### 

06-CV-00099-SUP

G M

#### IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

SAMMEDOD VV. ....V. BOSHING THINGO TOWNTEID B.D. XWALD

2006

MARCIA VEDRAL, individually and on behalf of all others similarly situated,

Plaintiff,

JAMES FREY, DOUBLEDAY & COMPANY, INC., ALFRED A. KNOPF, INC. d/b/a ANCHOR BOOKS, and RANDOM HOUSE, INC.,

Defendants.

**06**C 0935

MAGISTRATIE JUDGE LEVIN

#### NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1332 and 1446, as amended in relevant part by the Class Action Fairness Act of 2005, defendants Random House, Inc. ("Random House") and Doubleday & Company, Inc. ("Doubleday") (collectively "Defendants") hereby remove to this Court the above-styled action, pending as Case No. 06-CH-02089 in the Circuit Court of Cook County, Illinois County Department, Chancery Division ("the State Court Action"). As grounds for removal, Defendants states as follows:

#### Factual Background

- On January 31, 2006, Plaintiff Marcia Vedral filed the State Court Action in the Circuit Court of Cook County, Illinois County Department, Chancery Division.
- Defendant Doubleday was served with a summons and complaint
   ("Cmplt.) on February 6, 2006. To date, defendant Random House has not been served with a summons and complaint.
- 3. The complaint arises out of the publishing and marketing of the book "A Million Little Pieces" (the "Book") written by defendant James Frey. (Cmplt. ¶¶ 1-3).

- 4. The complaint contains three counts which seek relief against Defendants: Violation of the Illinois Consumer Fraud Act, 815 ILCS 505/2 (Count I), Breach of Contract (Count II), and Breach of Implied Contract (Count III, plead in the alternative to Count II).
  - 5. Plaintiff is a citizen of the State of Illinois. (Cmplt, ¶ 6).
- 6. Defendant Random House is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York, and thus is a citizen of New York for these purposes.
- 7. Defendant Doubleday is a corporation organized and existing under the laws of the State of New York with its principal place of business in New York, New York, and thus is a citizen of New York for these purposes.
  - 8. Defendant Frey is a citizen of the State of New York.
- 9. Plaintiff seeks to pursue her claims on behalf of a nationwide class of "all persons who purchased A Million Little Pieces, in any media..." (Cmplt. ¶ 24).

#### Federal Jurisdiction under the Class Action Fairness Act

10. Application of CAFA. The Court has original jurisdiction of this case pursuant to the Class Action Fairness Act of 2005 ("CAFA" or "the Act"). CAFA creates federal jurisdiction over lawsuits in which "the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a

In addition to defendants Frey, Doubleday, and Random House, the Complaint purports to name as a defendant "Alfred A. Knopf, Inc. d/b/a Anchor Books," which is not a corporate entity. Alfred A. Knopf, Vintage Books, and Anchor Books are divisions of Random House, Inc. Defendants Doubleday and Random House will move at the appropriate time to have these alleged parties dismissed from the action.

class of plaintiffs is a citizen of a State different from any defendant," and the number of members of all proposed plaintiff classes exceeds 100. 28 U.S.C. § 1332(d)(2)(A) and (d)(5).2 As explained below, each of these criteria are met here.

- Amount in Controversy. The aggregate amount in controversy in this case 11, exceeds \$5,000,000, exclusive of interest and costs. Plaintiff contends that the Court "should disgorge all profits collected from the sale of the book and [Defendants] should be enjoined from continuing the sale of the same," (Cmplt. § 52). Plaintiff also asks the Court to "find that each of the Defendants violated the [Illinois Consumer Fraud Act]" and "[a]ward such damages and equitable relief to Plaintiff and the Class as the Court deems appropriate,"(Cmplt. p. 12) which damages presumably include the purchase price of the Book. Based on sales of the Book; the amount in controversy exceeds the \$5,000,000 threshold. (Declaration of Donald Weisberg, Exhibit B hereto, at \$5). The book was sold in both hardcover and paperback editions. Id. at \$4. More than 2.5 million copies of the paperback edition were sold with a suggested retail price of \$14.95. Id. at ¶ 5. These figures demonstrate that in excess of \$5,000,000 is at issue in this case. Id.
- 12. Citizenship of the Parties. There is diversity of citizenship between a member of the putative class and defendants Doubleday and Random House:
  - Plaintiff is a citizen of Illinois and there are putative plaintiffs in all a. 50 states. (See D. Weisberg Dec., Ex. B, at ¶ 6.)

<sup>&</sup>lt;sup>2</sup> CAFA applies to any action commencing on or after February 18, 2005 - the date when CAFA was enacted. See CAFA § 9 ("The amendments made by this Act shall apply to any civil action commenced on or after the date of enactment of this Act.")

- **b**. Defendants Doubleday and Random House are New York corporations with their principal places of business in New York, New York, and thus are citizens of New York for these purposes.
  - Defendant Frey is a citizen of the State of New York. C.
- d. Accordingly, this action is a class action where "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).
- Number of Class Members. As the above figures indicate, there are more 13. than 100 class members.
- 14. Mandatory Jurisdiction. CAFA classifies qualifying class actions (i.e., ones in which the \$5 million amount-in-controversy is met) by the number of class members located in the state where the action is filed and the citizenship of the defendants. Where less than 1/3 of the class members are located in the state where the action is filed, federal courts are required to accept jurisdiction. See 28 U.S.C. § 1332(d)(2). Where more than 1/3 but less than 2/3 of the class members are located in the state where the action is filed, courts are required to apply a group of factors to determine whether to accept jurisdiction. See 28 U.S.C. § 1332(d)(3). Where more than 2/3 of the class members are located in the state where the action is filed and certain other criteria are met, courts are required to decline jurisdiction. See 28 U.S.C. § 1332(d)(4). In this case, federal jurisdiction over this action is mandatory, not permissive, under CAFA because defendants Doubleday and Random House are not citizens of Illinois and less

Defendants deny that Plaintiff has stated a claim or that certification of a statewide or nationwide class would be appropriate. Defendants further deny that Plaintiff or any putative class member is entitled to any relief whatsoever-

than 1/3 of the class members are citizens of Illinois. See D. Weisberg Dec., Ex. B, at ¶ 6.; 28 U.S.C. § 1332(d)(3) and (d)(4).

#### Procedural Matters

- 15. Removal is Timely. A notice of removal may be filed within 30 days after the defendant receives a copy of the initial pleading, motion, or other paper from which it may be ascertained that the case is removable. 28 U.S.C. § 1446(b). The United States Supreme Court has held that the 30-day period prescribed in section 1446(b) runs from the date of formal service of the complaint. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 355-56 (1999). Defendant Doubleday was served no earlier than February 6, 2006, and defendant Random House has not yet been served. This notice of removal is thus timely, as the 30-day period for removal for defendant Doubleday does not expire until March 8, 2006.
- 16. <u>Removal to Proper Court.</u> This Court is part of the "district and division embracing the place where" the State Court Action was filed Cook County, Illinois. 28 U.S.C. §1446(a).
- 17. <u>Consent Not Required.</u> Pursuant to 28 U.S.C. § 1453(b), the consent of other defendants to this removal is not required.
- 18. <u>Pleadings and Process.</u> Pursuant to 28 U.S.C. § 1446(a), attached hereto as Exhibit A is "a copy of all process, pleadings, and orders served upon" defendant Doubleday.

  No defendant has answered or otherwise filed a responsive pleading to the complaint.
- 19. <u>Filing and Service.</u> A copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of Cook County, Illinois, and is being served on all counsel of

record, consistent with 28 U.S.C. § 1446(d). The Circuit Court of Cook County, Illinois, is located within this district.

WHEREFORE, defendants Random House, Inc. and Doubleday & Company, Inc. respectfully remove this action, now pending in the Circuit Court of Cook County, Illinois County Department, Chancery Division to the United States District Court for the Northern District of Illinois.

Respectfully Submitted,

RANDOM HOUSE, INC. and DOUBLEDAY & COMPANY, INC.

By:

One of Their Attorneys

Mark B. Blocker Michael C. Andolina Marissa J. Reich SIDLEY AUSTIN LLP One South Dearborn Street Chicago, Illinois 60603 (312) 853-7000

#### Of counsel:

Stephen G. Contopulos
Jennifer A. Ratner
SIDLEY AUSTIN LLP
555 West Fifth Street
Los Angeles, California 90013
(213) 896-6000

Dated: February 21, 2006

## **EXHIBIT A**

	2110 - Servest 2210 - Not Servest 2310 - Served By Mait 2410 - Served By Publication SUMMONS	2121 - Served 3221 - Not Serv 2321 - Served B 2421 - Served B ALIAS - SUMM	ly Mail ly Publication		(Rev.1/2/01) CCG 0001
		TITE CIRCUIT COU TY DEPARTMENT,		•	S
	(Name all pa MARCIA VEDRAL, indivi- others gimilarly situ	dually and on behal	lf of all	l .	: Doubleday & Company, I c/o Prentice Hall Corp. 33 N. LaSalle, Chicago, I
	JAMOS FROY, DOUBLEDAY KNOUF, INC. d/b/a ANC	A COMPANY, INC., A BUR NOOKS and RAMOO	NLERED A. M HOUSE, INC.	Alfred Á. Kna c/o Alberto V	60602-2607 q:E, Inc. d/b/e Anchor Bec 'itale, 201 E. 50th Street  } 10022
		8	SUMMONS	Random House, Katherine J. 1540 Broadway New York, NY	Trager, Rog. Agent , 22nd Flanc
1	YOU ARE SUMMO hereto attached, or otherwise the following tocation:	NED and required to f Me your appearance, a	ile an auswer to ud pay ilte regul;	the camplulat in ed fee, in the office	this case, a copy of which is e of the Clerk of this Court at
	Mr Richard J. Daley	Center, 56 W. Washingto	on, Rosen 802	, Chics	ego, Illinois 60602
हैं जिल्हें इंटिंग	District 2 - Skald 5600 Old Orcher Skalde, IL 60077	Ha.	District 3 - Roll 2121 Euclid Rolling Meados		District 4 - Maywood 1500 Maybrook Ave. Maywood, IL 60153
	Cl District 5 - Bridge 18229 S. 76th Ave Bridgeview, TL 60	•	District 6 - Mar 16501 S. Kedzie Markham, IL (	Pkwy.	• <u>.</u>
ī	Kon must the within 30 days IK YOU FAIL TO NO 80, A REQUESTRIV IN THE CO	JUDGMENT BY DEFA	imens, hot count W.T MAY BE E	ing the day of servi INTERIOD AGAIN	ice. IST YOU FOR THE RELIEF
'1	La the officer:				
ė b	This summons wast endorsencent of service and persturned so endorsed. Th	ices, if way, immediatel	y after service.	If service connot b	was given for service, with te made, this aummous shall late.
Y	My. No.: 22073		WITNE	ess. Jennory	1000 1 1000 2000 2000 2000 2000 2000 20

(Atta Cufe) (Facelmile Telephone Number) DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Date of services

(To be loserted by officer on copy left with defendant

or other person)

Name: Larry D. Deury, Ltd.

Address: 205 Word Randolph, Suite 1430

Telephone: \_\_\_\_\_312/366\_7950

Service by Facsimile Transmission will be accepted at:

City/State/21p: Chi engo, 11. 60606

Atty for; Claintiff

2128 - Served 2228 - Not Served 2328 - Served By Mail

2124 - Served 2221 - Nut Served 2321 - Served by Mail 2421 - Served by Publication

2420 - Served By Publication : SUMMONS

ALIAS - SUMMONS

(Rev.1/2/01) CCG 0001

### IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANGERY DIVISION

#### (Name all parties)

MARCIA VEHICAL, individually and on behalf of all others similarly situated,

DAME'S FREY, COUNLEDAY & COMPANY, INC., ALTRED A. C/a Alberto Vitale, KNOPF, INC. d/b/n ANCHOR GOOKS and BRANDOM HOUSE, INC. New York, NY 10022

No. Car No. 06 CH 02009
PLEASE SERVE: Doubleday & Company, Inc.

c/o Proubice Mall Corp. 33 N. LaSulle, Chicago, IL 60602-2607

Alfred A. Knopf, Inc. d/b/a Anchor Books c/a Alberto Vitale, 201 E. 50th Street New York, NY 10022

tandom House, Inc. c/o Katherine J. Trager, Reg. Agent 1540 Broadway, 22nd Floor New York, NY 10036

SUMMONS

To each defendant:

VOU ARE SUMMONED and required to file an answer to the complaint in this case, a copy of which is hereto attached, or otherwise like your appearance, and pay the required fee, in the office of the Clerk of this Court at the following facetion:

Cak Richard J. Daley Ceater, 50 W. Washington, Room 602 \_\_\_\_\_\_ Chicago, Illinois 60602

- Cl District 2 Shokie - S600 Old Orchard Rd. Skehle, IL 60077
- District 3 Rolling Mendows 2121 Enclid Rolling Mendows, IL 60008
- O District 4 Maywood 1500 Maybronk Ave. Maywood, II, 60153

- District 5 Bridgeview 10220 S. 76th Ave. Bridgeview, H. 60455
- District 6 Markham 16501 S. Kedzie Pkwy. Markham, 11. 60426

You must file within 30 days after service of this summons, not counting the day of service.

IF YOU HAIL TODO SO, A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE RELIEF REQUESTED IN THE COMPLAINT.

#### To the afficer:

This summons must be refurned by the officer or other person to whom it was given for service, with endocretistist of zervice and fees, if any, immediately after service. If service cannot be mode, this summons shall be retarried so endorsed. This summons may not be served later than 30 days after its date.

ANY of Lood

Atty. No.: 22873

Name: Larry D. Brury, Ltd.

Atty. for: Plaintiff

Address: 205 West: Randolph, Suite 1430

Chy&Inte/Lip; Chicago, It 68666

Telephone: 112/566-7956

Service by Farrhalle Transmission will be recepted at:

DOROTRY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

## IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

	(LDRAL, individually Fof all others similarly	) )
	Plaintiff,	)   JURY TRIAL DEMANDED
	<b>v.</b>	) 06CH 02089
	EY, DOUBLEDAY &	)
	, INC., ALFRED A. KNOPP,	<b>&gt;</b>
INC. d/b/a A	NCHOR BOOKS,	)
and RANDO	OM HOUSE, INC.,	) `
	Defendants.	, )

#### CLASS ACTION COMPLAINT

NOW COMES Plaintiff, Marcia Vedral, individually and on behalf of all others similarly simulated, by and through their attorneys, Larry D. Drury, Ltd. and John H. Alexander & Associates, LLC, and, complaining against Defendants, James Prey, Doubleday & Company, Inc., Alfred A. Knopf, Inc. d/b/a Anchor Books, and Random House, Inc. (collectively, "Defendants"), state as follows:

- James Grey and his publishers captured the hearts and minds of Plaintiff and book lovers
  who were duped into buying the author's coarse and uplifting "memoir" of recovery from drug
  alcohol and abuse.
- 2. Reavily promoted by Oprah Winfrey, the book, A Million Little Pieces, has made many millions of dollars, but those sales are attributable to the book's numerous self-styled genuine accounts of Mr. Frey's life destroyed and life reconstructed that never really happened. (See A

<sup>&</sup>lt;sup>1</sup> References herein to "A Million Little Picces" or the "book" or "memoir" are to this book as published in any media format, e.g., print and andio compact disc (CD).

Million Little Pieces, last page of the story and covers, promotions and flaps attached thereto, Exhibit A.) Though the book is marketed and styled as an inspirational memoir, in January 2006, following recent emberrassing media disclosures Mr. Frey virtually admitted that key accounts in his book amount to nothing more than pure fabrication.

3. Plaintiff seeks relief for herself and other readers who purchased the book and did not get what they paid for, but instead, were induced by each of the defendants to buy (or read) a phony so-called "memoir" of Mr. Frey's gennine accounts of triumph over adversity.

### JURISDICCION AND VENUE

- 4. This Court has jurisdiction in this case pursuant to 725 H.CS 5/2-209, in that the Defendants have transacted business and committed acts relating to the matters complained of licroin in this state.
- 5. Cook County is a proper venue for this action pursuant 735 JECS 5/2-101 and 5/2-102, in that the transaction or some part thereof out of which this cause of action arose occurred within Cook County, and because the Defendants conduct business in Cook County and at least one of the Defendants is authorized to transact business in Illinois.

#### PARTIES

6. At all relevant times, Plaintiff, Marcin Vedral, resided in Cook County, Illinois. She purchased A Million Little Pieces in November or December 2005, published by the Defendants, at Border's Books located in Mt. Prospeci, Cook County, Illinois, because she had seen the book deceptively promoted by Mr. Frey on the Oprah Winfrey show, and by the Defendants on or in the book itself (e.g., Exhibit A), as a true recount of the author's battles as a drug addict and of the author's recovery.

receives a portion of the profit from sales of the book.

- Defendant, Alfred A. Knopf, Inc., a book publisher and a division and agent of Defendant Random House, Inc., promoted, marketed, published, represented and caused to be sold, the book, A Million Little Pieces, under the respected Anchor Books brand name, on behalf of itself and Random House, fue., to and for consumption by Plaintiff and the Class, as a memoir and nac and honest work of non-fiction. Alfred A. Knopf, Inc., undertook said acts in Cook County, Illinois and elsewhere, and continuously transacts business in Illinois.
- Described Doubleday & Company, Inc. ("Doubleday"), a division and accorder Defendant Kandom House, Inc. and a respected name in the publishing industry, promoted, marketed, published, represented, and caused to be sold, the book, A Million Little Pieces, on behalf of itself and Random House, Inc., to and for consumption by Plaintiff and the Class as a memoir and true and benest work of non-fiction. Doubleday undertook said acts in Cook County, Illinois and elsewhere, and continuously transacts business in Illinois, Ms. Nan A. Talese is a Senior Vice President of Doubleday and the Publisher and Editorial Director of Nau

4.1

P. 08

A. Talese/Doubledoy, a trade book publishing imprint that also published A Million Little Pieces. Ms. Talese is listed as one of the publishers of Plaintiff's book.

Defendant Random House, Inc., a well-known publishing house that readers trust and to. respect, promoted, marketed, published, represented and caused to be sold, the book, A Million Little Pleces to and for consumption by Plaintiff and the Class as a memoir and true and honest work of non-fiction. Random House, Inc. perpetrated said acts in Cook County, Illinois and elsewhere, and continuously transacts business in Illinois.

#### SUBSTANTIVE ALLEGATIONS

- 11. A Million Little Pieces is styled and promoted as a true account of Mr. Frey's life as a destructive, drug-addicted young adult who resurreets his life in a rehabilitation program.
- 12. Mr. Frey reportedly told Cleveland's Plain Dealer in a May 2003 interview that the book was straight non-fiction, claiming that his publisher, Doubleday, "contacted the people I wrote about in the book. All the events depicted in the book checked out as factually accurate. I changed people's names. I do believe in the anonymity part of AA. The only things I changed were aspects of people that might reveal their identity. Otherwise, it's all true." (See thesmokinggan.com.)
- However, the book was only published as a memoir after it was reportedly shapped as a novel to numerous publishing houses, each of which declined to publish the book. Mr. Frey has reportedly stated that it was his publishers' decision to publish the book as a memoir.
- The book gained increased popularity resulting from Oprah Winfrey's endorsement of the redemptive tale as part of her well-known "Book Club." Moreover, in the October 26, 2005, Oprah Winfrey television show entitled "The Man Who Kept Oprah Awake at Night," Winfrey

show included emotional filmed testimonials, whereby employees of Winfrey's show lauded the book as revelatory, with some choking back tears. the smoking muchased the book, at least in substantial part, due to Oprah Winfrey's and Mr. Frey's flavorable recommendation and description of the work as an inspiring memoir and work of non-faction, as part of Mr. Frey's interview on the October 2005 Oprah Winfrey Show.

- 15. The Defendants, via the text and advertisements appearing on and in the book itself.

  Mr. Frey's numerous media interviews and book store appearances, and the Defendants' uniform representations of the book for media sales, have at all relevant times mutually represented, marketed and promoted the book to Plaintiff and the Class solely as a true, genuine story and work of non-fiction.
- 16. Without objection from any of the Defendants at any time, and at their request and as a result of their own listings, the book was featured on the New York Times best selfer list and in numerous major book stores and media (e.g., amazon.com) in the non-fiction category and as a memoir.
- 17. Only very recently the Smoking Gun, an investigative news web site, reported that Mr. Frey "fictionalized his past" and "wholly fabricated or wildly embellished" many crucial accounts in the book, and further, that numerous other accounts central to the book and the story could not be verified. (See, e.g., "A Million Little Lies," presently reported on the smokinggun com). Frey has since reportedly admitted to The Smoking Gun that he had embellished central details of his criminal career and purported incarceration -- which constitute only some of the non-truths in the book -- for obvious dramatic reasons.

- 18. Mr. Frey also has since admitted on the Larry King show, and on the Oprah Winfrey show in January 2006 that parts of his book were not true and accurate.
- 19. A January 26, 2006, news release on Random House, Inc.'s website conceded the significance of Mr. Frey's recent admissions, stating "It is not the policy or stance of this company that it doesn't matter whether a book sold as nonfection is true."
- 20. More than 1.7 million copies of the memoir, first published in 2003 by Random House's Doubleday division, have been sold to Plaintiff and the Class, but 3.5 million copies have reportedly been printed.
- 21. Rather than recall the book, the publisher-Defendants have, to date been content to promise to include an nondescript editorial note entitled "new notes from the publisher and from the entitior" in editions of their book, but to continue to promote, market and sell it as a memoir and work of "non-fiction" and to reap continuing profits from the sale of same. In fact, Defendant Random House, Inc. has expressly denied that it is offering special refunds for the so-called "memoir".
- 22. Defendant Doubleday is reportedly printing new copies of the book, to capitalize on the recent media controversy surrounding the book's unumbs and thereby receive substantial profits from the fruit of the Defendants' transducent and misleading representations.
- 23. Plaintiff and the Class purchased the book, and many of them, too, spent time reading it, expecting to receive a inspiring memoir and true tale of non-fiction. As a result of the Defendants' phony marketing and representations as a so-called memoir and honest work of non-fiction, Plaintiff and the Class were damaged and deceived.

#### CLASS ALLEGATIONS

- 26. Plaintiff brings this case as a class action, pursuant to 735 H.CS \$72-801, on behalf of a Class of all persons who purchased A Million Little Pieces, in any media (e.g., books and CDs).
- 25. The Class is so numerous as to render joinder of the individual class members improvedeable.
- 26. Common questions of law and fact predominate over questions as to the resolution of this case with respect to individual class members, including, without finitation:
  - a. Did Defendant Frey fabricate key portions of A Million Little Pieces?
  - b. Did each of the Defendants intend that Plaintiff and the Class rety on the depiction of the book as a "memoir" and a work of non-fiction in deciding to buy the book?
  - c. Were Plaintiff and the Class damaged by virtue of the Defendants' herein alleged conduct, in violation of the Illinois Consumer Fraud Act and the similar laws of other states?
  - d. Were each of the Defendants unjustly enriched by their herein alteged conduct?
- 27. Plaintiff's claims are typical of those of the Class and will adequately represent same; Plaintiff's interest is not antigonistic to those of the Class, and Plaintiff's counsel are experienced in class action Bigation.
- 28. This case will not be unmanageable as a class action; indeed, the facts of this case are particularly conducive to a class action, in that Plaintiff alleges that she and the Class were damaged by the stage, uniformly represented wrongful conduct.

#### <u>COUNT I</u> Statutory Fraud

- 20. Plaintiff incorporates by reference and realleges the peeceding paragraphs of the Complaint.
- 30. The Illinois Consumer Frand Act (ICFA or "the Act"), 815 ILCS § 505 et. al., prohibits false, deceptive, misleading and unfair acts or practices, "...including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rety upon the concealment, suppression or omission of such material fact...." 815 ILCS § 505/2.
- 31. Plaintiff, individually and on behalf of the Class, brings this cause pursuant to IFCA and the similar deceptive practices consumer protection acts of other states (hereinafter collectively "ICFA"), which are designed to protect consumers against deceptive or fraudulent bitsiness practices.
- 32. At all relevant times, Plaintiff and the other Class members were consumers or persons within the meaning of ICFA.
- 33. The Defendants' acts, misrepresentations and omissions as stated above occurred during the course of trade and commerce within the meaning of ICFA.
- 34. Each of the Defendants, mutually and on their own behalf, via their publishing and marketing campaign for the book including without limitation, via instructing retailers and sellers to sell and list the book in the category of non-fiction and/or memoir, via their representations and promotions on/in the book, and via Mr. Frey's numerous media interviews (e.g., newspapers and television) and public appearances in bookstores, uniformly misrepresented the work as a

non-fletion memoir and uniformly failed to disclose that the book was more fiction – in order to create a marketable and profitable book product and increase book sales. Indeed, prior to the Defendant publishers' decision to market and make the book, other publishing houses had rejected the book when it was pitched to them as a work of fiction.

- 15. The Defendants each reasonably knew and intended that Plaintiff and the Class rely on the Defendants' said depiction of the book as a memoir and genuine account of non-liction, in order to induce Plaintiff and the Class to purchase and read the book.
- 36. Plaintiff expected to receive a memoir and true nonfiction story because, by the time she purchased the book, she had viewed the Defendants' marketing and promotion of the book as a work of non-fiction and memoir, i.e., including the Defendants' representations and omissions contained on/in the book, the listing of the book for sale in the category of non-fiction and/or memoir, and Mr. Frey's interviews or public appearances, namely, his first interview on the Opada Winfrey show in 2005. The putative Class members, too, expected to receive a memoir and true nonfiction story after being expected to the Defendants' same marketing and promotional campaign, which, by design, conveyed the single-minded, and very profitable message that the book was a true tale.
- 37. The Defendants' acts, misrepresentations and omissions as described herein (i.e., partraying the book as a memoir and true non-fiction story), are false pretenses and material facts which induced Plaintiff and the Class to buy (and/or read) the books. For example, had Plaintiff and the Class members known of these wrongful practices and known that the book was not a memoir and a genuine account of the author's life, they would never have purchased the book.
  - 38. The Defendants, by uniformly concealing, misrepresenting and failing to disclose

any of the aforementioned material facts (see, e.g., §§ 34-37), by the marketing the sale of the book under false pretense (ld.), and by engaging in the conduct alleged herein (ld.), proximately caused damage to Plaintiff and the Class who, by virtue of said conduct, did not truy (or get to read) what they reasonably expected.

- 30. The Defendants' mutual misrepresentation of the book as a memoir and a true and honest work of non-fletion, and concentment of crucial non-true stories that were built-in to dramatize the book, constitutes a deceptive practice and false promise and false pretense for purpreses of setting the book to induce sales, in violation of ICFA.
- 40. The Defendants' above-stated conduct constitutes a continuing threat to the consuming public.
- 41. The Defendants should account for all monies improperly collected from sales of the book, should have a constructive trust imposed on said monies until further order of the Cond, and should be enjoined from continuing the sale of the book.

### COUNT II Breach of Contract

- Plaintiff realleges and incorporates by reference the preceding paragraphs of the Complaint.
- 43. Each of the Defendants, as alleged herein, mutually and collectively offered the book, A Million Little Pieces, to Plaintiff and the Class as a "memoir" and as a true non-fiction story.
- 44. Plaintiff and the Class accepted the Defendants' offer and paid for the book (including applicable taxes) as represented, i.e., as a memoir and non-fiction story, and paid consideration therefore.

46. As a result of the Defendants' breach, Plaintiff and the Class have been damaged, to the unjust enrichment of each of the Defendants, whose respective profits and revenues therefrom should be refunded and disgorged to Plaintiff and the Class.

# <u>COUNT III</u> Breach of Contract Implied in Law — Pleaded in the Alternative

- 47. Plaintiff realleges and incorporates by reference the preceding paragraphs of the Complaint.
- 48. Each of the Defendants receive monies from sales of A Million Little Pieces, and each of the Defendants are mijustly enriched by sums they each illicitly recouped from Plaintiff and the Class, through their wrongful conduct as alleged herein.
- 1. 49. (The Defendants engaged in a concerted pattern of conduct, whereby Plaintiff and the Chass, due to the Defendants' false and unfair marketing and depiction of the book as a memoir and true an honest work of non-fiction, remitted monies for the purchase of A Million Pieces, which unfairly intered to the benefit of each of the Defendants.
- 50. The amount of money paid by Plaintiff and the putative Class ruembers, and received by the Defendants, for the purchase of the books at issue, exceeds the amount to which the Defendants are entitled, in that the book was falsely represented as a memoir, as non-fiction, and as a true and genuine story of an individual's trials and admirable rehabilitation as a drug addict.
- 51. As a result, the Defendants have unjustly retained the amount of payments they received from Plaintiff and the Class resulting from the purchase of the book, in breach of the

Defendants' contracts with Plaintiff and the Class for the sale of the book, which are implied in law; and the retention of said monetary benefits violates the principles of justice, equity, and good conscience.

52. The Defendants should account for all monies improperly collected from sales of the book, should have a constructive trust imposed on said monies until further order of the Count, should disgorge all profits collected from the sale of the book and should be enjoined from continuing the sale of same.

#### PRAYER FOR RELIEF

Wherefore, Plaintiff, individually and on behalf of all others similarly situated, prays that this Hopproble Court:

- A. Certify this case as a class action, and appoint Plaintiff as class representative and Plaintiff's counsel as class counsel;
- 13. Award such damages and equitable relief to Plaintiff and the Class as the Court deems appropriate;
- C. Find that each of the Defendants violated the ICFA, and were unjustly enriched or alternatively breached their contracts with Plaintiff and the Class, as alleged herein:
- Award reasonable attorney's fees and costgrand

E. Grant such other relief as it deems just

By;

L...[{

Militia & Attorneys

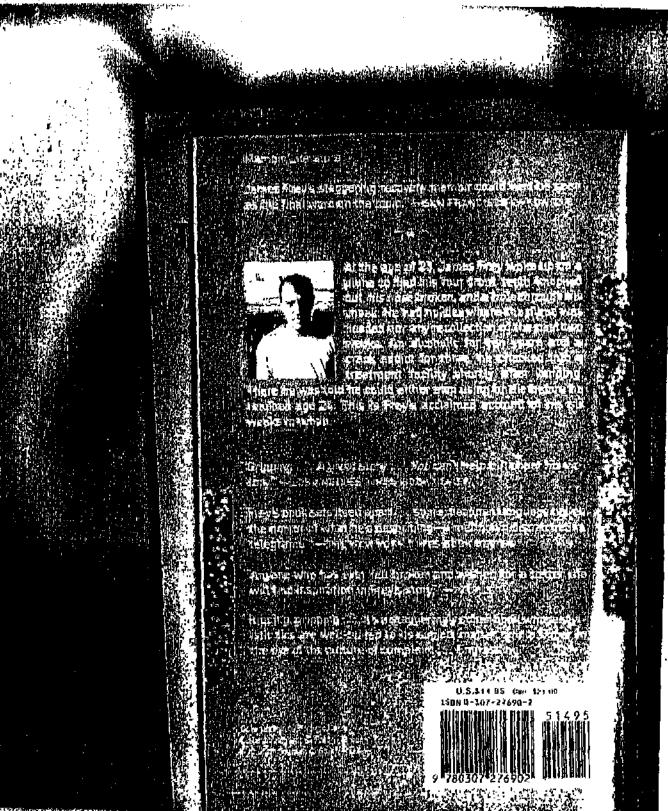
Larry D. Drury Han Chorowsky Larry D. Drury Ltd. 205 W. Randolph Street, Suite 1430 Chicago, H. 60606 (312) 346-7950 Atty, No. 22873



Earle Silife V

Casse 12 006 cox 00 00 09:20 AM ROP SORRENTINO FAX NO. 212 193

P. 23



motoing James was released from Jail, and it is believed that she was sober until the died.

Lincoln suit works at the Choic,

Ken still works at the Cleare

Hank and Joanne got matted, Both still work at the Cittle

Juntes has never reliepsed

Thank you blein and Dad for everything, thank you Mem and Dad.
Thank you Brother Bob and Sister-in-Law Lauft. Thank you Maya
I love you Drawer Maya. Thank you Kassie Evashevid. Thank you
Seas McDonald. Thank you Man Talese. Thank you David Kantaman
Thank you Preacher and Bella my little Friends. Thank you Swart
Hawkins, Elizabeth Sessiow, Kavin Yorn. Amer Douglas Swon
Michael Chaven, Quant Yanter, Christian Yanter, litgid Swam
John Von Brackel, Helen Morley, Jean Joseph Jr., Joshua Oorfmus,
Daniel Glasser, Marvin Wotz, Colleen Silva, Etem Subuse
Chris Wardwell. Thank you Then, Nigo, Jose and the Boys at the
Coffee Shap on the cosses. Thank you finding Meeta. Thank you
hadren Bursh and Keith Bray. Thank you Silva Julia Merin
Thank you Lilly, Lannard, Miles, I love you and I thank you.

FAX NO. 2127 183

Pragge 266 of 16633 P. 21

PROF AND AND TRUE SECRET SECTION AND SECRET

Published in the United Suser by Ametric Books, a division of Random Steam, Inc., New Organily gublished in hardenser in the Canon Cause by March Talme, as Impans of link and another mely in Casada by facalete. Howe of Casada Limited, Toronto. All types reserved under international and the American Copyright Conventions. Come of this by june Tree

Auctor Scale and otherhouse are agreemed androunds of Russian House, inc

Coubleday a division of Readers House, Inc., New York, in 2008.

The Library of Congrue has causing at the No. & Tales of Doubled synchics as follows .. Fry Jran, 1949 - 1 Names with the Reinbellevice - ) Tares to i Namode adamenta (processor) Bugraphy i, Tide A resison inte proces ( June Ereptorise et tay just 1968-

S002 1/45/V1850/R がになったした) 2002年6月5

Austra 25200 1-6000-5108-7

علدومة، والمرة ولا معام والعلال www.tachpipocha.com

Birth in the Count States of America ひゅきょそう

:: :: <u>.</u>

pieces

m | 111 a a

FFileed 002/2045/200066 Pragge 2277 of 16633 FEB-08-2006 WED 09:19 AH ROPPING SORRENTING P. 20 FAX NO. 2127 a byggon of samples house are. SYCHOR BOOKS 010045 KAP YOUR mallion 

"Incredible.... A Reactourly compelling memoir." - The Plan Dear

"Insisting a strik is demanding. . . A story that ours to the sterre of diant. . . . A aidal milatore in modern liverarise. addition by clank-clank-clanking through the skull of the ad-

— Ordanda Wady

he once despitatingly bleak and hearthreakingly hopeful ... Frey somethow manages to make his step-by-step walk through recovery -Charles States

'A nut direct and graphic documentation of the rehabilistics process.... The strength of the book cames from the creat of the —Тін Онзовіня

"A virtual addiction intelly visconally affecting. . . . Computerely —Cup Paper (Washington, DC)

"Powerful...haunoing... addictive.... A beautiful scory of recov-

Le ministraç est ... Frey't intence, puestry proce renders his acpenences with ಕಸಂಗರ್ಧಿಗಿತ್ತ ಬಾಸರಾಭಿಸಿದ್ದಾರೆ. ney and reconciliation." - fault City Physic Colors - Time One West York

•

10.7

"Describes the hopelesstess and the inability to scap with pracitien ... so get that down too." sico..... As adjecte who has over specit diene in a rehab een ter-— in Land fast-Diparto

Trey come on the the world's have recovering addictioned. . . . This fil) grunomely abusing seround, wid in support-town, stateon citaliza of the twelve-trep philosophy is preventive and his stay pedensetly compelling.

"Fray has devised a colling, pulsating style that early more, ... up-

FEB CONTROL OF THE FOUND OF THE FORM

those that to the prince states of the state grandite (tief subject addition of his though passently . . . . dealebly williag , . . . i have and boungable work that reliase to

> Ż  $\mathbb{Q}_{n, \frac{1}{2}}^{\frac{1}{2}}$

> > 一年代 医二甲基

million little presse

He is married and live in New York He is use measures of My Fried Leonard. une Frey is originally from Cleveland.

acolaim for james frey's

a million little pieces

-The New Yorker

We fruit A Millon Linds Pacer like miners lifted our of a collapsed that: exhausted, bluckened, exygen-surred, but abve, thrillingly, emazingiy alme, -Affirmengatie Sear-Tribune

'One of the most compelling banks of the year... Incredibly filled to do: depice hard-core drug addition as the self-inflired cheer public service announcements and after-school specials have held ... Sometions accomplishes white three decades' worth of specalypse that it is." - They York Post

Thoroughly engressing.... Hard-bitten extraopialism bristles on ing extreme physical anguin and steely determination." every page. . . . Frey's prose is muscular and rough, ideal for carrety-- Internationers Weekly

"Incodible.... Mesmerizing.... Fleurescarding." ---kilona Journal-Continnion

A rising lieutery star... has birthed a poetic account of his recovery.

[A Million Link Piece is] stark... distanting... elle with raw

— Chings Sun-Time. conecios.

"Frey will probably be halled in sum as the volue of a generation." in the second

We can admire I toy for his faceness, his extremity, his solitary vieus, the engry ethics of his harroom mibe, and his vieus of over his heis. . . . A compelling book 1.60

resident of this generation? Maybe. ben indicate, work and describe exercit. Can been be the greeness West More lives

"A frenzied, electrifying description of the experience."

Casse 12006 cox 00400499 FR.15M	Diocomeen 2516	FFileed 002/2046/2200066	Pragge 33D of 6633
*02715/2006_18:04212-572-( ) 30	RH LEGAL KACALINU PA	_ DEPT ( ) X_NO212782+103	PAGE 02/20
	and the F.C.	W WY 5151051103	P. Q1
2320 - Served By Mull 2321 - 8 2420 - Served By Publication 2421 - 8	ierved Vot Served Jerved Dy Mall Jerved Dy Publication SUMMONS	(Re	w. <b>J/2/01</b> ): CCG <b>0</b> (101
IN THE CHOCATE	T COURT OF COOK CO		
. COUNTY DEPARTM	ENT, CHANCERY	DIVISION	
(Name all parties)	•	No. 06 CH	02009 :
MARCIA VEDRAL, individually and on bothero similarly situated,  v.  JAMES TREY, DOUBLEDAY & COMPANY, INC. 176/A ANCHOR BOOKS and RAMBOM H	Plaintiff ALFRED A. KNOPF	PLEASE SERVE: Doubleday & Comp e/o Jacqueline Cl Bartelomann, 1940 Broadwa	hasey, Esq. Inc. V
	Defendents.	New York, NY	10036
Al	LIAS SUMMONS		
To çach defendant:			•
•			
YOU ARE SUMMONED and require hereto attached, or atherwise file year appear the following location:  13 Richard J. Doley Center, 50 W. W.	ance, and pay the require	d fee, in the office of the	Clerk of this Court at
·		, Chicago, Illi	-
© Tristrict 2 - Skokle 5600 Old Orchard Rd. Skokle, II. 60077	O District 3 - Rollin 2123 Enclid Rolling Meadqwi	t:	istrict 4 - Maywood 500 Maybrook Ave. Iaywood, IL- 60153
O District 5 - Bridgeview 19220 S. 76th Ave.	O District 6 - Mark 16501 S. Kedzie	chapo	
Reidgeview, IV. 60455	Markham, II. 60	<del>)</del> 426	
You must like within 30 days after service of a FYOU RAIL TO DO SO, A JUNGMENT BE REQUESTED IN THE COMPLAINT.	this summons, not cauath Y DEFAMAT MAY BE E	og the day of service. YTERED AGAINST YO	U FOR THE RELIEF
To the officers		" " " " to the to the to	
This enumens must be returned by endorsement of service and fees, if any, time he reinspect so endorsed. This summons may	nediately after service. I	rzon 10 whom it was g I scrvice cannot be mad	iven for so vice, with 6, this summons shall
Atty, No.: 22873	WIINE	ss,Fobruary,9	2006
Name: Latry D. Drury, Ltd.		7 3 5 11 11 22	W
Atty. for: "Toint if !			
Address: 205 West Randelph, Suite 14		Clerk of Co	urt
ChyNateZip: Chicago, II. 60606		ervice: 2-15	-014
Telephone 312/346-7950	(Te be la	or other person)	Il with defendant
Service by Pacalmile Transmission will be acc	opted at:	ic) (Pacaimue Tekephone Na	
HUBULAN WARE CALLED	·	•	1 1
DOKOTKY BROWN, CLERK O	e this CIRCUIT COUR	T OR LENDE COMMTV	11 1 Interci

SORRENTING

RH LEGAL DEPT FAX NO. 2127821103

83/28

F 02

#### IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

MARCIA VEIDRAL, individually nucleon behalf of all others similarly situated.	) ) )	
Pioloti (i)	JURY TRIAL DEMANDED S S S S	*2:
v.	№ 06CH02089	
JAMES PREY, DOUBLEDAY &	) = 1	2
COMPANY, INC., ALFRED A. KNOPP,		L
(NC. d/b/a ANCHOR BOOKS,	)	-
and RANDOM HOUSE, INC.,	) * # G	
Defendants.	) )	

#### CLASS ACTION COMPLAINT

NOW COMPS Plaintiff, Marcia Vedral, individually and on behalf of all others similarly sliggted, by and through their attorneys, Larry D. Drury, Ltd. and John H. Alexander & Associates, F.I.C. and, complaining against Defendants, James Frey, Doubleday & Company, Inc., Alfred A. Knopf, Inc. d/b/a Anchor Books, and Random House, Inc. (collectively, "Defendants"), state as follows:

- James Frey and his publishers captured the hearts and minds of Plaintiff and book lovers who were duped into buying the author's coarse and uplifting "memoir" of recovery from drug alcohol and abuse.
- Heavily promoted by Oprah Winfrey, the book, A Million Little Pieces, has made many millions of dollars, but those sales are attributable to the book's numerous self-styled genuine accounts of Mr. Frey's life destroyed and life reconstructed that never really happened. (See A

<sup>1</sup> References herein to "A Million Little Pieces" or the "book" or "memoir" are to this book as published in any media format, e.g., print and andio compact disc (CD).

P. 03

Million Little Pieces, last page of the story and covers, promotions and flaps attached thereto. Byhlbit A.) Though the book is marketed and styled as an inspirational momoir, in January 2006. following recent embarrassing media disclosures Mr. Prey virtually admitted that key accounts in his book amount to nothing more than pure fabrication.

Plaintiff seeks relief for herself and other readers who purchased the book and did not get what they paid for, but instead, were induced by each of the defendants to buy (or read) a phony an called "memoir" of Mr. Urcy's genuine accounts of triumph over adversity.

#### JURISDICTION AND VENUE

- This Court has jurisdiction in this case pursuant to 725 ILCS 5/2-209, in that the Dufandanta have transacred business and committed acts relating to the matters complained of horein in this state.
- Cook County is a proper venue for this action pursuant 735 H.CS 5/2-101 and 5/2-102, in that the transaction or some part thereof out of which this cause of action arose occurred within Cook County, and because the Defendants conduct business in Cook County and at least one of the Defendants is authorized to transact business in Illinois.

#### <u>PARTIES</u>

6. At all relevant times, Plaintiff, Marcia Vedral, resided in Cook County, Illinois. She nurchased A Million Little Pieces in November or December 2005, published by the Defendants. nt Border's Books located in Mt. Prospect, Cook County, Illinois, because she had seen the book deceptively promoted by Mr. Frey on the Opesh Winfrey show, and by the Defendants on or in the book itself (e.g., lixidblt A), as a true account of the author's battles as a drug addict and of the author's recovery.

2/15/2006 18:04 03:43 TH NO. 2127821103 FAX NO. 2127821103

- 7. Defendant James Frey is the author of A Million Little Pieces and is, with respect to the conduct herein alleged, an agent of each of the publisher Defendants, in writing, promoting, marketing and representing the book as a memoir and true and honest work of non-fiction. Mr. Frey undertook soid acts in Cook County, Illinois and elsewhere, and continuously transacts business in Cook County, Illinois in thus, at all relevant times, he has profited from sales of the book, represented as described herein, in Cook County, Illinois. Mr. Frey received a hefty cash sulvance from the publisher-Defendants for the sale of the book and on information and belief received a portion of the profit from sales of the book.
- R. Defendant, Affred A. Knopf, Inc., a book publisher and a division and agent of Defendant Random House, Inc., promoted, marketed, published, represented and caused to be sold, the book, A Million Little Pieces, under the respected Anchor Books hrand name, on behalf of itself and Random House, Inc., to and for consumption by Plaintiff and the Class, as a memoir and true and honest work of non-fiction. Alfred A. Knopf, Inc., undertook said acts in Cook County.

  Illinois and elsewhere, and continuously transacts business in Itinois.
- 9. Defendant Doubleday & Company, Inc. ("Doubleday"), a division and agent of Defendant Random House, Inc. and a respected name in the publishing industry, promoted, marketed, published, represented, and caused to be sold, the book, A Million Little Pieces, on hehalf of itself and Random House, Inc., to and for consumption by Plaintiff and the Class as a memoir and true and honest work of non-fiction. Doubleday undertook said acts in Cook County, Illinois and efsewhere, and continuously transacts business in Illinois. Ms. Nan A. Talese is a Senior Vice President of Doubleday and the Publisher and Balterial Director of Nan.

92/15/2006 [18:04] 03143-572-4 SURRENTINO

RH LEGAL DEPT ( ) FAX NO. 2127821103

P. 05

06/20

reportedly bailed Frey's graphic "momoir" as 'like nothing you've ever read before.' The show included emotional filmed testimentals, whereby employees of Winfrey's show lauded the book as revelatory, with some choking back tears. the smokinggun.com. Plaintiff Vedral purchased the book, at least in substantial part, due to Oprah Winfrey's and Mr. Frey's lavorable recommendation and description of the work as an inspiring memoir and work of non-fielion, as part of Mr. Frey's interview on the October 2005 Oprah Winfrey Show.

- 15. The Defendants, via the text and advertisements appearing on and in the book itself, Mr. Frey's numerous media interviews and book store appearances, and the Defendants' uniform representations of the book for media sales, have at all relevant times mutually represented, marketed and promoted the book to Plaintiff and the Class solely as a true, genuine story and work of non-fiction.
- 16. Without objection from any of the Defendants at any time, and at their request and as a result of their own listings, the book was featured on the New York Times best seller list and in appropriate book stores and media (e.g., amazon.com) in the non-fiction category and as a memoir.
- 17. Only very recently the Smoking Goo, an investigative news web site, reported that Mr. Frey "fictionalized his past" and "wholly febricated or wildly embellished" many crucial accounts in the book, and further, that numerous other accounts central to the book and the story could not be verified. (See, e.g., "A Million Little Lies," presently reported on the making municipal. Frey has since reportedly admitted to The Smoking Gun that he had embellished central details of his criminal career and purported incorporation—which constitute only some of the non-truths in the book—for obvious dramatic reasons.

RH LEGAL DEPT ( FAX NO, 2127821103

P. 08

r. Da

67/20

- 18. Mr. Frey also has since admitted on the Larry King show, and on the Oprah Winfrey show in January 2006 that parts of his book were not true and accurate.
- 19. A January 26, 2006, news release on Random House, Inc.'s website conceded the significance of Mr. Frey's recent admissions, stating "It is not the policy or stance of this company that it doesn't matter whether a book sold as nonfiction is true."
- 20. More than 1.7 million copies of the memoir, first published in 2003 by Random House's Dombleday division, have been sold to Plaintiff and the Class, but 3.5 million copies have reportedly been printed.
- 21. Rather than recall the book, the publisher-Defendants have, to date been content to promise to include an nondescript editorial note entitled "new notes from the publisher and from the author" in editions of their book, but to continue to promote, market and sell it as a memoir and work of "non-fletion" and to reap continuing profits from the sale of same. In fact, Defendant Random House, Inc. has expressly denied that it is offering special refunds for the so-called "memoir".
- 22. Defendant Doubleday is reportedly printing new copies of the book, to capitalize on the report media controversy surrounding the book's untruths and thereby receive substantial profits from the fruit of the Defendants' transmiss and instanceive representations.
- 23. Plaintiff and the Class purchased the book, and many of them, too, spent time reading it, expecting to receive a inspiring memoir and true tale of non-fiction. As a result of the Defendants' phony marketing and representations as a so-called memoir and honest work of non-fiction, Plaintiff and the Class were damaged and deceived.

Casse 12006-cxv-00400499-FRUSM DiDocument 251-6 FFileed 002/1206/220006 FPagge 3366 of 1663

02/15/2006 18:04 212-572-( ) SUMMENTINU

RH LEGAL DEPT ( ) FAX NO. 2127821103

PAGE 08/20

P. 07

#### CLASS ALLEGATIONS

- 24. Plaintiff brings this case as a class action, pursuant to 735 ILCS 5/2-801, on behalf of a Class of all persons who purchased A Million Little Pieces, in any media (e.g., books and CDs).
- 25. The Class is so numerous as to render joinder of the individual class members impracticable.
- 26. Common questions of law and fact predominate over questions as to the resolution of this case with respect to individual class members, including, without limitation:
  - n. Did Defendant Frey fabricate key portions of A Million Little Pieces?
  - b. Did each of the Defendants intend that Plaintiff and the Class rely on the depiction of the book as a "memoir" and a work of non-fiction in deciding to buy the book?
  - e. Were Plaintiff and the Class damaged by virtue of the Defendants' herein alleged conduct, in violation of the Illinois Consumer Francisch Act and the similar laws of other states?
  - d. Were each of the Defendants unjustly enriched by their herein alleged conduct?
- 27. Plaintiff's claims are typical of those of the Class and will adequately represent same; Plaintiff's interest is not antagonistic to those of the Class, and Plaintiff's counsel are experienced in class action litigation.
- 28. This case will not be unmanageable as a class action; indeed, the facts of this case are particularly conductive to a class action, in that Plaintiff alleges that she and the Class were damaged by the same, uniformly represented wrongful conduct.

02/15/2006 .18;04 312-573-( ), SUKKENTINE

RH LEGAL DEPT FAX NO. 2127821103

P. 08

# COUNT I Statutory Fraud

- Plaintiff incorporates by reference and realleges the preceding paragraphs of the Complaint.
- 30. The Illinois Consumer Fraud Act (ICPA or "the Act"), 815 ILCS § 505 et. al, prohibits false, deceptive, misleading and unfair acts or practices, "....including but not limited to the use or employment of any deception, fraud, false protense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the canocalment, suppression or omission of such material fact...." 815 ILCS § 505/2.
- 31. Plaintiff, individually and on hebalf of the Class, brings this cause pursuant to IPCA and the similar deceptive practices consumer protection acts of other states (hereinafter collectively "ICFA"), which are designed to protect consumers against deceptive or fraudulent business practices.
- 32. At all relevant times, Plaintiff and the other Class members were consumers or persons within the meaning of ICFA.
- 33. The Defendants' acts, misrepresentations and omissions as stated above occurred during the course of trade and commerce within the meaning of ICFA.
- 34. Each of the Defendants, mutually and on their own behalf, via their publishing and marketing campaign for the book including without limitation, via instructing retailers and selfers to self and list the book in the category of non-fiction and/or memoir, via their representations and promotions onto the book, and via Mr. Prey's numerous media interviews (e.g., newspapers and television) and public appearances in bookstores, uniformly misrepresented the work as a

02/15/2006 18:04 212-572-1 SUKKENTINU

RH LEGAL DEPT ( )
FAX NO. 2127821103

E 10/20 P. 09

non-fiction memoir and uniformly failed to disclose that the book was more fiction—in order to cause a marketable and profitable book product and increase book sales. Indeed, prior to the Defendant publishers' decision to market and make the book, other publishing houses had rejected the book when it was pitched to them as a work of fiction.

- 35. The Defendants each reasonably knew and intended that Plaintiff and the Class rely on the Defendants' said depiction of the book as a memoir and genuine account of non-fiction, in order to induce Plaintiff and the Class to purchase and read the book.
- 36. Plaintiff expected to receive a memoir and true nonfiction story because, by the time she pareliased the book, she had viewed the Defendants' marketing and promotion of the book as a work of non-fiction and memoir, i.e., including the Defendants' representations and omissions contained on/in the book, the listing of the book for sole in the category of non-fiction and/or memoir, and Mr. Frey's interviews or public appearances, namely, his first interview on the Opeah Winfrey show in 2005. The putative Class members, too, expected to receive a memoir and true nonfiction story after being exposed to the Defendants' same marketing and promotional campaign, which, by design, conveyed the single-minded, and very profitable message that the book was a true tale.
- 37. The Defendants' acts, misrepresentations and omissions as described herein (i.e., portraying the book as a memoir and true non-fiction story), are false pretenses and material facts which induced Plaintiff and the Class to buy (and/or read) the books. For example, had Plaintiff and the Class members known of these wroughtl practices and known that the book was not a memoir and a genuine account of the author's life, they would never have purchased the book.
  - 38. The Defendants, by uniformly concealing, misrepresenting and failing to disclose

P. 10

FAX NO. 2127821103

any of the aforementioned material facts (see, e.g., 7¶ 34-37), by the marketing the sale of the book under false pretense (Id.), and by engaging in the conduct alleged herein (Id.), proximately caused damage to Plaintiff and the Class who, by virtue of said conduct, did not buy (or get to read) what they reasonably expected.

- The Defendants' mutual miscentesentation of the book as a memoir and a true and housest work of non-fiction, and concoalment of crucial non-true stories that were built-in to dramatize the book, constitutes a deceptive practice and false promise and false proteinse for purposes of selling the book to induce sales, in violation of ICFA:
- 40. The Defendants' above-stated canduct constitutes a continuing threat to the consuming public.
- 41. The Defendants should account for all monies improperly collected from sales of the book, should have a constructive trust imposed on said menics until further order of the Caurt, and should be enjoined from continuing the sale of the book.

# COUNT II Breach of Contract

- 42. Plaintiff realleges and incorporates by reference the preceding paragraphs of the Complaint
- 43. Each of the Defendants, as alleged herein, mutually and collectively offered the book, A Million Little Pieces, to Plaintiff and the Class as a "memoir" and as a true non-fiction story.
- 44. Plaintiff and the Class accepted the Defendants' offer and paid for the book (including applicable taxes) as represented, i.e., as a memoir and non-fiction story, and paid consideration therefore.

02/15/2005 18:04 32137572 1 2kt SUKKENTING

RH LEGAL DEPT ( ) FAX NO. 2127821103

PAGE 12/20 P. 11

- 45. The Pulendants breached their contract with Plaintiff and the Class, in that, in truth and in fuci A Million Little Pieces is not a memoir and is riddled with fulseboods and untruths.
- 46. As a result of the Defendants' breach, Plaintiff and the Class have been damaged, to the unjust enrichment of each of the Defendants, whose respective profits and revenues therefrom should be refunded and diagorged to Plaintiff and the Class.

# <u>COUNT III</u> Breach of Contract Implied in Law - Pleaded in the Alternative

- 47. Plaintiff realistics and incorporates by reference the preceding paragraphs of the Complaint.
- 48. Each of the Defendants receive monies from sales of A Million Little Pieces, and each of the Defendants are unjustly enriched by sums they each illicitly recouped from Plaintiff and the Class, through their wrongful conduct as alleged herein.
- 49. The Defendants engaged in a concerted pattern of conduct, whereby Plaintiff and the Chass, due to the Defendants' false and unfair marketing and depiction of the book as a memoir and true an honest work of non-fiction, comitted monies for the purchase of A Million Pieces, which inflirly inused to the benefit of each of the Defendants.
- 50. The amount of money paid by Plaintiff and the putative Class members, and received by the Defendants, for the purchase of the books at Issue, exceeds the amount to which the Defendants are entitled, in that the book was falsely represented as a memoir, as non-fiction, and us a true and genuine story of an individual's trials and admirable rehabilitation as a drug addict.
- \$1. As a result, the Defendants have unjustly retained the amount of payments they received from Plaintiff and the Class resulting from the purchase of the book, in breach of the

02/15/2006 19:04 212-572-1 A SAKKENLING

RH LEGAL DEPT ( ) FAX NO. 2127821103

P. 12

13/28

Defendant's annual with merce of a constant state of implied in law; and the retention of said monetary benefits violates the principles of justice, equity, and good conscience.

52. The Defendants should account for all movies improperly collected from sales of the book, should have a constructive trust imposed on said movies until further order of the Court, should disguige all profits collected from the sale of the book and should be enjoined from continuing the sale of same.

# PRAYER FOR RELIEF

Wherefore, Plaintiff, individually and on behalf of all others similarly situated, prays that this Honorable Court:

- A. Comify this case as a class action, and appoint Plaintiff as class representative and Plaintiff's counsel as class counsel;
- B. Award such damages and equitable relief to Plaintiff and the Class as the Court decims appropriate;
- C. Find that each of the Dofendants violated the ICPA, and were unjustly enriched or alternatively breached their contracts with Plaintiff and the Class, as alleged herein;

D. A ward reasonable attorney's fees and costs; and

I'm Grant such other relief as it deems just

By:

Ope of Plaintiff's Attorneys

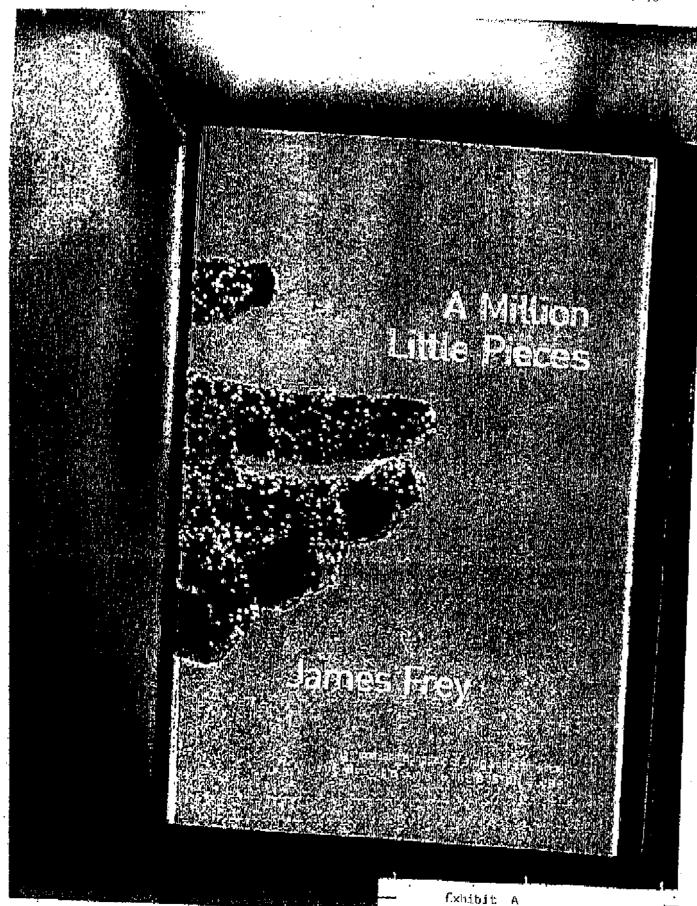
Larty D. Drury flan Charowsky Larry D. Drury Ltd. 205 W. Randolph Sinest, Suite 1430 Chicago, H. 60606 (312) 346-7950 Any, No. 22873 Casse 2006-cov-00400499-RUSM DiDocument 251-6 Fileed 002/200120006 Paggre 442 of 1663

02/15/2006 18:04 212-573

212-572-( AT SURAEMHINU

RH EFGAL DEPT FAX NO. 2127821103 PAGE 14/20

P. 13



Casse 12006-0x/0000093-PRJ5M DiDocument 251-6 FFiled 02/12/06/220006 Pragge 443 of 1653

H LEGAL DEPT ( ) FAX NO. 2127821103 PAGE 15/28

P. 14

acciaim for Jemes frey's

a million little pleces

"A frentist, electrifying description of the experience."

— The New Yorker

"We finish A Million Little Piece like miners lifted out of a collapsed shafe exhausted, blackedest, oxygen-mercet, but alive, cheillingly, amaningly alive."

—Adimnopolii San-Tibburs

\*One of the most compelling books of the year.... Incredibly bold.... Somethow accomplishes what these decades' worth of cheary public service announcements and after schools specials have falled to do: depict hard-core drug eddiction as the subjectificaed apocalypse thesi in."

—New York York

"Thiocoughly engrousing . . . Fixed-bitten extraorialism briefler on every page . . . Frey's prose is muscular and ough, ideal for conveysing externe physical arguint and areely descontractor."

— Ensurtationant Verify

"to credible. . . . Memericing. . . . Freat-rending."

-different formulas-Construction

"A riving licency star...has birthed a poetic account of his secretary. [A shifteen Link Winas is stark...discubbing... with with care constitue."

—Chicago Sun-Thues

"We can elimic Facy for his features, his actually, his solitary views, the argy white of his because affer and his viewey openly furles..... A compelling book."

"Ve industry, with and housely memory. Can Facy by the ground for industry, with which when the compelling book."

"Ve industry, with and housely memory."

"Ve industry, with and housely memory."

"Ve industry with and housely memory."

"Ve industry with and housely memory."

**SUKKENTINU** 

RH LEGAL DEPT FAX NO. 2127621103

PAGE 16/20 P. 15

Incredible . . . A ferceinnity compositing mensair." -The Phin Design

Twister is it is demanding. . . . A story that ones to the newe of addiction by clark-dank-danking through the shall of the addiaced....A critical milescome in modern licerature.

−Ordando Weskij

"A surk time and graphic documentation of the rebibilitation process.... The strength of the book comes from the truth of the "As once devisatingly blesk and hearthreakingly hopeful .....Frzy Special Contraction of the Contr अस्त्राम्ब्राच्य someboor manages to make his step-by-step walk duringh temovery -Charlene Objeve - The Oregonian

'A viewel edition in inest viscently affecting.... Computately resoluble."
——City Paper (Wichington, DC)

"Forrestal . . . hadrang . . . . addictive . . . . A beautiful story of recov-

िक क्षाम्प्रीयन्त्रपाद्ध read . . . . Fraj's in cense, 'purethy' prost renders his ex-Fertimeer with electricitying immediacy." ery and reconciliation. - Jours City Pres-Citizen — Tiese Out Naw York

Compare the dopent and the first states of the president." sien .... As anyone who her ever spear rime in a tehnh can restify ... he gas that down too." —Sie Louis Par-Biggien

"fil mustacly desorbing summer, rold in suipped-down, ruccus Frey came on like the world't first terroreing oddier have..... (1965) erhicism of the tridive-map philosophy is pravousism seed his story endeniably conspelling."

"Frey and derived a rolling, painting style than radio more, ... orthe section with special possessite and that were the 

book that writer other recovery textends tooks, well, a little group. gancies fied sectors edderion or his theory formalist . . . A

fortes frey

mfilien little pieces

He is practical and lives to New York He is also the suther of My Friend Lagrand Jernes Frey is originally from Claveland.

HTT leed 022/2045/200066 Pragge 4455 of 16633 RH LEGAL DEPT () FAX NO. 2127821103 PAGE 17/20 P. 16 A DIVISION OF MANCON HOUSE, INC. ANCHOR BOOKS ------

Document 2518 RH LEGAL DEPT FAX NO. 02/15/2006 18/29 2127821103 17 The Library of Conferm but create and the Man A. Tube of Doubleday exists as killown Publicad in the United Smer by earder Books e division of Randon House doe, New Originally published in Muckweer to the Chinad Seatts by Man a. Times, an imprioring Their and simultaneously in Curanisty Sandon: House of Cureda Limited, Forance, All eights reserved under lanuscational and Franchisca Copyrights Corrections isodor Scots and colopino ne repitazió radarente efficiators Figue, Inc. Decided by a division of Ametwo House, Inc., New York, in 2003. 5. Naccost relian-Massessa-Biography. I. This PLEA WHERE FOOMS TOLLION, WAY 3000 A callisto decle pieses / Jaman Freye—Lee ed. Pained in the Union State of America 30 9 6 7 6 5 and checolar inected and a John is an by Tony Maydo Cappide 2 IN by Leading GOOT PATENTIFIESAL mentalistic property (CE 362.291032\_4621 Fregs, James, 1955 经验的 # 11 1 1 F \$ 0 0 0 V m:l:l:n

02/15/2006 18:84 212-572-

RH LEGAL DEPT () FAX NO. 2127821103 PAGE 19/20 P. 18

morning fames was released from Jail, and it is believed that she was sober until the dired.

Lincoln still works at the Clinic

Nen still works at the Clinic

Hank and Joanne got married. Both still work at the Clinic,

Japan has never relapsed.

Thank you More and Dad for everything, thank you blom and Dad. Thank you Brother Bob and Sitter-in-Law Lauke. Thank you Mapa, I love you Dourse Meye. Thank you Kause Everherski. Thank you Sean McDonald. Thank you Man Talese. Thank you David Krinternan. Theok you Preacher and Bells my little Eriends. Thank you Swart Heavitins, Elizabeth Sosnow, Karla Yora, Amer Douglis Saot, Michael Craven, Quian Yamey Chairian Yamer, Ingrid Sixon, John You Brachel, Helen Modry, Jean Joseph Jr., Joshus Dorfman, David Glasse, Marria Kloat, Colken Siva, Even Strouse, Chris Wardwell Thank you Theo, Rigo, Jose and the Boys at the Coffee Shop on the censes. Trank you Falky Morris. Thank you Lifty, Leomard, Milles, I lave you and I thank you.

02/15/2005 18:04LD 312-572- RT SUKKENTINO RH RH LEGAL DEPT PAGE 20/20 FAX NO. 2127621103 P. 19 U.S.\$14.05 Con. \$21.00 [58N 0-307-2749D-5

Frieed 002/2045/200066 Pragge 4488 of 16633

Casse 12006-ccv-00400499-FRJSM DiDocument 251-6

Cause 2006-cov-0000029-RRSM Diocorreeh2516 Ffileatio2/20020006 Pragge 409 of 16633

KATHERINE 1 TRAGER

FEB 1 4 2006

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

MARCIA VEDRAL, individually and on behalf of all others similarly situated,

Plaintiff,

No. 06 CH 62089

ANCHOR BOOKS and RANDOM HOUSE, INC.,

JAMES FREY, DOUBLEDAY & COMPANY,

INC., ALFRED A. KNOPF, INC. d/b/a

Defendants.

### NOTICE OF FILING

1

James Frey c/o Anchor Books Publishing Corp. Publicity 1745 Broadway New York, NY 10019 Doubleday & Company, Inc. c/o Prentice Hall Corporation 33 North LaSalle Street Chicago, IL 60602-2607

Alfred A. Knopf, Inc. d/b/a Anchor Books c/o Alberto Vitale 201 East 50<sup>th</sup> Street New York, NY 10022

Random House, Inc. c/o Katherine J. Trager, Reg. Agent 1540 Broadway 22<sup>nd</sup> Floor New York, NY 10036

PLEASE TAKE NOTICE that on the 2nd day of February, 2006, the undersigned filed with the Clerk of the Circuit Court of Cook County, Illinois, the attached Motion for Class Certification and Motion for Prescription of Documents, copies of which are hereby served upon

LARRY D. DRURY, LTD. 205 West Randolph, Suite 1430 Chicago, IL 60606 (312) 346-7950 Atty. No. 22873

## **CERTIFICATE OF SERVICE**

personal delivery
U.S. mail, ovemight express
U.S. certified mail, return receipt requested
U.S. regular first class mail
via Federal Express
via facsimile transmission

(Printed Name)

# IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

MARCIA VEORAL, individually and ) on behalf of all others similarly ; situated,

Plaintiff,

VS.

١.

No. 06 CH 02089

JAMES FREY, DOUBLEDAY & COMPANY, INC., ALFRED A. KNOPF, INC. d/b/a ANCHOR BOOKS and RANDOM HOUSE, INC.,

Defendants.

## MOTION FOR CLASS CERTIFICATION

NOW COMES Plaintiff, MARCIA VEDRAL, "VEDRAL" individually and on behalf of all others similarly situated, by and through their attorneys, LARRY D. DRURY, LTD., and JOHN H. ALEXANDER & ASSOCIATES, LLC, and respectfully move that this Court enter an order certifying and determining that this action may properly be maintained as a class action.

In support of this motion, Plaintiffs state that the Class on behalf of which this action is sought to be maintained may be defined as follows:

### DEFINITION OF THE PLAINTIFF CLASS

All persons who purchased A Million Little Pieces, in any media (e.g., books and CDs).

- 1. Common questions of law or fact include, in part:
- (a) Did Defendant Frey fabricate key portions of A Million
  Little Pieces;

- Did each of the Defendants intend that Plaintiff and
  Class rely on the depiction of the book as a
  "memoir" and a work of non-fiction in deciding to buy
  the book?
- Were Plaintiff and the Class damaged by virtue of the Defendants' conduct as alleged in the Class Action Complaint, in violation of the Illinois Consumer Fraud and the similar laws of other states?
- (d) Were each of the Defendants unjustly enriched by their conduct as alleged in the Class Action Complaint?
- 2. The claims and acts of the representative parties are typical of the claims of all members of the Plaintiff Class,
  Plaintiff being a consumer who purchased A Million Little Pieces from the Defendants
- 3. Plaintiff further states that the questions of law or fact with respect to the Defendants' conduct are common to the members of the Plaintiff Class and predominate over any questions of individual members.
- 4. Class adjudication is superior to all other available methods for adjudication of this controversy, i.e., there are thousands of putative Plaintiff Class members who purchased A Million Little Pieces from the Defendants and separate suits to litigate the legality of Defendants' acts and conduct concerning same would not be in the best interest of judicial economy and efficiency.

WHEREFORE, Plaintiff prays that the class of Plaintiffs, as defined herein, be certified and that she be appointed as class representative and that Larry D. Drury of Larry D. Drury, Ltd. be appointed as lead class counsel and John H. Alexander of John H. Alexander & Associates, LLC be appointed as class counsel.

Respectfully submitted,

MARCIA VEDRAL, individually and on behalf of all others similarly situated,

LARRY D. DRURY LARRY D. DRURY, LTD. 205 West Randolph Suite 1430 Chicago, IL 60606 (312) 346-7950 Atty. No. 22873

JOHN H. ALEXANDER JOHN H. ALEXANDER & ASSOCIATES, 100 West Monroe 21st Floor Chicago, IL 60603 (312) 263-7731 Atty. No. 25849

AMERICA CALLON IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT - CHANCERY DIVISION

MARCIA VEDRAL, individually and on behalf of all others similarly situated,

Plaintiff,

VS.

No. 06 CH 02089

JAMES FREY, DOUBLEDAY & COMPANY, INC., ALFRED A. KNOPF, INC. d/b/a ANCHOR BOOKS and RANDOM HOUSE, INC.,

Defendants.

# MOTION FOR PRESERVATION OF DOCUMENTS

NOW COMES Plaintiff, MARCIA VEDRAL, individually and on behalf of all others similarly situated, by and through her attorneys, LARRY D. DRURY, LTD., and JOHN H. ALEXANDER & ASSOCIATES, LLC, and move this Honorable Court as follows:

On January 31, 2006, Plaintiff filed her Class Action 1. Complaint seeking various relief and for the certification of a class as follows:

# DEFINITION OF THE PLAINTIFF CLASS

All persons who purchased A Million Little Pieces, in any media (e.g., books and CDs).

- 2. Defendants were aware of their conduct at all times relevant herein
- Defendants' conduct in this matter raises serious issues in that this case concerns the following:
  - Did Defendant James Frey fabricate key portions of A

### Million Little Pieces;

- (b) Did each of the Defendants intend that Plaintiff the Class rely on the depiction of the book as a "memoir" and a work of non-fliction in deciding to buy the book?
- Were Plaintiff and the Class damaged by virtue of the Defendants' conduct as alleged in the Class Action Complaint, in violation of the Illinois Consumer Fraud Act and the similar laws of other states?
- (d) Were each of the Defendants unjustly enriched by their conduct as alleged in the Class Action Complaint?
- 4. Defendants' conduct and their continued refusal to recognize their culpability and compensate those who have been damaged, raised serious questions regarding future conduct may take in this matter.
- 5. The proper resolution of this litigation, and the rights of the parties, will depend upon documentation generated and maintained by the Defendants regarding A Million Little Pieces.
- 6. It is no great hardship on the Defendants to maintain the documents relevant to the subject matter of this litigation, since they are already in their actual or constructive care, custody or control, and their retention and preservation sould further the interests of justice for all parties concerned.

7. Many corporations have record retention/destruction policies which set a period of time during which they retain documents. Even for corporations that do not presently have such a policy, such a policy could be adopted at any time. An order for the preservation of documents would prevent destruction of relevant documents under a claim that it was authorized by existing corporate policy;

WHEREFORE, Plaintiff moves this Honorable Court to enter an order of preservation of documents in the form attached hereto as Exhibit A or in such other form as this Court deems appropriate.

Respectfully submitted,

MARCIA VEDRAL, individually and on behalf of all others similarly situated,

LARRY D. DRURY
LARRY D. DRURY, LTD.
205 West Randolph
Suite 1430
Chicago, IL 60606
(312) 346-7950
Atty. No. 22873

JOHN H. ALEXANDER
JOHN H. ALEXANDER & ASSOCIATES, LLC
100 West Monroe
21th Floor
Chicago, IL 60602
3(312) 263-7731
Atty. No. 25849

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT - CHANCERY DIVISION

MARCIA VEDRAL, individually and on behalf of all others similarly situated,

Plaintiff.

vs.

No. 06 Ch 02089

JAMES FREY, DOUBLEDAY & COMPANY, INC., ALFRED A. KNOPF, INC. d/b/a ANCHOR BOOKS and RANDOM HOUSE, INC.,

Defendants.

#### <u>ORDER</u>

THIS CAUSE COMING ON TO BE HEARD on the Motion for Preservation of Documents and the Court being duly advised in the premises;

#### IT IS HEREBY ORDERED:

I. During the pendency of this litigation or until further order of this Court, Defendants and their respective officers, agents, servants, employees, attorneys and accountants shall not alter, destroy or otherwise dispose of any "document" relating or relevant to the publication A Million Little Pieces, as alleged in the Class Action Complaint, in the actual or constructive care, custody or control of each such party from the date of entry of this Order forward, wherever such document is physically located.

EXHIBIT A

- The term "document" and the scope of this Order shall 2. have the meaning ascribed in Rule 201(b) of the Illinois Supreme Court Rules and shall; without limiting the generality of the foregoing, include the original and any non-identical copies thereof of any writing, drawing, map, blueprint, film, chart photograph, audio and video tape recordings and transcripts thereof, and retrievable data, whether electromechanically or electromagnetically recorded and other data compilations from which information can be obtained relating or relevant to A Million Little Pieces, including but not limited to notices, memoranda, diaries, minutes, purchase records, purchase invoices, correspondence, computer storage, tapes, computer storage cards or disks, books, journals, ledgers, statements, reports, invoices, bills, vouchers, worksheets, jottings, notes, letters, abstracts, audita, charts, checks, diagrams, drafts, recordings, instructions, lists, logs, orders, recitals, telegram messages telephone bills and logs, resumes, summaries, compilations, computations and other formal and informal writings or tangible preservations of information.
- J. Defendants shall be responsible for providing notice of this Order to their respective officers, agents, servants, employees, attorneys and accountants, and shall be responsible for compliance with this Order by such persons
- 4. If counsel are unable to resolve disputes regarding the scope or implementation of this Order, any party may apply to the

Court for clarification or relief from this Order upon reasonable notice. All documents which are the subject to such disputes shall be preserved pending a ruling by the Court.

Dated:

ENTER:

LARRY D. DRURY LARRY D. DRURY, LTD 205 West Randolph Suite 1430 Chicago, IL 60606 (312) 346-7950 Atty. No. 22873

JOHN H. ALEXANDER
JOHN H. ALEXANDER & ASSOCIATES, LLC
100 West Monroe
21st Floor
Chicago, IL 60602
(312) 263-7731
Atty. No. 25849

# **EXHIBIT B**

# **DECLARATION OF DONALD WEISBERG**

Pursuant to 28 U.S.C. § 1746, Donald Weisberg declares and states as follows:

- 1. My name is Donald Weisberg. I am over the age of 21 and am competent to testify as to the statements set forth in this declaration.
- 2. I am currently the Executive-Vice President and Chief Operating Officer,
  North America, of Random House, Inc. ("Random House"), a position I have held since
  November 2001. In my position, I am familiar with sales figures for books published by
  Random House and its related corporate entities.
- 3. I am familiar with the book "A Million Little Pieces," by James Frey. In 2003, "A Million Little Pieces" was published in hardcover by Nan A. Talese, an imprint of Doubleday, a division of Random House. In 2005, "A Million Little Pieces" was published in paperback by Anchor Books, a division of Random House.
- 4. The suggested retail price of the hardcover edition of the book was \$22.95.

  The suggested retail price for the paperback edition of the book was \$14.95.
- 5. I have reviewed sales figures for "A Million Little Pieces" maintained by Random House in the normal and ordinary course of its business. Through January 7, 2006, Random House sold and shipped to retailers more than 2.5 million copies of the paperback edition. Based on the suggested retail price listed above, the total amount of sales to consumers of "A Million Little Pieces" exceeds \$5,000,000.

6. I have also reviewed retail "point of sales" data provided by certain third-parties. Based on this data, I have determined that copies of "A Million Little Pieces" were sold to consumers in all fifty states and that sales to consumers in no single state accounted for more than 33 percent of the total sales to consumers.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on February 16, 2006 at NEW YORK NEW YORK.

Donald Weisberg

# CERTIFICATE OF SERVICE

Michael C. Andolina, an attorney, hereby certifies that he caused a true and

correct copy of the foregoing NOTICE OF REMOVAL to be served by messenger on:

Larry D. Drury Larry D. Drury, Ltd. 205 W. Randolph, #1430 Chicago, IL 60606 (312) 346-7950

on this 21st day of February 2006.

Michael C. Andolina

CHI 3444374v.1