

5. Copyright and Right to Publicity: Any copyright registrations for the Work shall be taken out in the name of the Author in the United States of America, and in foreign countries as the Publisher may deem advisable. Publisher is authorized to credit Author with authorship of the Work and to use Author's name, picture, and likeness for advertising purposes or purposes of trade in connection with the Work.

6. Joint Ownership: If the Work is authored or owned by more than one person, the word Author, as used herein, shall be deemed to include all authors or owners who are parties

hereto, jointly and severally, and all sums payable to the Author shall be divided equally between or among them and the Publisher shall render separate accounts and make separate payments to each of them unless herein otherwise provided.

7. Commencement: The Publisher agrees to commence production of the Work within 365 days from the Effective Date, provided Publisher is not hindered by causes beyond its own control, or by the Author. In the event Publisher fails to commence production within this deadline, Author may terminate this Agreement. In such instance, however, such payments as shall have been made to Author as advances shall constitute full payment to Author for all his rights, efforts and all materials supplied under this Agreement and no other damages, claims, actions or proceedings, either legal or equitable, founded on such breach, default or failure to publish by Publisher may be claimed, instituted or maintained by Author against Publisher.

8. Delivery and Advance: Author agrees to deliver to Publisher the final version of the manuscript (hereinafter referred to as the "Completed Manuscript"), as an electronic file, within 75 days of the Effective Date. Until the Completed Manuscript is submitted, Publisher Agrees that Author may make changes and/or corrections to the Work. After the Author's submission of the Completed Manuscript, no changes and/or corrections shall be made except to correct Publisher errors. Upon receipt of the Completed Manuscript, Publisher shall pay the Author an advance dollar amount of \$ 1 (one), which will be charged against royalties due to the Author. Unless postponed by mutual agreement, failure to make delivery of the manuscript of the Work by the deadline specified herein shall be deemed just cause for Publisher, at its option, to terminate this Agreement by giving written notice. The foregoing does not exclude any other remedies at law or equity that the publisher may have. Payment of the advance or any part thereof or any other sums to Author hereunder, including any payment upon or following delivery of the Work, shall not be deemed to be evidence either that the Work is satisfactory to Publisher, that Author has fulfilled his obligations hereunder, or that Publisher has waived any of its rights hereunder.

9. Rejection of Manuscript: If, in the opinion of Publisher, the Completed Manuscript is unacceptable or unsatisfactory to Publisher, Publisher may reject it by sending written notice to Author at any time before the Work is placed on the market, in which event this agreement shall be deemed terminated (except as indicated herein), and there shall be no further obligation upon Publisher to publish the Work or to make any further payment.

10. Revisions of Manuscript: The Author agrees to revise the Work on request of the Publisher if the Publisher considers it in the best interests of the First and/or future Editions of the Work. In the alternative, the Publisher may elect to provide editorial services of its own that it considers in the best interest of the Work. It is specifically understood and agreed, however, that the Publisher shall make no major revisions, changes and/or alterations therein without first consulting the Author and receiving written permission to do so. The provision of this agreement shall apply to each revision of the Work by the Author or Publisher as though that revision were the Work being published for the first time under this agreement, except that the manuscript of the revised Work shall be delivered in final form by the Author to the Publisher within a reasonable time after request for revision. However, Author is not entitled to payment for any revisions made pursuant to this paragraph.

11. Page Proofs: Publisher shall furnish the Author with an electronic page proof of the Work which conforms to the Completed Manuscript as submitted by the Author, and which is formatted for publication by Publisher. The Author agrees to notify the Publisher of any nonconformity between the electronic page proof and the Completed Manuscript within forty-eight (48) hours after the electronic page proof is sent by Publisher to Author. All formatting decisions shall be made solely by the Publisher.

12. Editions: Whereas this agreement refers to a First Edition of the Work, as designated, the Publisher may produce as many editions thereof as Publisher shall deem advisable, at any time after it ceases to produce copies of the First Edition. For all such subsequent editions that the Publisher may produce, Publisher shall pay Author royalties as specified in paragraph number 3(a) of this agreement for every copy sold by it.

13. Promotion: Sales promotion, advertising and publicity of the Work shall be at the Publisher's election and discretion as to the extent, scope and character thereof and in all matters pertaining thereto. It is furthermore agreed upon that the Publisher may, at the Publisher's sole expense and discretion, create, maintain, and solely own a separate domain on the Internet, exclusively dedicated to promoting the said literary Work and/or the Author and/or the Publisher, and that the domain name and content may contain any combination of words and/or names, including the said literary Work's title and/or the Author's legal or pen name, that the Publisher may deem benefiting the sales promotion, advertising and publicity as hereabove set forth, at the Publisher's sole discretion. The Publisher may also distribute, at its discretion, for purposes of publicity and/or review, promotional information pertaining to said literary Work, to publications

throughout the United States and/or Canada, or elsewhere. Distribution of this promotional material shall be at the Publisher's own cost and expense and to media outlets of the Publisher's own choice. The Author agrees that excerpts of said literary Work may be included in this promotional information, and agrees, furthermore, that the Publisher may, at the Publisher's election and discretion, cause to promote the said literary Work, as designated, in any electronic format, and that the Publisher shall have the exclusive right to distribute or cause to distribute, and to sell or cause to sell, at the Publisher's election and discretion, copies of the said literary Work in any electronic format. The Publisher agrees to pay to the Author a return as specified in Provision number 3(a) of this agreement of the sales price of every copy in any electronic format that may be sold and for which the Publisher shall receive payment in money. The Author agrees to actively participate in promoting the sales of the said literary Work in his home town area and elsewhere, by making himself available to media interviews, book readings and/or signings, and other public sales promotion appearances.

14. Record Keeping: The Publisher agrees to keep and maintain true and accurate records relating to the distribution of copies of the Work, including reports of all sales and collections therefrom.

15. Statement of Account: The Publisher agrees to render and forward to the Author, in the months of February and August next succeeding the date of publication of the Work, and thereafter semi-annual statements of account for so long as copies of the Work subject to royalty are sold. With respect to copies sold, the statement shall indicate the price of each copy sold. The statement shall also indicate both the total royalties payable to Author on sales during the accounting period and a breakdown indicating the royalties attributable to specific prices and/or discount percentages, and the market(s) where any sales were made, e.g. U.S. or U.K. With each royalty statement, Publisher shall include payment for any amount due and owing as indicated in the statement; however, Author agrees that Publisher shall withhold royalty payments until the amount of royalties payable has reached an aggregate of forty-nine dollars. Any amounts withheld shall be retained by Publisher until the end of the royalty period during which publication of the book is discontinued. At that time, the amount retained shall be paid to Author.

16. Accounting: Author may, at his or her own expense, audit the books and records of Publisher relating to the sales of the Work at the place where Publisher maintains such books and records in order to verify statements rendered to Author. Any such audit shall be conducted only by a reputable public accountant during reasonable business hours in such manner as not to

interfere with Publisher's normal business activities. An audit with respect to any statement shall not commence later than six (6) months from the date of dispatch to Author of such statement, nor shall audits be made more frequently than twice annually, nor shall the records supporting any statement be audited more than once. All statements rendered hereunder shall be binding upon Author and not subject to objection for any reason unless such objection is made in writing stating the basis thereof and delivered to Publisher within twelve (12) months from delivery of such statement, or if an audit is commenced prior thereto, within thirty (30) days from the completion of the relative audit.

17. Assignment and Subcontracting: The performance of the terms of this Agreement are personal to Author and may not be assigned or transferred in any way without the written consent of the Publisher; provided, however, that Author may assign or transfer (including to Author's executors, administrators and heirs) any monies due, or to become due to Author hereunder. Author hereby agrees that Publisher may assign, sell, lease, license or otherwise dispose of its rights hereunder, including its right to publish the Work in hard cover, soft cover, reprint, and translation editions or as an extraction, serial, abridgement or book club selection; Publisher may also perform some or all of its obligations hereunder through contractors.

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from all manner of claims, proceeding and expenses, including attorneys' fees, which may be taken or incurred by Publisher on the ground that the covenants above are not true or that the Work is subject to any such lien, claim, charge or debt, or that it is such violation, or that it contains anything defamatory or illegal.

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IN WITNESS WHEREOF, the parties hereto set their hands and seal the day first above written.

PUBLISHAMERICA, LLLP

by:



representative for
PublishAmerica, LLLP

4/23/2010
Date

AUTHOR'S SIGNATURE SENT BY SEPARATE FILE:

I hereby assent to all of the terms contained in the Author Contract, which was e-mailed to me as a pdf attachment on the 23 day of April, 2010 and agree that this document, which was sent as a word and/or wordperfect file on that same day, is incorporated therein.

Kerri Levine
(Kerri Levine)

4-30-10
Date

Author's Social Security Number