

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE AT BANGOR

SHANA SANDLER,  
 )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 MIA CALCAGNI, )  
 RALPH CALCAGNI, )  
 MAUREEN CALCAGNI, )  
 PETER MARS, )  
 and )  
 BOOKSURGE, LLC, )  
 )  
 Defendants. )  
 )

Case No. 07-CV-00029-DBH

**AFFIDAVIT OF MATTHEW J. SEGAL IN OPPOSITION TO  
PLAINTIFF’S MOTION FOR EXTENSION OF TIME TO FILE LIABILITY EXPERT  
DESIGNATIONS**

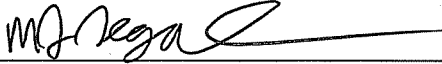
STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

THE UNDERSIGNED, being first duly sworn, on oath deposes and says:

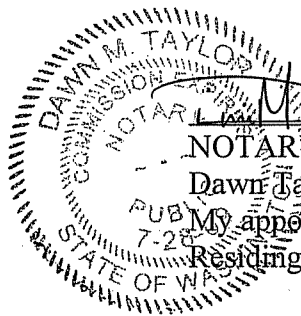

1. I hereby submit this Affidavit in opposition to Plaintiff’s Motion for Extension of Time to File Liability Expert Designations.
2. I am a partner in the law firm of Kirkpatrick & Lockhart Preston Gates Ellis LLP, counsel for Defendant BookSurge, LLC (“BookSurge) in this case. I am over the age of 18, have personal knowledge of the facts herein, and am competent to testify thereto.
3. Plaintiff did not serve a deposition notice for BookSurge until September 28. The date Plaintiff initially proposed was November 6, 2007. A true and correct copy of this notice is attached hereto as Exhibit A. After receiving the notice I promptly responded to Plaintiff’s

counsel, Mr. Kubetz, and advised that the deposition would need to take place in South Carolina, and offered a series of dates when our designee could be available. See attached Exhibit B. The deposition is now scheduled for one of those dates, November 27.

4. Plaintiff did not raise the issue of an extension of the expert designation deadline until October 11, 2007. I responded and asked Mr. Kubetz to elaborate on the scope and nature of the anticipated disclosures and the reason for his request. He declined to do so. I then offered a ten day extension of Plaintiff's deadline, coupled with a ten day extension of Defendants' deadline. I also asked Mr. Kubetz to explain why his entire expert designation was dependent on the deposition of BookSurge. See attached Exhibit C. Mr. Kubetz never responded to this inquiry but instead filed this motion without further notice.

  
\_\_\_\_\_  
MATTHEW J. SEGAL

SIGNED AND SWORN TO this 26<sup>th</sup> day of October, 2007.

  
  
\_\_\_\_\_  
NOTARY PUBLIC  
Dawn Taylor  
My appointment expires 7-28-09  
Residing in Stanwood, WA

K:\204074\100191\20913\_MJS\20913P22RB

# EXHIBIT A

**Segal, Matthew**

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**From:** Cabral, Eileen [ECabral@eatonpeabody.com]  
**Sent:** Friday, September 28, 2007 2:06 PM  
**To:** bmallonee@rudman-winchell.com; Wright, Steven; Segal, Matthew; Smith, Steve; bbruary@mardendubord.com  
**Subject:** Sandler v. Calcagni, et al  
**Attachments:** Interrogatories to Maureen Calcagni (00194420).PDF; Interrogatories to Defendant Peter Mars (00194419).PDF; Request for Production of Documents to Peter Mars (00194418).PDF; Request for Production of Documents to Maureen Calcagni (00194417).PDF; Notice of Deposition of Booksurge, LLC (00194415).PDF; Plaintiff's Request for Production of Documents to Booksurge (00194414).PDF

Attached are:

Interrogatories by Plaintiff to Defendant Maureen Calcagni  
Request for Production of Documents by Plaintiff to Defendant Maureen Calcagni

Interrogatories by Plaintiff to Peter Mars  
Request for Production of Documents by Plaintiff to Defendant Peter Mars

Request for Production of Documents by Plaintiff to Defendant Booksurge, LLC  
Notice of Deposition of Booksurge, LLC, Pursuant to Rule 30(b)(6)

Thank you,

Eileen

**Eileen Cabral**  
*Administrative Assistant*  
Eaton Peabody  
P.O. Box 1210  
80 Exchange Street  
Bangor, ME 04402-1210  
Tele: 207.947.0111  
Fax: 207.942.3040  
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10/20/2007



6. Booksurge's knowledge as to the identity of the author(s) of the book;
7. All sources of information used by Booksurge in its work on the book;
8. The financial terms of the publishing agreement between Booksurge and the author(s) of the book;
9. All communications between Booksurge and any other person or entity regarding the book;
10. The sale and distribution of the book; and
11. The marketing of the book.

Pursuant to Rule 30(b)(5), the deponent is required to produce the documents requested in Plaintiff's Request for Production of Documents for inspection and copying at or before the time of the taking of this deposition.

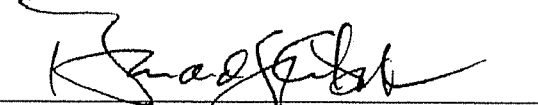
This deposition will be recorded by any of the following means: shorthand writing, stenotype machine, tape recording with multi-track tape, video camera recording, or any other method agreed to by the parties or approved by the Court.

The oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

Dated at Bangor, Maine, this 28<sup>th</sup> day of September, 2007.

PLAINTIFF, Shana Sandler,

By



Bernard J. Kubetz, Esq.  
Eaton Peabody  
80 Exchange Street  
P. O. Box 1210  
Bangor, Maine 04402-1210  
(207) 947-0111  
bkubetz@eatonpeabody.com

**CERTIFICATE OF SERVICE**

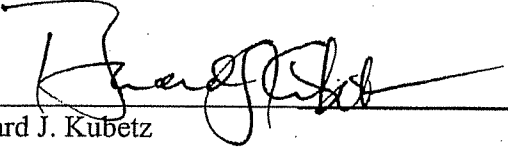
I hereby certify that I served a copy of the foregoing Notice of Deposition of Booksurge, LLC, upon counsel of record by electronic mail, on the 28<sup>th</sup> day of September, 2007, addressed to:

Bruce Mallonee, Esq.  
Rudman & Winchell, LLC  
84 Harlow Street  
P. O. Box 1401  
Bangor, Maine 04402-1401  
bmallonee@rudman-winchell.com

Steven P. Wright, Esq.  
Kirkpatrick & Lockhart Preston Gates Ellis LLP  
State Street Financial Center  
One Lincoln Street  
Boston, Massachusetts 02111-2950  
steven.wright@klgates.com

Matthew J. Segal, Esq.  
Stephen A. Smith, Esq.  
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925 Fourth Avenue, Suite 2900  
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matthew.segal@klgates.com

J. William Druary, Jr., Esq.  
Marden, Dubord, Bernier & Stevens  
44 Elm Street  
P. O. Box 708  
Waterville, Maine 04903-0708  
bdruary@mardendubord.com

  
\_\_\_\_\_  
Bernard J. Kubetz

# EXHIBIT B



**Segal, Matthew**

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**From:** Segal, Matthew  
**Sent:** Monday, October 08, 2007 6:02 PM  
**To:** 'Kubetz, Berney'  
**Subject:** RE: Booksurge

October 20 is a Saturday -- is that the date you meant? Will Ms. Sandler be sending us all the responsive documents with the responses? If you can get me full and complete responses by Friday 10/19 that should be fine.

FYI, November 2 is confirmed for Ms. Sandler's deposition and no problem on the start time, so long as it is understood that we may need to continue with her if all parties do not complete their examination on that day.

Regarding the BookSurge deposition, I have spoken with them and I believe we could be available on 11/15, 16, 22 or 23 in Charleston. We can provide a conference room with a firm there. Let me know how you would like to proceed. This confirms our discussion that BookSurge will not be deposed on November 6 as all counsel will be in Maine deposing other witnesses on that date (and also because BookSurge is not available on that date).

Matt

---

**From:** Kubetz, Berney [mailto:BKubetz@eatonpeabody.com]  
**Sent:** Monday, October 08, 2007 9:20 AM  
**To:** Segal, Matthew  
**Cc:** Cabral, Eileen  
**Subject:** Booksurge

Matt – I need until Oct 20 to respond to your discovery requests. Any objection?

Berney

Bernard J. Kubetz  
**Eaton Peabody**  
Fleet Center  
80 Exchange Street, P.O. Box 1210  
Bangor, Maine 04402-1210  
207-947-0111  
[bkubetz@eatonpeabody.com](mailto:bkubetz@eatonpeabody.com)

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10/20/2007

# EXHIBIT C

**Segal, Matthew**

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**From:** Segal, Matthew  
**Sent:** Tuesday, October 16, 2007 4:11 PM  
**To:** 'BKubetz@eatonpeabody.com'  
**Cc:** Smith, Steve  
**Subject:** RE: Sandler v. Calcagni, et al

I have forwarded your request to BookSurge to confirm their availability on that date and will let you know as soon as I hear. I personally can be available on that date.

It's not clear to me what linkage there is, however, between the BookSurge deposition and the designation of experts. I am worried that your request, without elaboration, does not allow sufficient time for rebuttal expert designations, expert discovery, or an IME if necessary, particularly with the holidays intervening. Without further elaboration from you on the designations, I am nonetheless willing to agree on behalf of BookSurge to a 10 day extension of your expert designation dates, coupled with a reciprocal 10 day extension of Defendants' counter designation. I can't speak for the other defendants as to whether they would agree to that.

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**From:** Kubetz, Berney [mailto:BKubetz@eatonpeabody.com]  
**Sent:** Tuesday, October 16, 2007 1:46 PM  
**To:** Segal, Matthew  
**Subject:** RE: Sandler v. Calcagni, et al

I can't do that until the Defendants' depositions are taken. I can do it fairly quickly after that. Can we pin down the BS dep date for the November date I suggested last week?

Berney

Bernard J. Kubetz  
**Eaton Peabody**  
Fleet Center  
80 Exchange Street, P.O. Box 1210  
Bangor, Maine 04402-1210  
207-947-0111  
[bkubetz@eatonpeabody.com](mailto:bkubetz@eatonpeabody.com)

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**From:** Segal, Matthew [mailto:Matthew.Segal@klgates.com]

10/26/2007

**Sent:** Tuesday, October 16, 2007 3:54 PM

**To:** Kubetz, Berney; bmallonee@rudman-winchell.com; Wright, Steven; Smith, Steve; bdruary@mardendubord.com

**Subject:** RE: Sandler v. Calcagni, et al

Berney,

Can you elaborate how many experts you intend to designate and what the subject matters will be? I am a bit concerned about time to complete discovery and, if necessary, identify rebuttal experts with a 30 day extension.

Matt

---

**From:** Kubetz, Berney [mailto:BKubetz@eatonpeabody.com]

**Sent:** Thursday, October 11, 2007 10:36 AM

**To:** bmallonee@rudman-winchell.com; Wright, Steven; Segal, Matthew; Smith, Steve; bdruary@mardendubord.com

**Subject:** Sandler v. Calcagni, et al

Gentlemen:

My expert witness designation deadline is October 30, 2007. Because the depositions in this case have been delayed until November, and Booksurge's deposition is likely to occur the week after Thanksgiving, I would like an extension of my expert witness deadline until thirty (30) days after the Booksurge deposition. Please let me know if you will agree to the extension.

Berney

**Berney J. Kubetz**

Eaton Peabody

P.O. Box 1210

80 Exchange Street

Bangor, ME 04402-1210

Tele: 207.947.0111

Fax: 207.947.3040

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