

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND**

|                       |   |                     |
|-----------------------|---|---------------------|
| DARLA YOOS, et al.    | ) |                     |
|                       | ) |                     |
| Plaintiff             | ) |                     |
|                       | ) |                     |
| v.                    | ) | Case No. 12-cv-1696 |
|                       | ) |                     |
| PUBLISH AMERICA, LLLP | ) |                     |
|                       | ) |                     |
| Defendant             | ) |                     |
|                       | ) |                     |
| _____                 | ) |                     |

**DEFENDANT’S MOTION TO DISMISS AND TO STRIKE**

Pursuant to Fed. R. Civ. Proc. 12, Defendant Publish America, LLLP (“PA”), moves to dismiss the complaint for failure to state a claim and to strike immaterial allegations therein. The Court should dismiss the claims brought by Plaintiffs under the Maryland Consumer Protection Act (“CPA”) because Plaintiffs are not consumers; they have entered into a commercial enterprise with PA pursuant to which they split the proceeds from sales of their literary work made by PA. This profit sharing relationship is not a relationship that is protected by the (“CPA”). Plaintiffs’ declaratory judgment count should also be dismissed since the underlying CPA claim is defective. Furthermore, Plaintiffs are not entitled to quasi-contract remedies for unjust enrichment because their claims arise from contractual relationships with PA.

For the foregoing reasons, as more fully explained in the accompanying memorandum, Plaintiffs' claims should be dismissed with prejudice and the allegations in paragraphs 23-35, 40-41, 47-53, and 56-71 should be stricken.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Fed. R. Civ. Proc. 5(a) and LR 103(1)(C), a true and correct copy of the foregoing Motion, and all supporting papers, was served electronically pursuant to the Court's CM/ECF systems to counsel for Plaintiffs, including: John B. Isbister, Daniel S. Katz, Tydings & Rosenberg LLP, 100 East Pratt Street, 26<sup>th</sup> Floor, Baltimore, MD 21202, on March 30, 2012.

/s/ \_\_\_\_\_

Victor Cretella