

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA**

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PATRICIA WHEELER and HELEN HEIGHTSMAN
GORDON,

Plaintiffs,

Index No. 1:15-cv-00481-WTL-
TAB

-against-

AUTHOR SOLUTIONS LLC,

Defendant.

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CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

PRELIMINARY STATEMENT

1. Plaintiffs Patricia Wheeler and Helen Heightsman Gordon (collectively “Plaintiffs”) bring this class action against Defendant Author Solutions LLC, a Penguin Random House company (“Author Solutions” or the “Company”) (collectively “Defendants”), pursuant to the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.1 *et seq.*, the Indiana Senior Consumer Sales Act, Indiana Code §24-4.6-6-1 *et seq.*, California’s Unfair Competition Law, Business and Professions Code §§ 17200, *et seq.*, 17500, *et seq.*, (“UCL”), and common law.

2. This action is related to the suit *Everette v. Author Solutions LLC*, 14-CV-1827 (S.D. Ind. filed Nov. 7, 2014) (“Ind. Action”). This action is also related to the suit *James v. Penguin Group (USA) Inc.*, 13-CV-2801 (S.D.N.Y. filed April 24, 2013) (“N.Y. Action”).

3. Author Solutions has marketed itself at various times as an “indie publisher,” a “self-publisher,” or as a “supported self-publishing” company that helps its authors (“Authors”) fulfill their publishing dreams.

4. By its own estimation, Author Solutions has worked with over 180,000 authors

and created over 200,000 new book titles since its inception in 2007. It controls many imprints, such as iUniverse, AuthorHouse, Trafford, and Xlibris, as well as many others. By 2008, Author Solutions published one out of every 17 books in the United States.

5. In truth, Author Solutions operates more like a telemarketing company whose customer base is the Authors themselves. In other words, unlike a traditional publisher, Author Solutions makes money from its Authors, not for them. It does so by selling books back to its Authors, not to a general readership, and by selling its Authors expensive publishing, editing, and marketing services (“Services”) that are effectively worthless.

6. Author Solutions aggressively sells publishing and marketing services (“Services”) to its Authors through a large sales force of telemarketers, largely based in the Philippines, who introduce themselves as the Author’s personal “Publishing Consultant” or “Marketing Consultant.” This has the deceptive effect of leading Authors to believe that the “consultant” has a background in publishing or marketing and has the requisite skills to guide the Author through the publishing process. In fact, these “consultants” are simply commissioned sales people with aggressive quotas who are not required to have any publishing or marketing experience. Author Solutions never discloses this fact to Authors.

7. Similarly, the Company employs scores of “Book Consultants,” a sales team whose goal it is to sell hundreds of the Authors’ *own* books back to the Author. However, Author Solutions does not employ any sales force to sell an Author’s books to the general public – referred to as the retail channel – because, unlike with traditional publishers, an Author’s retail success is largely irrelevant to Author Solutions.

8. Author Solutions sold, and in some instances continues to sell, an array of ineffective marketing Services to its Authors and fails to disclose relevant facts regarding the Services. Below are examples of such Services:

- a. E-Mail Marketing Campaign: a “campaign” that consists of sending a press release regarding the Author’s book to as many as several million recipients. Author Solutions fails to disclose that it does not know the identity or interests of the recipients or whether they have ever purchased Author Solutions’s books.
- b. Hollywood Packages: Author Solutions offers a variety of extremely expensive services to “assist” authors in optioning their books for movies and television. However, over several years, only one book has possibly been optioned through an Author Solutions Hollywood service, and that was in 2014, well after Author Solutions began to offer the service.
- c. Book Galleries: Author Solutions offers a variety of book “gallery” events. On its website, Author Solutions’s imprint iUniverse represents that “we’ve put our books in the hands of industry insiders and book buyers every year through our book exhibit and event marketing services.” In reality, an Author’s book is simply put on a shelf. Author Solutions fails to disclose to its Authors that it has never measured book sales from these events, nor has it measured how many attendees stop by the booths. Author Solutions does not know if they have successfully “put book in the hands of industry insiders.”

9. Authors buy these Services because Author Solutions leads them to believe that the Services are designed to increase its Authors’ marketability and book sales.

10. The Company uniformly tells its Authors through forms and materials that the “increase of book sales” is the “primary goal” of Author Solutions’s Marketing Services. Through its website, Author Solutions represents to Authors: “If you want your book to sell, you’ll want to do more than just hope for the best. Our selection of promotional products and services allows authors to build a dynamic platform from which they can effectively promote and sell their books.”¹

¹ “Marketing and Publicity Services,” iUniverse <http://www.iuniverse.com/ServiceStore/ServiceList.aspx?Service=CAST-105> (last accessed on March 2-, 2015).

11. These statements are misleading. As the Global Director of Author Marketing for Author Solutions, Susan Dunn, stated during her deposition in the N.Y. Action: book sales are in fact “*not* one of the goals of Author Solutions’s marketing services.” Author Solutions has no idea whether its Services help Authors sell books, nor does Author Solutions care. An Author’s retail success is largely irrelevant to Author Solutions, since its best customers are the Authors themselves.

I. JURISDICTION AND VENUE

12. This Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1332(d), because the matter in controversy in this class action exceeds \$5,000,000, exclusive of interest and costs, and attorney’s fees.

13. Venue is proper in this District as Defendant is a citizen of Indiana.

II. THE PARTIES

14. Plaintiff Wheeler is a California citizen. She purchased the Pinnacle Publishing Package in or around July 2012 for the publication of her work *Successful Tails: The Wonders of Therapy Dogs*. She spent at least \$31,373.30 on Services, \$6,529.00 of which was refunded to her because it was not fulfilled. In total, she spent \$24,844.30. She was above the age of 60 at all relevant times.

15. Plaintiff Helen Heightsman Gordon is a California citizen. She purchased a Publishing Package in 2010 from iUniverse. In 2011, she also purchased an Editing Service for \$7,059.78 and a Book-to-Screen Package for \$1,999. In total, she ultimately spent over \$10,000 with iUniverse.

16. Defendant Author Solutions is an LLC based in Bloomington, Indiana. It is owned by Pearson PLC and is a member of Penguin Random House and operated by Penguin

Random House. It controls many imprints, including AuthorHouse, iUniverse, and Xlibris and depicts itself as an “indie publisher.”

III. STATEMENT OF FACTS

17. Author Solutions was acquired by Bertram Capital, a private equity firm, in 2007 and quickly hired Kevin Weiss as its C.E.O. to prepare the Company for acquisition or to take it public. Mr. Weiss was tasked with increasing revenue and growing the business. To do so, Author Solutions began acquiring imprints. When Mr. Weiss joined in 2007, Author Solutions operated AuthorHouse, iUniverse, and another imprint. Author Solutions subsequently acquired Trafford (2009) and Xlibris (2009). AuthorHouse, iUniverse, Trafford and Xlibris are referred to as Author Solutions’s “core imprints.”

18. When Author Solutions acquired Xlibris, a small self-publishing company with operations in Cebu, Philippines in 2009, it moved part of its operations to Cebu. By 2012, most of Author Solutions’s “consultants” were based in Cebu – only 79 out of 365 remained in Indiana.

19. Author Solutions also increased revenue by forming partnerships with traditional publishing companies to create new imprints, or “partner imprints.” For instance, Author Solutions partnered with Hay House Publishing to form the imprint Balboa Press. While Author Solutions operates the imprint, the Company does not disclose to Authors on its website or in its contracts that Balboa Press is run by Author Solutions. Authors are simply told that Balboa Press is a division of Hay House. At various times, Author Solutions has also partnered with Simon & Schuster for the imprint Archway, Thomas Nelson for Westbow Press, Reader’s Digest for LifeRich, and Writer’s Digest for Abbott Press, among others.

20. Author Solutions has also partnered with Nook Press, the Barnes & Noble self-publishing imprint, to perform Services, as well as Lulu Press, Inc., a self-publishing company.

Author Solutions does not always disclose its affiliation with these imprints. As a result, several Authors who do not wish to publish with Author Solutions are unable to make an informed decision.

21. The role of the partner, to whom Author Solutions pays a royalty, is to contribute and assist in lead generation. In other words, the partners generate a potential pool of Authors to whom Author Solutions's "consultants" can sell the same Services, except for at a higher price than the core imprints' Services so that the partners could share in the profits.

22. "Consultants" are not required to have marketing or publishing experience, nor are they required to read the Author's work. For Author Solutions to maximize revenue opportunities, when an Author's book is recently published (or about to be published), the Author is assigned a "Tier 1" Marketing Consultant, but after a certain amount of time, or if the Author purchased a Service, she is moved to a "Tier 2" Marketing Consultant. Once the title is live, the Author becomes an "active lead" for the Book Consultant. In other words, the Author is passed around and bombarded with calls from several levels of "consultants." Authors have complained to Author Solutions about this practice.

23. In order to reach their quota, "consultants" at Authors Solutions repeatedly make sales calls to Authors to promote Services aggressively. Even after Authors have requested not to be called again, Author Solutions continues calling its Authors.

The Publishing Process

24. Authors first purchase a Publishing Package to initiate the publishing process with Author Solutions. A Publishing Package is a bundle of Services that can include Marketing Services, among others. Author Solutions lures Authors to purchase expensive Publishing Packages by promising higher royalties than traditional publishing and a commitment "to helping

[Authors] reach [their] sales goals.”² All the while, Author Solutions has no basis to believe that its Authors could ever reach their sales goals.

25. Author Solutions’s evaluations of Authors’ works paints a harrowing picture of how Author Solutions views its Authors. In monitoring their online reputation, Author Solutions noticed that a former employee posted on a blog that “[s]alespeople brag about pushing customers to overextend themselves, promising them the world, laughing about how they’ll probably only sell a dozen copies” and that “Keith Ogorek [Senior Vice President of Marketing] has a shelf of the worst books in his office that he laughs about.”

26. From the beginning of the publishing process, Author Solutions plants a seed of retail success and of placement in major chain bookstores, enticing Authors to invest in its expensive packages. On its website, Author Solutions, makes several misleading statements, including that the package is designed to help the Author become “a serious contender in today’s competitive publishing environment.”³ Author Solutions has no basis to make such a statement, as it avoids any analysis of its Authors’ success. Author Solutions goes on to claim that “[t]he Bookstore Premier Pro publishing package is focused on enhancing your chances of success with major bookselling chains such as Barnes and Noble. Bookstore Premier Pro includes everything you would find in our Premier Pro package, plus our high value Bookseller’s Return Program.”⁴

² “Publishing the iUniverse Way,” IUNIVERSE, <http://www.iuniverse.com/why-iUniverse/publishing-the-iUniverse-way/selling-your-book.aspx> (last accessed on March 20, 2015).

³ This language from iUniverse’s website is a description offered for the Premier Pro Package. The Bookstore Premier Pro package “includes everything you would find” in the Premier Pro Package. “Premier Pro Package,” IUNIVERSE, <http://www.iuniverse.com/Packages/Premier-Pro.aspx> (last visited on March 20, 2015).

⁴ “Bookstore Premier Pro Package,” IUNIVERSE, <http://www.iuniverse.com/Packages/BookstorePremierPro.aspx> (last visited on March 20, 2015).

While Author Solutions makes these representations, it knows that it is “the [A]uthor himself or herself [that is] the biggest source of sales on average for any given book,” as former C.E.O., Kevin Weiss, testified at deposition in the NY Action.

27. Authors who have purchased Premier Pro packages receive an Editorial Evaluation, which provides an analysis of a book’s strengths and weaknesses. Once an Author receives the evaluation of her work, she only reviews the work with her “consultant.” The Author can talk to a salesperson about their evaluation but they are not allowed to talk to the editor.

28. The quality of the Author’s work is meaningless to Author Solutions. A manuscript is simply a sales vehicle used to push Marketing Services and book sales of the Author’s own book on the Author. Even the most poorly written books with no marketing potential that receive scathing internal reviews are not spared from receiving sales calls from “consultants” to purchase Marketing Services.

29. The book is moved through production as quickly as possible so that the Author can then be targeted with Marketing Services and book offers. Once the Author submits her manuscript, she becomes a lead for the Marketing Consultants, and once her title goes live, she becomes bait for the Book Consultants.

30. Authors who delay submitting their manuscript or final work are referred to as “languishing” Authors. Since Author Solutions cannot recognize revenue until the Author’s title goes live, Author Solutions has various tactics in place to rush the process. Author Solutions employs a team of “submission miners” who “entice [A]uthors to submit material” through promotions. Author Solutions is only interested in the quantity, not the quality of its books.

31. Authors often find errors, such as typographical, grammatical, or formatting errors in their published work, even after purchasing several rounds of editing. Errors occur for a variety

of reasons, including conversion errors from Microsoft Word, or because an editor fails to correct or introduces a new error. The main safeguard against such errors is for Authors to identify and correct publisher errors, a process that can be taxing and time-consuming for the Author, creating work, expense, and confusion for the Author.

32. Contrary to what iUniverse claims on its website and to what Authors reasonably expect, Authors do not “[w]ork with an editorial team to make [their] book the best it can be.”⁵ Authors are not allowed to collaborate with their editors – they do not know the name of their editor and cannot speak with them.

33. Ultimately, Author Solutions is not concerned with errors in the Author’s manuscript because unlike a traditional publisher, Author Solutions’s primary source of revenue is the Authors themselves.

Recognition Programs

34. On its website, iUniverse claims that “[m]any of our authors have gone on to find greater retail success or even traditional publishing success as a result of these programs,”⁶ but has no basis to make this claim: Author Solutions has never performed any analysis as to whether its programs lead to greater retail success.

35. Part of the incentive for Authors to publish with iUniverse is the chance to be awarded Editor’s Choice and Rising Star, which are unique to iUniverse. Prior to Rising Star, Author Solutions had a similar program called “Publisher’s Choice,” which guaranteed bookstore placement in Barnes & Noble.

⁵ iUniverse Homepage, IUNIVERSE <http://www.iuniverse.com/> (last accessed Feb. 13, 2015).

⁶ iUniverse Recognition Programs, IUNIVERSE <http://www.iuniverse.com/why-iuniverse/recognition-programs.aspx> (last accessed on Feb. 12, 2015).

36. However, Barnes & Noble was not interested in continuing this relationship due to the poor quality of Author Solutions's books and their lack of sales. The soured relationship with Barnes & Noble did not stop Author Solutions from making the misleading claim on its website that Rising Star Books would be "presented" to Barnes & Noble.

37. Author Solutions did not in fact "present" Rising Star books to Barnes & Noble in any meaningful way. Instead, Author Solutions simply emailed Barnes & Noble's small press department with book information, which *any* author could do. The process is the same, and Rising Star books are treated no differently.⁷

Plaintiff Patricia H. Wheeler

38. In or about July 2012, Plaintiff Wheeler purchased the Pinnacle Publishing Package and Social Media Campaign Package from AuthorHouse for her book *Successful Tails: the Wonders of Therapy Dogs*. She paid \$2,391.30 for both of these packages.

39. After the publication, Plaintiff Wheeler purchased the following packages from AuthorHouse: Literary Prime Prospect Package for \$8,000, Network TV Premium Package for \$5,029, Retail Market Gateway Plus Package for \$5,529, Coast-to-Coast Gallery Package for \$865, Trifecta Review Service for \$3,030, the AARP Spring 2013 Book Signing in Las Vegas Package for \$4,029, the Newsmaker Publicity Campaign Package for which Plaintiff Wheeler paid \$6,029.00 but was later refunded, and approximately \$500 in bookmarks for which she was also refunded, since Author Solutions printed the wrong version of the bookmarks and took too

⁷ Notably, approximately two months after the Second Amended Complaint was filed in the N.Y. Action, Author Solutions changed the wording of its representation to the more accurate representation that such books would be "sent." *Compare* <http://web.archive.org/web/20110809150834/http://www.iuniverse.com/why-iuniverse/programs-awards/rising-star.aspx> (last accessed Feb. 13, 2015) with <http://www.iuniverse.com/why-iuniverse/programs-awards/rising-star.aspx> (last accessed Feb. 13, 2015).

long to fulfill.

40. Contrary to the representations Author Solutions made to Plaintiff Wheeler, as detailed more fully below, Author Solutions never disclosed that its Services were not reasonably designed to increase book sales or to accomplish their stated goal.

41. In addition, Plaintiff Wheeler experienced numerous delays due to Author Solutions's careless work.

Literary Prime Prospect Package

42. On November 9, 2012, Plaintiff Wheeler's Marketing Consultant, David Ocampo, sent her an e-mail with the description of the Literary Prime Prospect package, which included the following services: Literary Agent Reading Service, Single Slot Ad in Baker & Taylor Forecast Magazine, Single Slot Ad in the New York Times Sunday Book Review, and Single Slot in the Bookseller Magazine.

43. On December 10, 2012, relying on the representations contained in Mr. Ocampo's November 9, 2012 e-mail, set forth in more detail below, Plaintiff Wheeler purchased the package for \$8,000, reduced from \$12,699.

Literary Agent Reading Service

44. In a November 9, 2012 e-mail, Mr. Ocampo claimed that "[i]f you want to get your title noticed and picked up by a traditional publisher, enlisting the services of a literary agent is a step in the right direction." This statement is deceptive in that it implies that Author Solutions's Services are effective at the task of helping Authors get noticed by traditional publishers. In fact, Author Solutions has no idea whether this is the case, because it never performs any relevant analysis. Plaintiff Wheeler relied on this statement in purchasing the expensive package.

45. As part of the package, AuthorHouse guaranteed at least five reading requests from literary agents; to send a copy of the book to up to ten literary agents who request to read the book; and to ghost write the author's query letter to be sent to the literary agents.

46. On August 19, 2013, another Marketing Consultant, Yanie Cortes, sent Plaintiff Wheeler the query letter prepared by AuthorHouse. The query letter was deficient in that it provided the wrong book description saying the book is about service dogs, including police dogs, when the book is actually about therapy dogs. Since Author Solutions's employees who perform Marketing Services do not read the Author's work, such mistakes are common. Author Solutions does not disclose this to its Authors.

47. Plaintiff Wheeler immediately contacted AuthorHouse and pointed out the deficiencies in the query letter. She also submitted her revised version of the letter on August 26, 2013. These errors caused delays.

48. On September 18, 2013, Plaintiff Wheeler also contacted Mr. Ocampo and complained about the inadequacy of the query letter drafted by AuthorHouse.

49. On November 6, November 16 and November 26, 2013, Plaintiff Wheeler requested Mr. Ocampo to provide her the list of all literary agents to whom AuthorHouse sent the query letter. AuthorHouse never responded to these requests.

50. Plaintiff Wheeler received only two out of the promised five reading requests from literary agents. AuthorHouse did not send these agents a copy of the book as initially promised – Plaintiff Wheeler sent it herself. In addition, two agents requested that Plaintiff Wheeler and AuthorHouse not contact them, claiming that Author Solutions effectively spammed them with poor quality books and failed to follow proper submission instructions. AuthorHouse never disclosed its lack of affiliation with the agents it contacted.

51. On December 4, 2013, Plaintiff Wheeler sent another email to AuthorHouse complaining about the Literary Agent Reading Service and requesting a refund. The recipients of this e-mail were Ms. Hostetler, Mr. Ocampo, Mr. Galvez, and Ms. Cortes. AuthorHouse never responded to this e-mail.

52. AuthorHouse no longer provides the Literary Agent Reading service. Astonishingly, on its website, AuthorHouse discourages authors from using literary agents and states the following: “AuthorHouse is here to help you avoid all the pitfalls and headaches that are commonly associated when working with a book agent. At AuthorHouse, you can bypass literary agents.”⁸

Advertisement in Baker & Taylor’s Forecast Magazine

53. Single Slot Ad in Baker & Taylor’s Forecast Magazine was also a part of the Literary Prime Prospect package.

54. On October 21, 2013, Ms. Kelsey Hostetler e-mailed Plaintiff Wheeler announcing that the ad had been published. The ad, however, was placed in the wrong genre (“Education and Arts” rather than “Pets”) and had an inadequate description of the book, focusing on the dogs’ biographies, which is only a very small portion of the book. The correct book description was available to AuthorHouse and used by it before in other advertisements, such as an ad in New York Times Sunday Book Review. But since Author Solutions employees who perform Marketing Services for Authors do not read Authors’ books, these mistakes are routine and cause unnecessary delays.

55. On December 4, 2013, Ms. Hostetler sent Plaintiff Wheeler a scan of the second

⁸ “Do I need a literary agent to self-publish a book?” AUTHORHOUSE, <http://www.authorhouse.com/GetPublished/LiteraryAgents.aspx> (last visited February 05, 2015, 7:15 PM).

ad in Baker & Taylor published under the correct genre but with the same incorrect description. That same day, Plaintiff Wheeler complained but received no response.

Advertisement in Bookseller Magazine

56. The Single Slot Ad in Bookseller Magazine was also a part of the Literary Prime Prospect package.

57. Plaintiff Wheeler never received a confirmation that the ad was indeed published in Bookseller Magazine.

58. On November 26, 2013, Plaintiff Wheeler e-mailed Mr. Ocampo expressing her lack of information regarding this service. AuthorHouse never responded to this concern.

Network TV Premium Package

59. According to the description of the Network TV Premium package sent to Plaintiff Wheeler by AuthorHouse, AuthorHouse promised that Plaintiff Wheeler would get the following services, among others:

- (a) **Video Airing on National Cable Networks:** The description of this service included a representation by AuthorHouse that it will “target 100 networks reaching out to 50 million homes in the United States across major cable networks (including all channels of DISH network), plus integration of new network partners.”
- (b) **Customized Marketing Strategy:** In the description of this service, AuthorHouse stated that its advanced targeting system allows AuthorHouse “to search audience attributes, demographics, and content themes to find the best place for [authors’] ads based on viewership data.” AuthorHouse also stated that as a part of this service, “a professional television advertising expert will aid [Plaintiff Wheeler] on which channels and what time slots would work well for [Plaintiff Wheeler’s] book.”
- (c) **More Accountability:** AuthorHouse represented that “with the auction style spot-credit pricing system, we make sure that you only pay for the ads that are actually delivered.”

60. On August 27, 2012, relying on the AuthorHouse’s representations stated in the previous paragraph, Plaintiff Wheeler purchased the Network TV Premium Package for which

she paid \$5,029.

61. On June 6, 2013, Plaintiff Wheeler received an e-mail from Ms. Cortes with airing schedule for the San Francisco area for June 2013 only for the following channels: BRVO-TV, LIF-TV and TVL-TV. Plaintiff Wheeler immediately notified Ms. Cortes that these were not the channels she had requested, to which Ms. Cortes responded that “the channels are randomly generated by our system” and that AuthorHouse has “no control over the list,” contrary to AuthorHouse’s description of the Service.

62. In her e-mail on June 6, 2013, Ms. Cortes also promised to send Plaintiff Wheeler “a proof of fulfillment with the full broadcasting report once the service has been completely fulfilled.” Plaintiff Wheeler never received the promised broadcasting reports.

63. Besides San Francisco area, Plaintiff Wheeler’s commercial was allegedly aired in one other location – Portland, Oregon – on channels BRVO, ENT, MNBC, TBSC, and TRU. But it was not aired nationwide as advertised.

Retail Market Gateway Plus package

64. Plaintiff Wheeler purchased the Retail Market Gateway Plus package on September 25, 2012, because, as stated on the AuthorHouse website, it promised to “[i]ncrease [her] book’s visibility and value in front of thousands of industry decision makers . . .” and to “reach a mass audience” who are “searching for reliable information on the next book to read, title to review or book to stock.”

65. Author Solutions had no basis for making any of these claims. Instead, these claims misled Plaintiff Wheeler into purchasing an expensive Service that Author Solutions knew or should have known was of no value. Furthermore, AuthorHouse did not complete the Service adequately.

66. The package included the following Services: ad in a catalog mailed with Baker & Taylor's Forecast Magazine; Emergent Voices Microsite; ad in a banner at Baker & Taylor homepage; and an e-mail marketing campaign.

67. The ads in the catalog mailed with Forecast Magazine at various times showed a wrong author, genre, and book description.

68. Emergent Voices Microsite, according to AuthorHouse description, is a microsite created by Baker & Taylor where the book would be available for purchase for three months. Plaintiff Wheeler could not find the Emergent Voices microsite when she searched for it online.

69. The banner ad on Baker & Taylor's homepage had a wrong description of the book, focusing on the dog's biography.

70. In the description of the e-mail marketing campaign, AuthorHouse represented that an e-mail marketing the book would be sent to 500,000 recipients "to give [Plaintiff Wheeler's] book marketing an extra boost, allowing [Plaintiff Wheeler] to reach a massive market of book buyers more quickly and more efficiently."

71. Author Solutions has no basis for making this statement. It does not know or analyze who receives the emails from its campaigns and thus cannot determine whether "book buyers" are email recipients, or if Authors have achieved more book sales after purchasing this Service.

Facebook Fan Page

72. The setting up of a Facebook fan page was a Service included in the Social Media Marketing Campaign package, which Plaintiff Wheeler purchased in or about July 2012 together with the Pinnacle Publishing Package for \$2,341.20.

73. On March 22, 2013, Ms. Cortes sent Plaintiff Wheeler an e-mail confirming that

the Facebook page was created.

74. Shortly thereafter, however, Plaintiff Wheeler could not find the Facebook page.

75. Plaintiff Wheeler complained about the missing Facebook page to Ms. Hostetler on the phone and in her e-mail of December 4, 2013 to her various marketing “consultants,” Kelsey Hostetler, Dave Ocampo, Jessie Galves, and Yanie Cortes. AuthorHouse did not resolve this issue.

Radio Interview with Stu Taylor

76. As a part of one of her packages, Plaintiff Wheeler purchased a Service that included a radio interview with radio host Stu Taylor.

77. AuthorHouse’s description of this Service included representations that a radio interview can help Plaintiff Wheeler reach a new customer base and that the author will receive a digital copy of the radio interview for use on her blog, website, e-mail, or future promotions.

78. The interview was recorded on August 9, 2013 via telephone when Mr. Taylor called Plaintiff Wheeler. The same day, Plaintiff Wheeler e-mailed MC Cortes asking for the program, radio station, and airing time of her interview.

79. No one from AuthorHouse ever provided Plaintiff Wheeler this information.

80. On August 16, 2013, Cortes sent Plaintiff Wheeler an mp3 file of the interview, which was cut off in the middle of a sentence near the end of the interview.

81. Plaintiff Wheeler has requested a complete recording of the interview from AuthorHouse multiple times to no avail.

82. Plaintiff Wheeler has also spent significant time and effort to market her book outside of Author Solutions. For instance, she has placed ads in magazines that deal directly with the issues in her book, such as Therapy Dogs Incorporated and Just Labs. On her own initiative,

she also performed book signings at various bookstores, during which time she sold at least 85 copies of her book.

83. In total, Plaintiff Wheeler earned approximately \$1,427.12 in royalties but has no way of verifying whether her earned royalties are accurate and believes that she earned more royalties than reflected in her earnings.

Plaintiff Helen Heightsman Gordon

84. In 2010, Plaintiff Gordon purchased a publishing package with iUniverse for her book, a historical novel *Malinalli of the Fifth Sun: The Slave Girl Who Changed the Fate of Mexico and Spain*. Later, she also purchased an Editorial Package for \$7,059.78 and a Book-to-Screen Package for \$1,999 from iUniverse.

85. Contrary to the representations Author Solutions made to Plaintiff Gordon, as detailed more fully below, Author Solutions never disclosed that its Services were not reasonably designed to increase book sales or to accomplish their stated goal.

Rising Star

86. As part of her publishing package, Plaintiff Gordon received an Editorial Evaluation (“Evaluation”), which, among other things, provided an assessment as to whether Plaintiff Gordon could obtain Editor’s Choice. Her Evaluation indicated that she had been flagged as a possible Editor’s Choice candidate but required her to purchase Editorial Services. Authors who received Editor’s Choice were then eligible to receive Rising Star, an even more prestigious designation.

87. On its website, iUniverse represented that “[m]any recognized authors,” in other words those who received Editor’s Choice and above, “have found greater retail success or even traditional publishing offers.”

88. This claim is false, untrue, or misleading because it implies that Authors who are awarded Editor's Choice and above sell more books or are able to obtain traditional publishing contracts. But iUniverse has no basis for making this claim, because it does not analyze the book sales or publishing offers of its Authors.

89. On its website, iUniverse also represented that Plaintiff Gordon would be able to custom-design her cover; that her book would be "presented to . . . Barnes & Noble"; and that her book would be featured online at Barnes & Noble.

90. Plaintiff Gordon relied on these representations and decided to purchase Editorial Services. She paid \$7,059.78 on January 11, 2011.

91. However, after several communications describing her vision for the cover for her historical novel set in the 16th century, iUniverse used a boilerplate stock photo that displayed modern-dressed tourists climbing a well-known tourist destination. It misrepresented the setting and made a wrong impression of the subject. This misjudgment harmed the book's chances for retail success.

92. Plaintiff Gordon complained to iUniverse about the poor cover image on numerous occasions, including via e-mails to her iUniverse Marketing Consultants, Kelsy Conner and Jed Michael, on January 4, 2013 and again on May 10, 2013.

93. iUniverse never corrected Plaintiff Gordon book's cover design. Furthermore, Plaintiff Gordon was unable to find her book using the link sent to her by Barnes & Noble, nor was her book "presented" to Barnes & Noble in any meaningful way. iUniverse simply emailed the marketing information and order sheets.

Book-to- Screen PitchFest Package ("PitchFest" Package)

94. In 2011, Plaintiff Gordon purchased a PitchFest package for \$1,999.

95. As a part of advertising this package, iUniverse represented on its website, at all relevant times, that the PitchFest is the Author's chance to meet "face-to-face" with film and television representatives hoping to discover the next great book they can adapt for the screen. iUniverse also represented to Plaintiff Gordon that the PitchFest package is a rare opportunity to have several Hollywood production company representatives in one location, all anxiously waiting to hear her story.

96. Plaintiff Gordon relied on these representations when purchasing the PitchFest package.

97. Plaintiff Gordon attended the PitchFest event in 2011, covering the travel and accommodation expenses out of her own pocket. However, the services included in the package were not reasonably designed to fulfill their represented goal, nor were they organized for the Authors' benefit.

98. iUniverse failed to match the interests of the Hollywood representatives with the books' genres or adaptation format, such as television or movie. Plaintiff Gordon believed her book was better suited for film adaptation and indicated so on her questionnaire. However, at the PitchFest, Plaintiff Gordon spoke primarily with "Hollywood" representatives who were looking for TV shows and movies of various genres not suitable to Plaintiff Gordon's book.

99. The Hollywood representatives were not decision-makers for their production companies and Author Solutions representatives refused to provide Plaintiff Gordon with their contact information because they did not want her to follow up with them.

CLASS ACTION ALLEGATIONS

100. Plaintiffs bring this action as a class action pursuant to Rule 23(a), Rule 23(b)(2), and Rule 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves individually

and all others similarly situated who have purchased Publishing Packages and/or Services from Defendant (the “Class”), who have been deceived, from April 26, 2007 through the present (the “Class Period”).

101. Excluded from the class is Defendant, Defendant’s employees and any entity in which the Defendant has a controlling interest, and their legal representatives, officers, directors, assignees and successors.

102. Plaintiffs also bring this action on behalf of two subclasses:

Subclasses

California: All persons residing in California who purchased a Publishing Package and/or Services from Defendants in conjunction with their work(s) whose Services have not been fulfilled since April 26, 2009.

Senior Authors: All individuals at least sixty years of age who purchased a Publishing Package and/or Services from Defendants in conjunction with their work(s) whose Services have not been fulfilled since July 1, 2013.

103. **Numerosity/Impracticability of Joinder:** The members of the Class are so numerous that joinder of all members would be impracticable. In 2011 alone, Defendant sold 27,500 Publishing Packages to authors. The precise number of Class members can be ascertained by reviewing documents in Defendant’s possession, custody, and control.

104. **Commonality and Predominance:** There are common questions of law and fact which predominate over any questions affecting only individual members of the Class and/or the Subclasses. These common legal and factual questions include, but are not limited to, the following:

- (a) Whether Defendant engaged in deceptive practices in violation of Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.1 *et seq.*, the Indiana Senior Consumer Sales Act, Indiana Code §24-4.6-6-1 *et seq.*, and California’s Unfair Competition Law, Business and Professions Code §§ 17200, *et seq.*, 17500, *et seq.*, (“UCL”).

- (b) Whether Defendant's representations of its Publishing Packages or Services have the capacity, tendency, or effect of deceiving or misleading consumers;
- (c) Whether Defendant's representations relating to its Publishing Packages or Services suggest a sponsorship, approval, status, affiliation, or connection which it does not have;
- (d) Whether Plaintiffs and the Class were injured as a result of Defendants' deceptive conduct;
- (e) Whether Plaintiffs and the Class have conferred a benefit upon Defendant;
- (f) Whether it is inequitable for Defendant to retain payment for Services that it misrepresented;
- (g) Whether Defendant's made false, untrue, or misleading representations relating to its Publishing Packages or Services with the intention of luring Plaintiffs into purchasing expensive Publishing Packages or Services;
- (h) Whether Defendant acted in such a manner as to prevent Plaintiffs and members of the Class from receiving the benefits of their contracts;
- (i) Whether Author Solutions deceptively marketed its Publishing Packages and other Services;
- (j) Whether a reasonable person would have purchased Marketing Services from Author Solutions if Author Solutions had disclosed that it knew of no correlation between its Services and book sales;
- (j) Whether a reasonable person would have purchased packages or other Services if Author Solutions had disclosed that its "consultants" were commissioned salespeople; and
- (k) Whether a reasonable person would have purchased the Services had Author Solutions disclosed what it knew about their value.

105. **Typicality:** The Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all Class members have been injured by the same wrongful practices in which Defendant has engaged. Plaintiffs' claims arise from the same practices and course of

conduct that give rise to the claims of all Class members and are based on the same legal theories.

106. **Adequacy**: Plaintiffs are representatives of who will fully and adequately assert and protect the interests of the Class, and have retained class counsel who are experienced and qualified in prosecuting class actions. Neither Plaintiffs nor their attorneys have any interests which are contrary to or conflicting with the Class.

107. **Superiority**: A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class members is economically unfeasible and procedurally impracticable. The individual damages incurred by each Class member resulting from Defendant's wrongful conduct are too small to warrant the expense of individual suits. The likelihood of individual Class members prosecuting their own separate claims is remote, and even if every Class member could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Individual members of the Class do not have a significant interest in individually controlling the prosecution of separate actions, and individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all of the parties and to the court system because of multiple trials of the same factual and legal issues. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action. Plaintiffs and the Class do not anticipate any difficulty in the management of this litigation.

COUNT ONE
UNJUST ENRICHMENT

108. Plaintiffs repeat and re-allege the allegations set forth herein and further allege:

109. Plaintiffs and the Class have conferred a benefit upon Defendant in the form of

payment for one or more of the Services Defendant sold and failed to provide either in whole or in part.

110. Defendant has also retained payments from Plaintiffs and members of the Class for Marketing Services that were not fulfilled properly.

111. Defendant created the expectation that it would execute Services professionally, with proper care, in a timely fashion, and with the goal of increase book sales to Plaintiffs and members of the Class.

112. Instead, Defendant has failed to design Services effectively to increase book sales or to promote the Author's book in the manner that Author Solutions represented it would.

113. Defendant has also failed to fulfill Services in a profession manner, with a reasonable amount of case.

114. It is inequitable for Defendant to payment for Services that Defendant failed to carry out as promised.

COUNT TWO
FRAUD

115. Plaintiffs repeat and re-allege the allegations set forth herein and further allege:

116. Defendant represented to Plaintiff and the Class through websites, emails, and phone calls that its Services had the effect or were designed to have the effect of increasing book sales or were effectively designed to accomplish their stated goal, such as an optioned film or a traditional publishing contract.

117. Defendant made these statements with the intention of luring Plaintiffs to purchase expensive Publishing, Editorial, and Marketing Services.

118. Defendant knew or should have known, at all times, that these representations were false or untrue, because: a) the Company has never analyzed whether the hundreds of

Services it offered to Plaintiffs and the Class had any effect on an author's book sales, nor did it reasonably design Services to increase an author's book sales; b) Defendant did not analyze whether its Services were effective at accomplishing the task the Service was allegedly designed to accomplish; and c) Defendant's top executives state that book sales are not the goal of its Services, even while they failed to inform Plaintiffs and the Class of this material fact.

119. These representations and statements made by Defendants were material to Plaintiffs and the Class in inducing them to purchase Services.

120. Plaintiffs and the Class had no reason to believe and did not know that the representations Defendant made were false. Plaintiffs relied on Defendant's statements.

121. As a result of the above conduct, Defendant engaged in fraud and violated Plaintiffs' rights and protections guaranteed by Indiana law and other applicable law.

COUNT THREE
INDIANA DECEPTIVE CONSUMER SALES ACT
(INDIANA CODE § 24-5-0.1 *et seq.*)

122. Plaintiffs repeat and re-allege the allegations set forth herein and further allege:

123. Author Solutions's practice of selling Publishing Packages and Marketing Services constitutes a "consumer transaction" within the Burns Ind. Code Ann. § 24-5-0.5-2(a)(1), as it is "a sale . . . assignment, award by chance, or other disposition of . . . a service, or an intangible."

124. Author Solutions is a "supplier" within § 24-5-0.5-2(3), because it is a "seller . . . who regularly engages in or solicits consumer transactions . . ."

125. Author Solutions engaged in "deceptive acts" within § 24-5-0.5-3 generally and § 24-5-0.5-3(a)(1) and (10) specifically by representing that:

- a. the Services Author Solutions sold to Plaintiffs "ha[ve] sponsorship, approval, performance, characteristics, accessories, uses, or benefits [they do] not have which [Author Solutions] knows or should reasonably know [they do] not

have.” § (a)(1).

- b. Author Solutions “is able to deliver or complete the [services sold to Plaintiffs] within a stated period of time, when [Author Solutions] knows or should reasonably know Author Solutions could not.” § (a)(10) Author Solutions routinely fails to deliver Marketing Services within the allotted time.

126. Defendant falsely claimed or conveyed the impression that Author Solutions’s Services had the following characteristics or benefits:

- a. that Defendant was an “indie publisher” that would create a professionally published and marketable work that was “primed for retail success”;
- b. that the primary goal of the Publishing and/or Marketing Services was to increase the marketability of an author’s work(s) and increase the Author’s book sales;
- c. that the Services were specifically designed to increase the marketability of an author’s work(s) and increase the author’s book sales;
- d. that the services for Marketing Services would be provided in a timely and diligent manner, with the proper care.

127. Author Solutions’s actions were “incurable” within the meaning of § 24-5-0.5-2(a)(8), since it is “a deceptive act done by a supplier as part of a scheme, artifice, or device with intent to defraud or mislead . . .”

128. The Court may increase damages for a willful deceptive act in an amount that does not exceed the greater of three times the actual damages of the consumer suffering the loss or \$1,000. § 24-5-0.5.4(a)(1) and (2).

129. Plaintiffs are entitled to damages, together with interest, costs and attorney’s fees pursuant to § 24-5-0.5.4(a)(1) and (2).

COUNT FOUR
INDIANA SENIOR CONSUMER PROTECTION ACT
(INDIANA CODE § 24-4.6-6-1 *et seq.*)
(Indiana Senior Consumer Subclass)

130. Plaintiff Wheeler repeats and realleges the allegations set forth herein and further

allege:

131. Burns Ind. Code Ann. § 24-4.6-6-2(a) states that “[t]his chapter shall be liberally construed and applied to protect senior citizens.”

132. A “senior consumer” is an individual of at least sixty years of age. § 24-5-0.5-2(a)(11).

133. Plaintiff Wheeler is at least sixty years of age.

134. “Deception” under § 24-4.6-6-4 of the statute is defined as a:

- (A) misrepresentation or omission of any material fact relating to the terms of a contract or agreement entered into with a senior consumer or to the existing or pre-existing condition of any of the property involved in such a contract or agreement; or
- (B) the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a senior consumer to enter into a contract or agreement.

135. Author Solutions committed “financial exploitation of a senior” under § 24-4.6-6-4(a-b), which states that:

- a. A person commits financial exploitation of a senior consumer when the person knowingly and by deception or intimidation obtains control over the property of a senior consumer or illegally uses the assets or resources of a senior consumer.
- b. The illegal use of the assets or resources of a senior consumer includes, but is not limited to, the misappropriation of those assets or resources by undue influence, breach of a fiduciary relationship, fraud, deception, extortion, intimidation, or use of the assets or resources contrary to law.

136. Author Solutions engaged in financial exploitation of senior consumers when it knowingly and by deception sold Publishing Packages and Services to senior consumers that were not reasonably designed to market and/or increase the sales of books when Author Solutions had expressly represented otherwise through Approval Forms, telephone conversations, and on its websites.

137. The Indiana Subclass of Senior Consumers is entitled to a reimbursement “for any damages incurred or for the value of the property or assets lost as a result of the violation or violations of this chapter.” § 24-4.6-6-5(b)(2).

138. Author Solutions committed these violations knowingly. As a result, the Indiana Subclass of Senior Consumers are entitled to twice the amount of damages incurred and a \$5,000 civil penalty per violation for each consumer. § 24-4.6-6-5(c)(1). The Court may increase this amount to up to three times the amount for knowing violations. § 24-4.6-6-5(f)(3).

139. The Indiana Subclass of Senior Consumers are entitled to reasonable attorneys fees. § 24-4.6-6-5(d).

COUNT FIVE
CALIFORNIA BUSINESS AND PROFESSIONS CODE
(CAL. BUS. & PROF. CODE § 17500, ET SEQ. – Untrue Advertising)
(California Subclass)

140. The Plaintiffs repeat and reallege the allegations set forth herein and further allege:

141. Plaintiffs assert this cause of action for violations of California Business and Professions Code § 17500, *et seq.*, for untrue advertising against Defendants.

142. At all material times, as stated in more detail above, Defendants made false, untrue, or misleading statements, including but not limited to statements about the quality, timeline of completion, and the goal of the Services offered to induce authors to purchase Publishing Packages and Services from Author Solutions.

143. Defendants have made these representations on their website, email correspondence with its authors, Approval Forms, and other written materials, and through telephone communications with Plaintiffs and members of the California Class.

144. Defendants falsely claimed or conveyed the impression of the following:

- a. that Defendants would create a professionally published and marketable work that was “primed for retail success”;
- b. that publishing and marketing Services would be rendered by professionals and that such Services would improve the quality and marketability of the authors’ work(s);
- c. that Services would enhance an author’s reputation or increase book sales; and
- d. that the Marketing Services would be provided in a timely and diligent manner, with the proper level of care.

145. These statements were false, untrue, or misleading because Author Solutions did not analyze whether its Services were effective at selling books or increasing the marketability of a book and did not design Services with those specific goals in mind.

146. As a result of Defendants’ false advertising, Plaintiffs and members of the California Class suffered economic injury in that they lost money or property by paying for Services that were never delivered.

147. The economic injury suffered by Plaintiffs and members of the California Class was caused by their reliance on Defendants’ false advertising, as Plaintiffs and members of the California Class reasonably relied on Defendants’ advertising in purchasing Services that were never delivered and/or Services that were not executed as promised.

148. Defendants knew or by the exercise of reasonable care should have known that the statements regarding the effectiveness of publishing, editing, and marketing Services, and who was rendering such Services, were untrue or misleading. Statements made by Defendants were not mere puffery.

149. Consumers, including Plaintiffs and members of the California Class, necessarily and reasonably relied on Defendants’ statements.

150. Consumers, including Plaintiffs and members of the California Class, were among

the intended targets of these representations and statements.

151. The above acts of Defendants, in disseminating said misleading and deceptive representations and statements throughout the State of California to consumers, including to Plaintiffs and members of the California Class, were and are likely to deceive reasonable consumers by obfuscating the nature of Defendants' business practices, all in violation of the "untrue" prong of California Business and Professions Code § 17500, *et seq.*

152. Plaintiffs and members of the California Class, pursuant to California Business and Professions Code § 17535, are entitled to an order of this Court enjoining such future wrongful conduct on the part of Defendants, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and restore to any person in interest any money paid to Defendants as a result of its deceptive marketing scheme.

COUNT SIX
CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE § 17200, ET SEQ. – Unlawful Business Acts and Practices)
(California Subclass)

153. Plaintiffs repeat and reallege the allegations set forth herein and further allege:

154. Such acts of Defendants, as described herein, and each of them, constitute unlawful business acts and practices.

155. The business practices alleged above are unlawful under Business and Professions Code § 17200, *et seq.* ("UCL") by virtue of violating Business and Professions Code § 17500, *et seq.*, which forbids untrue advertising and misleading advertising.

156. Defendants have engaged in the following unlawful acts:

- a. Falsely claiming or conveying the impression to Plaintiffs and members of the California Class that Author Solutions would create professionally published books "primed for retail success";
- b. Selling Services to Plaintiffs and members of the California Class by

falsely claiming or conveying the impression that such Services would be rendered by professionals and that such Services would improve the quality, marketability, or book sales of the Authors' work(s);

- c. Selling marketing Services to Plaintiffs and members of the California Class by falsely claiming or conveying the impression that such Services would be provided in a timely and diligent manner, with the proper level of care.

157. As a result of the wrongful business practices described above, Plaintiffs and members of the California Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future wrongful conduct on the part of Defendants and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore to any person in interest any money paid for the products as a result of the wrongful conduct alleged herein.

158. Plaintiffs and members of the California Class have been injured and have suffered a monetary loss as a result of Defendants' violations of the UCL.

159. As a result of Defendants' violations of the UCL, Plaintiffs and members of the California Class are also entitled to attorney fees and costs to be paid by Defendants, as provided by California Code of Civil Procedure § 1021.5 and other applicable law.

COUNT SEVEN
CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE § 17200, ET SEQ. – Unfair Business Acts and Practices)
(California Subclass)

160. Plaintiffs repeat and reallege the allegations set forth herein and further allege:

161. Such acts of Defendants, as described herein, and each of them, constitute unfair business acts and practices.

162. Plaintiffs and other members of the California Class suffered a substantial injury by purchasing Publishing Packages and/or Services from Defendants that they would not have

bought absent Defendants' unfair advertising.

163. The business practices alleged above have hurt the general public.

164. Defendants' conduct harms competition and is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

165. Defendants aggressively lure authors into purchasing expensive Publishing Packages and/or Services with false promises with respect to increased book sales and quality and design of Services. These books could otherwise have been published through vanity presses or other self-publishing companies.

166. Defendants also profit from rushing books through to publication, whether or not they are "primed for retail success," in order to claim revenue and begin the aggressive sales calls from Marketing Consultants and Book Consultants.

167. There is no benefit to consumers or competition by falsely advertising the value of its Publishing Packages or quality of Services and by failing to disclose the true nature of its business. Indeed, the harm to the consumers and competition is substantial and greatly outweighs any benefits that the conduct may have.

168. As a result of the business acts and practices described above, Plaintiffs and members of the California Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future wrongful conduct on the part of Defendants, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore to any person in interest any money paid for Defendants' services as a result of the wrongful conduct of Defendants.

169. Plaintiffs and members of the California Class have been injured and have suffered a monetary loss as a result of Defendants' violations of the UCL.

170. As a result of Defendants' violations of the UCL, Plaintiffs and members of the California Class are also entitled to attorney fees and costs to be paid by Defendants, as provided by California Code of Civil Procedure § 1021.5 and other applicable law.

COUNT EIGHT
CALIFORNIA UNFAIR COMPETITION LAW
(CAL. BUS. & PROF. CODE § 17200, ET SEQ. – Fraudulent Business Acts and Practices)
(California Subclass)

171. Plaintiffs repeat and reallege the allegations set forth herein and further allege:

172. Such acts of Defendants as described herein, and each of them, constitute fraudulent business practices under California Business and Professions Code § 17200, *et seq.*

173. A fraudulent act is an act in which members of the public are likely to be deceived. The business practices alleged herein and Defendant's false advertising made it probable that a significant portion of the general consuming public could be misled.

174. As more fully described herein, Defendants deceived the general public and lured Authors into purchasing expensive Publishing Packages and Services by doing the following:

- a. Falsely claiming or conveying the impression to Plaintiffs and members of the California Class that Author Solutions would create professionally published books "primed for retail success";
- b. Selling Publishing and Editing Services to Plaintiffs and members of the California Class by falsely claiming or conveying the impression that such Services would be rendered by professionals and that such Services would improve the quality and marketability of the Authors' work(s);
- c. Selling publishing and editing Services to Plaintiffs and members of the California Class by baiting them with a potential Editor's Choice or Rising Star designation ("Recognition Programs"), and by failing to disclose relevant information, such as the type, quantity, and price of subsequent services Plaintiffs and members of the California Class would be required to purchase to receive such status;
- d. Selling marketing Services to Plaintiffs and members of the California Class by falsely claiming or conveying the impression that such Services would enhance an Author's reputation or increase book sales; and

- e. Selling Marketing Services to Plaintiffs and members of the California Class by falsely claiming or conveying the impression that such Services would be provided for the duration of the time allotted for the campaign.

175. Said acts are fraudulent business acts and practices.

176. As a result of these fraudulent business acts and practices, Plaintiffs and members of the California Class were misled into purchasing expensive Publishing Packages and/or paying for Services that were never delivered.

177. As a result of the business acts and practices described herein, Plaintiffs and members of the California Class, pursuant to Business and Professions Code § 17203, are entitled to an order enjoining such future wrongful conduct on the part of Defendants, and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore to any person in interest any money paid for the services at issue as a result of the wrongful conduct of Defendants.

178. Plaintiffs and members of the California Class have been injured and have suffered a monetary loss as a result of Defendants' violations of the UCL.

179. As a result of Defendants' violations of the UCL, Plaintiff and members of the California Class are also entitled to attorneys' fees and costs to be paid by Defendants, as provided by California Code of Civil Procedure § 1021.5 and other applicable law.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, on behalf of themselves and the other members of the Class, respectfully pray that:

A. 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. The Court award the Plaintiffs and the Class compensatory damages believed to exceed \$5,000,000, including any additional monies paid by Class members for the purchase of any services sold by Defendant that were not delivered, either in whole or in part;

C. 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;

D. Plaintiffs and the class recover the costs and expenses of suit, pre- and post-judgment interest, and reasonable attorney fees as provided by law;

E. Defendant be ordered to pay restitution to Plaintiffs and the Class; and

F. 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.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all causes of action so triable.

Dated: Indianapolis, Indiana
March 23, 2015

Brian C. Hewitt
ALERDING CASTOR HEWITT LLP
47 S. Pennsylvania St.
Suite 700
Indianapolis, IN 46204
Telephone: (317) 829-1910
bhewitt@aleringcastor.com

Oren Giskan
O. Iliana Konidaris
GISKAN SOLOTAROFF ANDERSON &
STEWART LLP
11 Broadway, Suite 2150
New York, NY 10004
Telephone: (212) 847-8315
ogiskan@gslawny.com
ikonidaris@gslawny.com

Daniel Lynch
James L. Thompson
LYNCH STERN THOMPSON LLP
150 South Wacker Drive, Suite 2600
Chicago, IL 60606
Telephone: (312) 346-1600
dlynch@lstllp.com
jthompson@lstllp.com