

20; Kubetz Aff., Ex. 7, “*Help Us Get Mia*” at BS000046; Kubetz Aff., Ex. 3, Symonds Dep. Ex. 3 at BS000003;

4. “*Help Us Get Mia*” is a book that purports to depict Shana Sandler and to chronicle several events in her life during her time as a student at Maranacook High School and Winthrop High School, including her interactions with Mia Calcagni. Kubetz Aff., Ex. 5, Sandler Aff. at ¶¶ 7-8; Kubetz Aff., Ex. 7, “*Help Us Get Mia*”, passim.

5. The book “*Help Us Get Mia*” contains a number of false and defamatory statements about Shana Sandler. Kubetz Aff., Ex. 5, Sandler Aff. at ¶¶ 10-11.

6. The book “*Help Us Get Mia*” identifies “Emet Gabar” as the author of the book but the agreement to produce the book was made between Booksurge, LLC and Ralph Calcagni in the form of an “Author Publishing Agreement.” Kubetz Aff., Ex. 7, “*Help Us Get Mia*” at BS000045; Kubetz Aff., Ex. 1, Symonds Dep. at 47:6-9, 48:6-14; Kubetz Aff., Ex. 4, Symonds Dep. Ex. 4 at BS000001 – BS000007.

7. In the “Author Publishing Agreement,” Ralph Calcagni granted Booksurge a non-exclusive license to publish “*Help Us Get Mia*” in print. Kubetz Aff., Ex. 3, Symonds Dep. Ex. 3 at BS000002.

8. The “Author Publishing Agreement” between Ralph Calcagni and Booksurge provides that Booksurge reserves the right, in its sole discretion, not to accept a submission upon receipt. Kubetz Aff., Ex. 3, Symonds Dep. Ex. 3 at BS000003.

9. The “Author Publishing Agreement” between Ralph Calcagni and Booksurge provides that Booksurge intends to market “*Help Us Get Mia*” on its website and make the book available for distribution in various channels. Kubetz Aff., Ex. 3, Symonds Dep. Ex. 3 at BS000003.

10. The copyright page of the book “*Help Us Get Mia*” identifies that the book was “published by Booksurge, LLC” in 2006. Kubetz Aff., Ex. 7, “*Help Us Get Mia*” at BS00046; Kubetz Aff., Ex. 1, Symonds Dep. at 25:19-25.

11. Part of Booksurge’s role in “*Help Us Get Mia*” included making the book available to the public by listing it for sale on Amazon.com and by listing it for sale through the book distributor Baker & Taylor and the retailer Abe & Aliris. Kubetz Aff., Ex. 1, Symonds Dep. at 26:1-13; 28:1-15; 28:24-25; 30:24-25; 31:1-20.

12. REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED REDACTED. Kubetz Aff., Ex. 2, Symonds Dep. Ex. 2 at BS000494 – BS000502.

13. Booksurge actively solicits new titles through its sales department and personnel. Kubetz Aff., Ex. 1, Symonds Dep. at 16:25, 17:1-4; 20:17-23; 34:21-25, 35:1-21.

14. In 2007 Booksurge increased the titles it produced by 360,000 titles for a total of 480,000 titles in its inventory and which it could list for sale through Amazon.com. Kubetz Aff., Ex. 1, Symonds Dep. at 36:1-7; 36:13-25.

15. Booksurge produces books without regard for their content and does not review or screen manuscripts before producing a book. Kubetz Aff., Ex. 1, Symonds Dep. at 37:15-22; 38:1-22.

16. Booksurge made no efforts to review or screen the content of “*Help Us Get Mia.*” Kubetz Aff., Ex. 1, Symonds Dep. at 39:22-25; 40:1.

17. Booksurge did not check any of the facts or attempt to verify any of the information contained in “*Help Us Get Mia.*” Kubetz Aff., Ex. 1, Symonds Dep. at 40:2-13.

CERTIFICATE OF SERVICE

I, Bernard J. Kubetz, hereby certify that on March 5, 2008 I electronically filed the foregoing Plaintiff's Statement of Material Facts with the Clerk of the United States District Court using the CM/ECF system, which will send notification of such filing to the following:

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.
Kirkpatrick & Lockhart Preston Gates Ellis LLP
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104-1158
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

Harold J. Friedman, Esq.
Friedman, Gaythwaite Wolf & Leavitt
Six City Center
P. O. Box 4726
Portland, Maine 04112-4726
hfriedman@FGWL-law.com

/s/ Bernard J. Kubetz

Bernard J. Kubetz