

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-GZS

**OPPOSITION OF DEFENDANT BOOKSURGE, LLC
TO PLAINTIFF’S MOTION TO DEFAULT
DEFENDANT MIA CALCAGNI**

Pursuant to Local Rule 7(b), Defendant BookSurge, LLC (“BookSurge”), through its attorneys, Kirkpatrick & Lockhart Preston Gates Ellis, LLP, opposes Plaintiff Shana Sandler’s (“Sandler”) November 6, 2007 Motion for Default Against Defendant Mia Calcagni for the following reasons:

1. BookSurge joins and incorporates by reference the Opposition of Defendants Mia, Ralph, and Maureen Calcagani (the “Calcagni Defendants”) to Plaintiff’s Motion for Default (the “Calcagni Opposition”), which was filed with the Court on November 27, 2007.

2. In addition to the grounds set forth in the Calcagni Opposition, BookSurge further opposes the Motion for Default in its own right because Defendant Mia Calcagni has offered to appear for a deposition under alternative circumstances. Specifically, counsel for Mia Calcagni has offered to produce Ms. Calcagni for deposition in Charleston, South Carolina (so as to coordinate

with the BookSurge deposition), or in Boston, Massachusetts in the event that other depositions in this matter are scheduled for that location. See Declaration of Matthew J. Segal (“Segal Dec.”) at ¶ 3. All of the parties, except Sandler, expressed a willingness to explore rescheduling the Calcagni deposition under these proposed options. See Segal Dec. at ¶ 4.

3. While Sandler may prefer that Defendant Mia Calcagni’s testimony not be of record or that she simply be defaulted, BookSurge would be prejudiced through no fault of its own.

4. BookSurge is entitled to reach an agreement with the other parties that would permit it to depose Mia Calcagni in another location, if BookSurge wishes to do so.

5. Sandler’s Motion for Default of Mia Calcagni must be viewed in the context of Sandler’s conduct during discovery conducted to date. As correctly noted in the Calcagni Opposition, Sandler’s deposition was not completed on Friday, November 2, 2007. See Calcagni Opposition at ¶ 3. Sandler refused to start her deposition until 10:00 a.m., despite requests to begin earlier. See Segal Dec. at ¶ 5. Sandler then unilaterally terminated her examination after less than a half a day of questioning, stating that she was not feeling well enough to continue due to an automobile accident. See Segal Dec. at ¶ 6. BookSurge requested that Sandler remain in Maine for the weekend and resume her deposition either over the weekend or at the next business day (when all counsel would be present), but Sandler refused. See Segal Dec. at ¶ 7.

6. To date, although the parties are in discussions to make appropriate arrangements, no agreement has been reached on how and under what terms Sandler’s deposition will be resumed. See Segal Dec. at ¶ 8.

7. In the interests of fairness and justice, the Court should not grant Sandler’s Motion to Default when Calcagni has agreed to be available for deposition.

REQUEST FOR RELIEF

WHEREFORE, BookSurge prays for the following relief:

1. Sandler's Motion for Default Against Defendant Mia Calcagni be denied; and
2. Defendant Mia Calcagni will be made available for a deposition at a location agreed upon by the parties.

BOOKSURGE, LLC

By its attorneys,

/s/ Steven P. Wright

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November 28, 2007

CERTIFICATE OF SERVICE

I hereby certify that on November 28, 2007, I electronically filed Defendant BookSurge's Opposition to Plaintiff's Motion for Default Against Defendant Mia Calcagni with the Clerk of Court using the CM/ECF system which will send notification of such filings to the following counsel of record:

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