

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF DUPAGE )

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT  
DUPAGE COUNTY, ILLINOIS

WILLIAM ALEXANDER MALARKEY, )  
 )  
 ) **Plaintiff,** ) **CASE NO. 2018L000388**  
 )  
 ) **v.** )  
 )  
 ) **TYNDALE HOUSE PUBLISHERS, INC.,** ) **JURY DEMANDED BY**  
 ) **PLAINTIFF**  
 ) **Defendant.** )



**ORIGINAL COMPLAINT AT LAW**

NOW COMES, the Plaintiff, WILLIAM ALEXANDER MALARKEY (“Alex”), by and through his attorneys, GIBBS LAW FIRM, P.A. and JONATHAN P. REMIJAS, and complain of the Defendant, TYNDALE HOUSE PUBLISHERS, INC. (“Tyndale House”), as follows:

**NATURE OF THE ACTION**

1. This action is brought to seek redress of damages suffered by Alex and caused by Tyndale House pursuant to the Illinois’ Right of Publicity Act, 765 ILCS 1075/1, et seq.; Illinois common law regarding publicity given to private life; Illinois common law regarding publicity placing a person in a false light; Illinois common law regarding intrusion upon the seclusion of another; Illinois common law regarding defamation; the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2; and the Illinois statute regarding Financial Exploitation of an Elderly Person or a Person with a Disability, 720 ILCS 5/17-56(g).

## **VENUE AND JURISDICTION**

2. This Court has venue and jurisdiction over the above-listed causes of action, wherein a substantial part of the events or omissions giving rise to these claims occurred at Tyndale House's principal place of business in Carol Stream, DuPage County, Illinois.

3. Tyndale House is subject to service of process through its registered agent, Paul Mathews, at 351 Executive Drive in Carol Stream, Illinois.

4. The book that is the primary focus of the instant litigation was published at Tyndale House's principal place of business in Carol Stream, Illinois.

## **THE PARTIES**

5. Alex is a young man who will turn twenty (20) years of age on April 11, 2018. On November 14, 2004 Alex was permanently paralyzed as a quadriplegic in a car accident that was caused by the negligence of his father, Kevin Malarkey. The accident was so severe that an on-scene official requested that a coroner be called to the scene. As a result of the accident, Alex spent two months in a coma. Alex's father, Kevin Malarkey, concocted a story that, during the time Alex was in a coma, he had gone to Heaven, communicated with God the Father, Jesus, angels, and the devil, and then returned. Kevin Malarkey sold the concocted story, allegedly about Alex's life and what Alex allegedly experienced, to one of the largest Christian publishers in the country, Tyndale House. On July 2, 2010, Tyndale House published the book, but never paid Alex anything. Alex currently resides in Huntsville, Ohio and is dependent on Social Security.

6. Tyndale House is one of the largest Christian publishers in the country. Tyndale House was founded in 1962 by Dr. Kenneth N. Taylor to publish The Living Bible. It also publishes Christian fiction, nonfiction, children's books, and other resources, including

Bibles in the New Living Translation. Although Tyndale House is incorporated in Delaware, it is authorized to do business in the State of Illinois, where it maintains a registered agent for purposes of service of process. Tyndale House's publishing headquarters are located in Carol Stream, DuPage County, Illinois. Tyndale House products include many New York Times best sellers, including the popular Left Behind fiction series by Tim LaHaye and Jerry B. Jenkins. On July 2, 2010, Tyndale House published the book, purportedly about Alex's life, "The boy who came back from heaven" ("the Book"). In the Book's first year of sales, Tyndale House sold 112,386 copies. In 2013, Tyndale House received a platinum award from the Evangelical Christian Publishers Association for selling over one million copies of the Book. On information and belief, in or around 2010, Tyndale House sold the story rights for the Book to Franklin Films to produce a television movie by the same name. Despite the huge revenues received from the Book, Tyndale House never paid Alex anything.

#### **FACTS COMMON TO ALL ALLEGATIONS**

7. On information and belief, in or around 2009, Tyndale House entered into a contract ("Contract") to publish the Book.
8. Alex was not a party to the Contract.
9. On July 2, 2010, Tyndale House published the Book.
10. On the front cover of both the hardcover and paperback versions of the Book, the authors are identified as "KEVIN & ALEX MALARKEY."
11. On the front cover of both the hardcover and paperback versions, the Book is described as "a true story."
12. The Book is allegedly "about Alex and his experiences."

13. In its first year of sales, the Book sold 112,386 copies.
14. In 2013, Tyndale House received a platinum award from the Evangelical Christian Publishers Association for selling over one million copies of the Book.
15. In addition to the Book, Tyndale House also published an unabridged audio version of the Book on C.D. and a D.V.D. “documentary” titled “The boy who came back from heaven.”
16. On information and belief, in or around 2010, Tyndale House sold the story rights from the Book to Franklin Films, or another television production company.
17. Therefore, the Book sold over one million (1,000,000) copies, in addition to revenues from the audiobook, the D.V.D. “documentary,” and television movie rights.
18. Despite the fact that the Book sold over one million copies, in addition to revenue from the audio book, DVD “documentary,” and movie rights, Tyndale House never paid Alex anything.
19. In August of 2011, while still a minor, Alex described the Book as “one of the most deceptive books ever.”
20. Now that he is an adult, Alex desires to have his name completely disassociated from the Book and seeks a permanent injunction against Tyndale House requiring it to do everything within reason to disassociate his name from the Book.
21. In January of 2015, while still a minor, Alex released an open letter stating that the account of his alleged journey to Heaven was fictional.
22. On January 15, 2015, Tyndale House announced that it was taking “the book and all ancillary products out of print.”

23. On January 26, 2018, Counsel for Alex wrote Tyndale House, via its registered agent, “request[ing] an accounting of all revenues earned from, all expenses associated with, and all disbursements made in association with the publication of and sale of the Book.”

24. In the January 26, 2018 letter, Counsel for Alex also requested to know whether “Tyndale House followed the process established in chapter 820 of the Illinois Compiled Statutes, 820 ILCS 20/1, et seq. to have the publishing contract for the publication of Alex’s alleged autobiography, ‘The Boy Who Came Back from Heaven,’ approved by an Illinois circuit court.”

25. On February 14, 2018, Counsel for Tyndale House responded advising that Tyndale House would provide a “copy of accountings required under that contract,” if “Alex agrees that the Publishing Agreement is in effect and binding.”

26. Alex has never been permitted to read the publishing Contract, nor has he ever been permitted to review any accountings required by the publishing Contract.

27. Because Alex has never been permitted to read the Contract, nor to review any accountings provided under the Contract, he refuses to acknowledge that the Contract “is in effect and binding,” now that he has reached the age of majority.

28. Because Alex is unwilling to agree that the Contract “is in effect and binding,” Tyndale House is unwilling to provide an accounting of the revenues it received, as a result of the Contract.

29. On information and belief, based on Tyndale House’s February 14, 2018 letter, Tyndale House did not have the Contract approved by an Illinois circuit court, pursuant to

Illinois Compiled Statutes, 820 ILCS 20/1, et seq., despite the fact that Tyndale House had every opportunity to do so.

30. On information and belief, based on the number of copies the Book sold, the sale of ancillary publications, and the sale of television movie rights, it appears that Tyndale House made millions of dollars from the Book, an alleged autobiography of Alex's life.

31. On information and belief, despite the fact that Tyndale House made millions of dollars off Alex's identity and an alleged autobiographical story of his life, Tyndale House paid Alex, a paralyzed young man, nothing.

32. Alex survives on Social Security payments and support from his mother. They are on the verge of being homeless.

**COUNT I**  
**APPROPRIATION OF NAME OR LIKENESS OF ANOTHER**

33. Alex, realleges and incorporates herein by reference the allegations made in Paragraphs 1 – 32.

34. In its Right of Publicity Act, Illinois recognizes an individual's ownership of the right of publicity in Illinois Compiled Statutes 765 ILCS 1075/10, which provides: "The right to control and to choose whether and how to use an individual's identity for commercial purposes is recognized as each individual's right of publicity."

35. 765 ILCS 1075/35(b), "Applicability" provides, in relevant part:

(b) This Act does not apply to the following:

(1) use of an individual's identity in an attempt to portray, describe, or impersonate that individual in a live performance, a single and original work of fine art, play, **book**, article, musical work, **film**, radio, **television**, or **other audio**, visual, or audio-visual work, provided that the performance, work, play, book, article, or film does not constitute in and of itself a commercial advertisement for a product, merchandise, goods, or services;

...

**(3) use of an individual's name in truthfully identifying the person as the author of a particular work** or program or the performer in a particular performance;

**(4) promotional materials, advertisements, or commercial announcements for a use described under paragraph (1), (2), or (3) of this subsection . . .**

765 ILCS 1075/35(b) (emphasis added).

36. The dust cover and title page of the hardcover version of the Book identify the authors of the Book as: "Kevin & Alex Malarkey."
37. The front cover and title page of the paperback version of the Book identify the authors of the Book as "Kevin & Alex Malarkey."
38. Alex Malarkey did not write the Book or any portion of it.
39. Alex did not consent to be identified as the author of the Book.
40. At the time the publishing Contract for the Book was signed, Tyndale House knew that the material contained in the Book was not an accurate depiction of Alex's life and experiences.
41. At the time the publishing Contract for the Book was signed, Tyndale House knew that Alex was not an author of the Book.
42. The Acknowledgements of the Book identify it as "Alex's story."
43. In August of 2011, Alex Malarkey described the Book as "one of the most deceptive books ever."
44. The dust cover of the hardcover book contains an image of a boy in a wheelchair that is clearly intended to be understood as an image of Alex.

45. The image on the dust cover of the hardcover book that consists of an image of a boy in a wheelchair that is clearly intended to be Alex was widely used by Tyndale House in promotional materials, advertisements, and commercial advertisements for the Book.

46. The Book was published in Carol Stream, Illinois.

47. Because Alex is not an author of the Book, Tyndale House's use of Alex's name as the author of the Book is a violation of Illinois' Right of Publicity Act.

48. Tyndale House sold over one million copies of the Book, in addition to the audiobook, D.V.D. "documentary," and television movie rights.

49. On information and belief, in order to accomplish the sale of over one million copies of the Book and ancillary publications, Tyndale House promoted the Book in promotional material, advertisements, or commercial advertisements.

50. One example of the advertising that Tyndale House used to promote the ancillary publications is an advertisement in the back of the hardcover copy of the Book. The advertisement encourages readers to "Continue the journey with Keven and Alex" and promotes the sale of the audiobook and D.V.D. "documentary."

51. On information and belief, in its promotional materials, advertisements, and commercial advertisements, Tyndale House identified Alex as an author of the Book.

52. Because Alex is not an author of the Book, Tyndale House's use of Alex's name in promotional materials, advertisements, and commercial advertisements as an author of the Book is a violation of Illinois' Right of Publicity Act.

53. With respect to damages, Illinois Compiled Statutes 765 ILCS 1075/40 provides:

(a) A person who violates Section 30 of this Act [765 ILCS 1075/30] may be liable for either of the following, whichever is greater:

- (1) actual damages, profits derived from the unauthorized use, or both; or
- (2) \$1,000.



(b) Punitive damages may be awarded against a person found to have willfully violated Section 30 of this Act [765 ILCS 1075/30].

54. Because Tyndale House used Alex's name and identity as an author of the Book without Alex's consent, Tyndale House is responsible to Alex for profits derived from the unauthorized use of his name as the author of the Book.

55. Because Tyndale House willfully used Alex's identity for commercial purposes during his lifetime without his consent, Alex is entitled to punitive damages from Tyndale House.

56. Additionally, Alex seeks a permanent injunction against Tyndale House requiring it to take all steps reasonably possible to disassociate Alex's name from the Book.

**WHEREFORE**, Alex demands judgment against Defendant Tyndale House for compensatory damages in an amount at least equal to the amount of profits derived from the sale of the Book and punitive damages. These amounts will exceed \$50,000.00. Additionally, Alex seeks a permanent injunction against Tyndale House requiring it to take all steps reasonably possible to disassociate Alex's name from the Book.

**COUNT II**  
**PUBLICITY GIVEN TO PRIVATE LIFE**

57. Alex, realleges and incorporates herein by reference the allegations made in Paragraphs 1 – 32.

58. The State of Illinois recognizes the tort of publicity given to private life. *Lawlor v. N. Am. Corp. of Ill.*, 983 N.E.2d 414, 424 (Ill. 2012).

59. Illinois defines the tort of publicity given to private life as: "One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy, if the matter publicized is of a kind that

- (a) would be highly offensive to a reasonable person, and
- (b) is not of legitimate concern to the public.

*Id.*

- 60. Here, Tyndale House published the Book, which sold over one million copies.
- 61. The Book was published in Carol Stream, Illinois.
- 62. The Book was a “NEW YORK TIMES BESTSELLER.”
- 63. On information and belief, the Book, in order to achieve New York Times Bestseller status and sell over one million copies, was the subject of significant promotional and advertising efforts by Tyndale House.
- 64. The subject matter of the Book is “Alex and his experiences.”
- 65. The Book describes Alex’s alleged near-death experience while he was in a coma for two (2) months.
- 66. Alex’s recovery from the deadly car crash that left him a quadriplegic for life and what he experienced, or allegedly experienced, during that recovery process is a matter concerning Alex’s “private life” and is not a matter of legitimate concern to the public.
- 67. Alex’s recovery process and what he experienced during that recovery process is not a matter of public concern that is appropriate for news coverage.
- 68. While there was public interest regarding the fact that Alex received the “Christopher Reeve surgery,” no news organization could reasonably have reporters camped-out in Alex’s hospital room during his recovery from his nearly fatal injuries to report on his experiences and sensations, while he was in a coma.
- 69. Further, because the contents of the Book are false with respect to what Alex experienced while he was in a coma, this false information is not, and cannot be, a matter

of legitimate interest to the public. The public has no legitimate interest in knowing something that is false.

70. Publishing the story of Alex's recovery from his near-fatal injuries and the false story of what Alex allegedly experienced while he was in a coma would be highly offensive to a reasonable person.

71. Our society recognizes the right to privacy of information related to a person's medical treatment and recovery from injuries. For example, our society considers it highly offensive for a medical professional to release information of this type and provides penalties for medical professionals who do.

72. Tyndale House placed Alex, a Christian, in the highly offensive position of either having to lie and claim that the false story regarding what he experienced while he was in a coma was true, or else having to fight back against Tyndale House, its massive publishing operation, and promotional campaign to let the truth be known.

73. As a Christian, it was highly offensive for Alex to be placed in a position where he would have to lie to maintain the false story published by and promoted by Tyndale House.

74. At the time the Book was published, Alex was only twelve (12) years old.

75. Now that he is an adult and has legal standing, Alex's faith compels him to oppose what Tyndale House has done.

76. Any reasonable person, regardless of faith, would feel compelled to oppose such publicity given to their private life.

77. Any reasonable person, regardless of age or faith, would find it highly offensive to have false information regarding their recovery from near-fatal injuries and what they experienced during that process sold and distributed to the public.

78. The publicity given Alex's private life by Tyndale House is even more offensive because Tyndale House paid Alex absolutely nothing for the invasion of his private life.

79. Tyndale House never spoke directly with Alex to confirm whether or not he was an author of the Book and whether or not he consented to having material about his private life published.

80. Because Tyndale House never spoke directly with Alex regarding whether he was an author of the Book and whether he consented to having material about his private life published, Tyndale House acted at least recklessly with respect to these issues.

81. Because Tyndale House never obtained Alex's consent to publish the Book about Alex's private life, but rather intentionally kept the subject matter and content of the Book secret from both Alex and his mother, Beth Malarkey, before it was published, Tyndale House acted knowingly with respect to these issues.

82. Because Tyndale House gave publicity to Alex's private life about material that a reasonable person would find highly offensive, particularly where the material published was false and the material that was published by Tyndale House was not of public concern, Alex seeks compensation for the tort of publicity given to private life.

83. Because Tyndale House published a Book containing information concerning Alex's private life that a reasonable person would find highly offensive, Alex seeks damages for:

- (a) The harm to his interest in privacy resulting from the invasion;
- (b) His mental distress; and
- (c) Special damages.

84. Alex seeks damages at least in the amount of the profits derived by Tyndale House from the sale of the Book.

85. Because Tyndale House acted knowingly, or at least recklessly, with respect to the fact that the Book it was publishing contained information about Alex's private life that a reasonable person would find highly offensive to have published, Alex is entitled to punitive damages from Tyndale House.

86. Additionally, Alex seeks a permanent injunction against Tyndale House requiring it to take all steps reasonably possible to disassociate Alex's name from the Book.

**WHEREFORE**, Alex demands judgment against Tyndale House for a sum equal to the harm to his interest in privacy resulting from the invasion, his mental distress, and his special damages. These damages should equal an amount at least equal to the profits Tyndale House derived from the sale of the Book. Alex also seeks punitive damages. The total of these damages will exceed \$50,000.00. Additionally, Alex seeks a permanent injunction against Tyndale House.

**COUNT III**  
**PUBLICITY PLACING PERSON IN FALSE LIGHT**

87. Alex, realleges and incorporates herein by reference the allegations made in Paragraphs 1 – 32.

88. The State of Illinois recognizes the tort of publicity placing another person in a false light. *Lovgren v. Citizens First Nat'l Bank*, 534 N.E.2d 987, 989 (Ill. 1989).

89. Illinois defines the tort of publicity placing another person in a false light as "One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if

(a) the false light in which the other was placed would be highly offensive to a reasonable person, and

(b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed."

Restatement (Second) of Torts § 652E, at 394 (1977)."

*Id.*

90. Here, Tyndale House created significant publicity that would place Alex before the public in a false light that would be highly offensive to a reasonable person.

91. Tyndale House published the Book, which was allegedly about Alex's life at the age of six (6) years old.

92. Tyndale House identified Alex as one of the Book's two authors.

93. Tyndale House sold over one million (1,000,000) copies of the Book.

94. In addition to the Book, Tyndale House also sold an audiobook and DVD "documentary."

95. The Book and the ancillary publications were published in Carol Stream, Illinois.

96. On information and belief, Tyndale House also sold the television movie rights for the Book.

97. On information and belief, in support of its sale of over one million (1,000,000) copies of the Book and the ancillary publications, Tyndale House distributed significant amounts of promotional materials, and placed a significant amount of commercial advertisements.

98. The dust cover of the hardcover and the cover of the paperback versions of the Book identify it as a “NEW YORK TIMES BESTSELLER.”

99. As an example of the promotion that Tyndale House engaged in, at the back of the hardcover version of the Book, there is an advertisement for the audiobook and DVD “documentary” that encourages readers to “Continue the journey with Kevin and Alex.”

100. Tyndale House placed Alex in a false light, which claims that Alex had a near death experience, went to Heaven, saw and communicated with God the Father, Jesus, angels, and the devil, and then returned.

101. The portrayal of Alex’s near-death experience contained in the Book is entirely false, because Alex remembers absolutely nothing from the time he was in a coma. The core of the story is entirely false.

102. By publishing the false story of Alex’s life, Tyndale House placed Alex, a Christian, in the highly offensive position of either having to lie and claim that the story is true or having to fight back against Tyndale House, its massive publishing operation, and promotional campaign to let the truth be known.

103. As a Christian, it was highly offensive for Alex to be placed in a position where he would have to lie to maintain the false story published by and promoted by Tyndale House.

104. Much of the content of the false story is also highly offensive to Alex, because it is contrary to the Bible and his faith.

105. At the time the Book was published and Alex was placed in this highly offensive position by Tyndale House, he was only twelve (12) years old.

106. Any reasonable person, regardless of age or faith, would find it highly offensive to constantly have to lie about the truth of their life experiences in support of a Book that they did not write and for which they received no compensation.

107. Tyndale House never spoke directly with Alex to confirm whether or not the contents of the Book were true and whether or not Alex was an author of the Book.

108. Because Tyndale House never spoke directly with Alex regarding the content of the Book or Alex's alleged authorship of the Book, Tyndale House acted in "reckless disregard as to the falsity of the publicized matter and the false light in which [Alex] would be placed."

109. Because Tyndale House never obtained Alex's consent to publish the Book, but rather intentionally kept the subject matter and content of the Book secret from both Alex and his mother, Beth Malarkey, before it was published, Tyndale House acted knowingly with respect to the fact that it was publishing a Book that placed Alex in a false light that would be highly offensive to a reasonable person.

110. Given the nature of the Book that Tyndale House published about Alex, claiming that Alex had communicated with and interacted with God the Father, Jesus, angels, and the devil, any reasonable person would have realized that it was highly unlikely that the content of the Book was true.

111. Because Tyndale House was aware that it was highly unlikely that the content of the Book was true, Tyndale House acted with reckless disregard as to the "falsity of the publicized matter and the false light in which [Alex] would be placed."

112. Alex seeks compensatory damages from Tyndale House, at least in the amount of the profits derived from Tyndale House's sale of the Book.



113. Because Tyndale House acted knowingly, or at least recklessly, with respect to the fact that the Book it was publishing placed Alex in a false light that would be highly offensive to a reasonable person, Alex seeks punitive damages from Tyndale House.

114. Additionally, because the Book continues to place Alex in a false light that would be highly offensive to a reasonable person, Alex also seeks a permanent injunction against Tyndale House requiring it to take all steps reasonably possible to disassociate Alex's name from the Book.

**WHEREFORE**, Alex demands judgment against Tyndale House for compensatory damages in the amount of the profits derived from the sale of the Book and punitive damages, which will exceed \$50,000.00. Additionally, Alex seeks a permanent injunction against Tyndale House.

**COUNT IV**  
**INTRUSION UPON THE SECLUSION OF ANOTHER**

115. Alex, realleges and incorporates herein by reference the allegations made in Paragraphs 1 – 32.

116. The State of Illinois recognizes the tort of intrusion upon seclusion. *Lawlor v. N. Am. Corp. of Ill.*, 983 N.E.2d 414, 425 (Ill. 2012).

117. In Illinois, the elements of intrusion upon the seclusion of another are: "'One who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.' **Restatement (Second) of Torts § 652B (1977).**" *Id.*

118. Here, on information and belief, Tyndale House entered into the Contract with Kevin Malarkey, for the purpose of having Kevin Malarkey act as an agent of Tyndale House for the purpose of intruding into Alex's solitude with respect to Alex's private affairs, specifically Alex's recovery from near-fatal injuries.

119. The purpose of the Contract was for Kevin Malarkey to provide Tyndale House with information regarding Alex's private affairs to allow Tyndale House to publish that material in a book "about Alex and his experiences."

120. Although publication is not a required element of the tort of intrusion upon the seclusion of another, the Book that was published with the information Kevin Malarkey provided about Alex's private affairs was published by Tyndale House in Carol Stream, DuPage County, Illinois.

121. Tyndale House's intrusion into Alex's private affairs was intentional.

122. On information and belief, Tyndale House willfully, knowingly, and intentionally entered into a Contract with Kevin Malarkey for the purpose of intruding into Alex's private affairs.

123. Any reasonable person would find the intrusion that Alex suffered to be highly offensive.

124. Our society recognizes the right to privacy of information related to a person's medical treatment and recovery from injuries. For example, our society considers it highly offensive for a medical professional to release information of this type and provides penalties for medical professionals who do.

125. Here, through its agent, Kevin Malarkey, Tyndale House intruded into the details of Alex's recovery from near-fatal injuries and published the information that it obtained from that intrusion.

126. A reasonable person would find the intrusion even more offensive when much of the information that is disclosed as a result of the intrusion is false.

127. In Alex's case, because Tyndale House's agent, Kevin Malarkey, provided Tyndale House false information, as a result of the intrusion that Tyndale House sponsored, the end result was that Tyndale House published outrageously false information about Alex.

128. Because Tyndale House, through its agent, Kevin Malarkey, intentionally intruded upon Alex's solitude and seclusion and his private affairs or concerns regarding his recovery from his near-fatal injuries and what he experienced in that process, Tyndale House is subject to liability for invasion of Alex's privacy, because the intrusion Tyndale House committed, through its agent, Kevin Malarkey, would be highly offensive to a reasonable person.

**WHEREFORE**, Alex demands judgment against Defendant Tyndale House for compensatory damages in an amount at least equal to the profits derived from the sale of the Book. Additionally, because Tyndale House acted knowingly, or at least recklessly, Alex also seeks punitive damages. The total of the damages sought will exceed \$50,000.00.

**COUNT V**  
**DEFAMATION**

129. Alex, realleges and incorporates herein by reference the allegations made in Paragraphs 1 – 32.

130. In Illinois, to "state a defamation claim, a plaintiff must present facts showing that [1] the defendant made a false statement about the plaintiff, [2] the defendant made an

unprivileged publication of that statement to a third party, and [3] that this publication caused damages.” *Solaia Tech., LLC v. Specialty Publ. Co.*, 852 N.E.2d 825, 839 (Ill. 2006).

131. Here, Tyndale House published the Book containing page after page of material regarding Alex that states Alex went to Heaven, saw and interacted with God the Father, Jesus, angels, and the devil, while he was in a coma.

132. The truth is that Alex does not remember anything from the time when he was in a coma.

133. On the front cover of the Book, both hardcover and paperback versions, Tyndale House identifies the Book as “a true story.”

134. Immediately below where Tyndale House identified the Book as “a true story,” on both the hardcover and paperback versions, it also identifies the authors as: “KEVIN & ALEX MALARKEY.”

135. As described above, the Book is not a true story.

136. Alex was not an author of the Book.

137. Tyndale House included similar false statements in the audiobook and DVD “documentary” that it published.

138. As shown, Tyndale House published multiple false statements about Alex.

139. In the first year the Book was sold, Tyndale House sold 112,386 copies.

140. In 2013, Tyndale House received a platinum award from the Evangelical Christian Publishers Association for selling over one million copies of the Book.

141. In addition to the Book, Tyndale House also published an unabridged audio version of the Book on C.D. and a D.V.D. “documentary” titled “The boy who came back from heaven.”

142. On information and belief, in or around 2010, Tyndale House sold the story rights from the Book to Franklin Films, or another television production company.

143. Therefore, the Book has sold over one million (1,000,000) copies, in addition to revenues from the audiobook, the D.V.D. “documentary,” and television movie rights.

144. Therefore, Tyndale House published the Book and its ancillary publications to over one million (1,000,000) people.

145. Alex was paid nothing for the Book and did not consent to the Book being published.

146. No privilege known to defamation law permits such publication to be privileged.

147. While the Book describes Alex as “a dynamic witness for Jesus Christ. If you meet Alex, you’re going to hear the gospel,” the Book has permanently and irreparably damaged Alex’s Christian testimony.

148. Anyone of the millions of people who have read the Book or who are familiar with Alex through one of the ancillary publications, will know Alex for the claims that he saw and interacted with God the Father, Jesus, angels, and the devil, while he was in a coma.

149. These claims made in the Book are entirely false. Alex remembers nothing from this time.

150. Tyndale House’s damaging conduct leaves Alex in a position where he is either compelled to tell people that the reason they have become familiar with him is entirely a lie, or he is left with the untenable option of continuing to tell Tyndale House’s string of lies.

151. Because continuing Tyndale House’s lies is not a legitimate option, Alex’s testimony as a witness for Christ has been permanently and irreparably damaged by Tyndale House’s false publications.

152. Alex's testimony for Christ will be perpetually marred by the need to tell every person who asks that what they read about him in the Book is a string of lies.

153. Tyndale House's publication of the Book and the ancillary publications caused Alex irreparable damages.

154. Tyndale House never spoke directly with Alex to confirm whether or not the contents of the Book were true and whether or not Alex was an author of the Book.

155. Because Tyndale House never spoke directly with Alex regarding whether Alex was an author of the Book and whether the information contained in the Book was true, Tyndale House acted at least recklessly in publishing the Book.

156. Given the nature of the claims contained in the Book, that Alex spoke with and interacted with God the Father, Jesus, angels, and the devil, any reasonable person would be on notice that it was highly unlikely that the information Tyndale House published in the Book about Alex was true.

157. Because Tyndale House never obtained Alex's consent to publish the Book, but rather intentionally kept the subject matter and content of the Book secret from both Alex and his mother, Beth Malarkey, before it was published, Tyndale House acted knowingly with respect to the fact that the material it published was false and that Alex was not an author of the Book.

158. Because Tyndale House acted knowingly, or at least recklessly, with respect to the fact to the content of the Book, Alex seeks compensatory damages from Tyndale House, at least in the amount of the profits derived from Tyndale House's sale of the Book.

159. Because Tyndale House acted knowingly, or at least recklessly, with respect to the fact to the content of the Book, Alex seeks punitive damages from Tyndale House.

160. Additionally, because the Book continues to defame Alex, he also seeks a permanent injunction against Tyndale House requiring it to take all steps reasonably possible to disassociate Alex's name from the Book.

**WHEREFORE**, Alex demands judgment against Defendant Tyndale House for compensatory damages in a sum at least equal to the profits derived from the sale of the Book and punitive damages, which will exceed \$50,000.00. Additionally, Alex seeks a permanent injunction against Tyndale House.

**COUNT VI**  
**VIOLATION OF THE ILLINOIS UNIFORM DECEPTIVE TRADE**  
**PRACTICES ACT, 815 ILCS 510/2**

161. Alex, realleges and incorporates herein by reference the allegations made in Paragraphs 1 – 32.

162. The Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2 provides as follows, in relevant part:

(a) A person engages in a deceptive trade practice when, in the course of his or her business, vocation, or occupation, the person:

(1) passes off goods or services as those of another;

(2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with or certification by another;

...

(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he or she does not have;

...

(b) In order to prevail in an action under this Act, a plaintiff need not prove competition between the parties or actual confusion or misunderstanding.

...

163. As a corporation, Tyndale House is a “person” for purposes of the Illinois Deceptive Trade Practices Act, 815 ILCS 510/2.

164. The Book was published in Carol Stream, DuPage County, Illinois.

165. The Book was published in the course of Tyndale House’s business vocation, or occupation.

166. Here, Tyndale House passed off the Book as being written by “KEVIN & ALEX MALARKEY,” when Alex was not an author of the Book.

167. Therefore, Tyndale House passed off the Book as Alex’s goods, when the Book was not a good created by Alex.

168. This conduct constitutes a violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2(a)(1).

169. Here, by stating that the Book was “a true story” written by Alex Malarkey, Tyndale House caused a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of the Book.

170. Alex did not write the book and is, therefore, not the source of the book and he does not approve of the Book.

171. Therefore, Tyndale House violated the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2(a)(2), by indicating that Alex was an author and source of the Book.

172. Alex is not affiliated with the Book. Alex is not connected to the Book. Alex wants and has no association with the Book.



173. Here, Tyndale House, by indicating that Alex was an author of the Book, indicated that there was an affiliation, connection, or association between Alex and the Book.

174. Rather than properly dealing with Alex to obtain his true story and insuring that Alex's interest in his true story were protected (he was a 12-year-old paralyzed boy at the time), Tyndale House purchased a counterfeit story from Kevin Malarkey.

175. Tyndale House then described its resulting Book as being affiliated with, connected to, and associated with Alex in violation of the Illinois Deceptive Trade Practices Act, 815 ILCS 510/2(a)(3).

176. Here, Tyndale House represented that the Book has the approval of and has connection with Alex, and that the Book has the characteristic and quality of being "a true story," but the Book has no such approval and connection to Alex, and the Book does not have the characteristic or quality of being a true story.

177. By claiming that the Book has the approval of and has connection with Alex, and that the Book has the characteristic and quality of being a true story, Tyndale House causes likelihood of confusion or of misunderstanding as to the approval and connection of the Book with Alex, and the characteristics and quality that the Book is a true story in violation of the Illinois Uniform Deceptive Trade Practices Act, 815 ILCS 510/2(a)(5).

178. For all of the above-stated reasons, Tyndale House violated the Illinois Deceptive Trade Practices Act by claiming that Alex was an author of the Book and that the Book was a true story.

179. Because Tyndale House violated the Illinois Deceptive Trade Practices Act, Alex seeks a permanent injunction against Tyndale House requiring it to take all steps reasonably possible to disassociate Alex's name from the Book.

**WHEREFORE**, Alex demands judgment against Defendant Tyndale House for a permanent injunction requiring Tyndale House to take all steps reasonably possible to disassociate Alex from the Book.

**COUNT VII**  
**FINANCIAL EXPLOITATION OF AN ELDERLY PERSON OR A**  
**PERSON WITH A DISABILITY PURSUANT TO ILLINOIS**  
**COMPILED STATUTE 720 ILCS 5/17-56(g)**

180. Alex, realleges and incorporates herein by reference the allegations made in Paragraphs 1 – 32.

181. Illinois Compiled Statute 720 ILCS 5/17-56 – “Financial exploitation of an elderly person or a person with a disability provides,” in relevant part:

(a) A person commits financial exploitation of an elderly person or a person with a disability [1] when he or she stands in a position of trust or confidence with the elderly person or a person with a disability and [2] he or she knowingly and [3] by deception or intimidation [4] obtains control over the property of an elderly person or a person with a disability or illegally uses the assets or resources of an elderly person or a person with a disability.

...

(g) Civil Liability. A civil cause of action exists for financial exploitation of an elderly person or a person with a disability as described in subsection (a) of this Section. A person against whom a civil judgment has been entered for financial exploitation of an elderly person or person with a disability shall be liable to the victim or to the estate of the victim in damages of treble the amount of the value of the property obtained, plus reasonable attorney fees and court costs. In a civil action under this

subsection, the burden of proof that the defendant committed financial exploitation of an elderly person or a person with a disability as described in subsection (a) of this Section shall be by a preponderance of the evidence. This subsection shall be operative whether or not the defendant has been charged or convicted of the criminal offense as described in subsection (a) of this Section. This subsection (g) shall not limit or affect the right of any person to bring any cause of action or seek any remedy available under the common law, or other applicable law, arising out of the financial exploitation of an elderly person or a person with a disability.

182. Here, Alex is a person with a disability, because – due to the automobile accident caused by Kevin Malarkey – he “suffers from a physical . . . impairment resulting from . . . injury . . . that impairs [Alex’s] . . . physical ability to independently manage his . . . property or financial resources, or both.”

183. Tyndale House obtained control over the property of Alex, a person with a disability, by identifying Alex as an author of its Book and promoting the Book as Alex’s “true story.”

184. Tyndale House acted with deception, misrepresentation or concealment of material fact relating to Alex’s property, in that Tyndale House identified Alex as the author of its Book without Alex’s consent and paid Alex nothing for the use of his name as an author of the Book.

185. Additionally, Tyndale House stated, on the cover of both the hardcover book and the paperback book, that the Book was “a true story,” purportedly, Alex’s true story.

186. Through these means Tyndale House acted with deception, misrepresentation or concealment of material facts to gain control of the property of Alex, a disabled person.

187. On information and belief – Tyndale House made millions of dollars through its deception, misrepresentation, or concealment of material facts used to gain control over Alex’s property.

188. Tyndale House never spoke with Alex directly regarding whether he was the author of the Book and whether the Book was a true story. Tyndale House never fact checked the Book.

189. Because Tyndale House never obtained Alex’s consent to publish the Book about Alex’s private life, but rather intentionally kept the subject matter and content of the Book secret from both Alex and his mother, Beth Malarkey, before it was published, Tyndale House acted knowingly with respect to its deception.

190. Tyndale House acted knowingly with respect to the fact that it paid Alex nothing for his identification as an author and Tyndale House’s claim that the Book represented Alex’s true story.

191. Because Tyndale House knew that it was attempting to purchase the rights to “a book about Alex and his experiences,” knowing that Alex was only twelve (12) years-old at the time, that he was a disabled quadriplegic - and likely would be for life, that Alex was alleged to be an author of this story, that the story was alleged to be true and was about unusual near death communication with God the Father, Jesus, angels, and the devil, Tyndale House stood in a position of trust or confidence with respect to Alex.

192. In addition to his physical disabilities, Alex was also legally disabled, as he was a minor at the time the Book was published.

193. As a Christian publishing company, Tyndale House had a moral obligation to consider the interests of this 12-year-old paralyzed little boy, whose story they were attempting to purchase.

194. Despite the fact that Tyndale House had the opportunity, under Illinois law, to bring the Contract for the Book before an Illinois circuit court judge, pursuant to 920 ILCS 20/1, to have the contract affirmed to insure that Alex's interests were reasonably protected and that the Contract would not be disaffirmed upon Alex reaching the age of majority, Tyndale House chose not to do so.

195. Rather, Tyndale House – on information and belief – entered into a Contract with Kevin Malarkey, paid Alex nothing, provided Alex with no accounting of the millions of dollars Tyndale House made with the use of Alex's name, his image, and his purportedly “true story.”

**WHEREFORE**, Alex demands judgment against Defendant Tyndale House for treble the amount of the value of the property Tyndale House obtained, plus reasonable attorney fees and court costs, pursuant to Illinois Compiled Statute 720 ILCS 5/17-56(g).

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, WILLIAM ALEXANDER MALARKEY, respectfully demands the following relief from the Defendant, TYNDALE HOUSE PUBLISHING, INC.:

A. With respect to **COUNT I, APPROPRIATION OF NAME OR LIKENESS OF**

**ANOTHER:**

1. Compensatory damages in an amount at least equal to the amount of profits derived from the sale of the Book,
2. Punitive damages,

3. A permanent injunction requiring Tyndale House to take all reasonable actions possible to disassociate Alex from the Book.

B. With respect to **COUNT II, PUBLICITY GIVEN TO PRIVATE LIFE:**

1. Compensatory damages equal to the harm to his interest in privacy resulting from the invasion,
2. Mental distress damages,
3. Special damages,
4. Punitive damages, and
5. A permanent injunction requiring Tyndale House to take all reasonable actions possible to disassociate Alex from the Book.

C. With respect to **COUNT III, PUBLICITY PLACING PERSON IN FALSE LIGHT:**

1. Compensatory damages in the amount of the profits derived from the sale of the Book,
2. Punitive damages, and
3. A permanent injunction requiring Tyndale House to take all reasonable actions possible to disassociate Alex from the Book.

D. With respect to **COUNT IV, INTRUSION UPON THE SECLUSION OF ANOTHER:**

1. Compensatory damages in an amount at least equal to the profits derived from the sale of the Book and
2. Punitive damages.

E. With respect to **COUNT V, DEFAMATION:**

1. Compensatory damages in a sum at least equal to the profits derived from the sale of the Book,
2. Punitive damages, and
3. A permanent injunction requiring Tyndale House to take all reasonable actions possible to disassociate Alex from the Book.

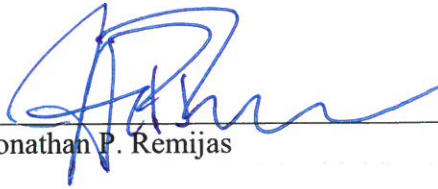
F. With respect to **COUNT VI, VIOLATION OF THE ILLINOIS UNIFORM DECEPTIVE TRADE PRACTICES ACT, 815 ILCS 510/2:**

1. A permanent injunction requiring Tyndale House to take all reasonable actions possible to disassociate Alex from the Book.

G. With respect to **COUNT VII, FINANCIAL EXPLOITATION OF AN ELDERLY PERSON OR A PERSON WITH A DISABILITY PURSUANT TO ILLINOIS COMPILED STATUTE 720 ILCS 5/17-56(g):**

1. Treble the amount of the value of the property Tyndale House obtained and
2. Reasonable attorney fees and court costs, pursuant to Illinois Compiled Statute 720 ILCS 5/17-56(g).

Respectfully submitted,



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Jonathan P. Remijas

**LAW OFFICES OF JONATHAN P. REMIJAS**

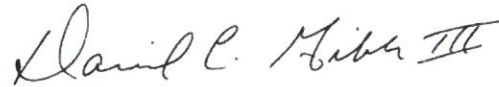
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