

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE AT BANGOR

SHANA SANDLER,)	
)	
Plaintiff)	
)	
v.)	Case No. 1:07-CV-00029-GZS
)	
MIA CALCAGNI,)	
RALPH CALCAGNI,)	
MAUREEN CALCAGNI,)	
PETER MARS,)	
and)	
BOOKSURGE, LLC,)	
)	
Defendants.)	

**DECLARATION OF MATTHEW J. SEGAL IN SUPPORT OF
BOOKSURGE, LLC’S
MOTIONS FOR SUMMARY JUDGMENT**

THE UNDERSIGNED, under penalty of perjury, declares as follows:

1. I hereby submit this Declaration in Support of BookSurge, LLC’s Motion for Summary Judgment.
2. I am a partner in the law firm of Kirkpatrick & Lockhart Preston Gates Ellis, LLP, counsel for 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.

Records Custodian Declarations:

3. BookSurge served subpoenas in this case on the following entities: Winthrop High School and School District, Maranacook Community High School and Area School District, High Point University, and Winthrop Police Department.

4. True and accurate copies of documents received from the subpoenaed entities are included as exhibits to this declaration.
5. Attached as **Exhibit A** is a records custodian declaration from the Winthrop Police Department. All documents produced pursuant to the subpoena served on the police department are labeled “WPD___”.
6. Attached as **Exhibit B** is a records custodian declaration from High Point University. All documents produced pursuant to the subpoena served on the university are labeled “HPU___”.
7. Attached as **Exhibit C** is a records custodian declaration from the Maranacook Area School District and High School. All documents produced pursuant to the subpoena served on the school district are labeled “MCHS___”.
8. Attached as **Exhibit D** is a records custodian declaration from the Winthrop School District superintendent. All documents produced pursuant to the subpoena served on the school district are labeled “WHS___”.

Documents Obtained During Party Discovery:

9. Plaintiff Shana Sandler (“Ms. Sandler”) served requests for documents on Defendants Ralph and Maureen Calcagni.
10. The Calcagnis produced all of the documents they collected from 2003 to the present that pertain to their daughter’s, Defendant Mia Calcagni (“Ms. Calcagni”), special education services, school disciplinary proceedings, criminal mischief prosecution, civil hate crime prosecution, and U.S. Department of Education civil rights proceeding. See **Exhibit G** below, which includes excerpts of Maureen Calcagni’s November 2007 deposition at 30:19-25 – 31:1-10, 41:9-25 – 42:1-9,

- 113:14-18, 135:13-25 – 136:1-15, 151:4-16 (referred to as “M. Calcagni Dep. I” in BookSurge’s Memorandum of Law and Statement of Material Facts); *see also* **Exhibit I** below, which includes excerpts of Ralph Calcagni’s November 2007 deposition at 10:19-25 – 11:1-16, 17:15-25 – 18:1-11 (referred to as “R. Calcagni Dep. I” in BookSurge’s Memorandum of Law and Statement of Material Facts).
11. The Calcagnis also produced all of the documents they had that pertained to the writing and printing of *Help Us Get Mia. Id.*
 12. True and correct copies of documents produced by the Calcagnis were labeled in one of three ways: “C ____” (*see, e.g.*, Segal Decl., Ex. DD), “CAL ____” (*see, e.g.*, Segal Decl., Ex. V), or “ ____” (a bates number without a letter prefix; *see, e.g.*, Segal Decl., Ex. U).

Depositions & Deposition Exhibits:

13. Plaintiff Shana Sandler (“Ms. Sandler”) was deposed on November 2, 2007, and again on January 17 and 18, 2008.
14. Defendant Maureen Calcagni was deposed on November 5, 2007, and again on January 22, 2008.
15. Defendant Ralph Calcagni was deposed on November 6, 2007, and again on January 23, 2008.
16. Defendant Peter Mars (“Mars”) was deposed on January 21, 2008.
17. Excerpts from the depositions taken in this case and some of the exhibits to those depositions are included as exhibits to this declaration.

18. Attached as **Exhibit E** [REDACTED & FILED UNDER SEAL] are excerpts of Ms. Sandler’s November 2007 deposition (referred to as “Sandler Def. Dep. I” in BookSurge’s Memorandum of Law and Statement of Material Facts).
19. Exhibit E also contains the following exhibits to Ms. Sandler’s November 2007 deposition:
- a. Exhibit 1: Plaintiff’s Amended Complaint, *Sandler v. Calcagni*, Docket No. 1:07-CV-00029, June 28, 2007 (referred to as “Plaintiff’s Amended Complaint” in BookSurge’s Memorandum of Law and Statement of Material Facts).
 - b. Exhibit 2: Affidavit of Maureen Calcagni, Presented in Opposition to Plaintiff’s Amended Motion for Approval of Attachment and Trustee Process, Aug. 15, 2007. This Affidavit contains several exhibits that are part of Sandler Def. Dep. I Ex. 2:
 - i. *State v. Mia Calcagni* Decision, Docket No. AUG-JV-04-006, Sept. 9, 2004 (referred to as “State v. Mia Calcagni Decision” in BookSurge’s Memorandum of Law and Statement of Material Facts).
 - ii. *State v. Mia Calcagni* Consent Decree, Docket No. CV-04-076, Aug. 12, 2005.
 - iii. Deposition of Shana Sandler, Docket No. CV-04-076, March 11, 2005 (referred to as “Sandler Hate Crime Dep.” in BookSurge’s Memorandum of Law and Statement of Material Facts).

- iv. Excerpts of Sandler Trial Testimony, Docket No. AUG-JV-04-006 (referred to as “Sandler Trial Testimony” in BookSurge’s Memorandum of Law and Statement of Material Facts).
- v. Letter from Thomas J. Hibino, U.S. Dep’t of Ed. Office of Civil Rights, Oct. 15, 2004 (referred to as “OCR Decision” in BookSurge’s Memorandum of Law and Statement of Material Facts).
- vi. Nov. 10, 2003 handwritten note drafted by Winthrop High School music teacher Michael Shaw regarding Oct. 24, 2003 music room incident involving Ms. Calcagni.
- vii. Ms. Sandler’s myspace.com survey, March 16, 2005. Ms. Sandler revealed her attendance at a university in High Point, North Carolina, her Jewish heritage, and her willingness to date someone with piercings and tattoos. She also stated “I have no comment” to a myspace.com survey question that asked “Ever shoplifted.”
- viii. Ms. Sandler’s myspace.com posting, April 11, 2005. Ms. Sandler stated “J.A.P. Baby!! If you don’t know what that is, its [sic] a slang used to describe spoiled little brats who get their way (hehe) who are Jewish aka Jewish American Princess, but in my case it would be Jewish American Duchess hahaha.” She also stated “I have been feeling depressed for the past of [sic] 3-4 weeks. Not good and I have NO idea why, so I am taking it upon myself to do [sic] see the psyc doctor on campus. At least I am addmiting [sic]

that something is wrong and I need help to figure out why, I don't want to feel this way anymore, especially [sic] when I have no reason to be sad or have any idea why I am sad.”

- ix. Ms. Sandler's myspace.com posting, May 5, 2005. Ms. Sandler revealed her attendance at “HPU” in “NC” – High Point University. Ms. Sandler also signed her posting “JAP” – Jewish American Princess.
 - x. An instant message exchange between Ms. Sandler (“SummerEyes9”) and Ryan LeClair (“AirFxSTR03”) in which Ms. Sandler tells LeClair that “MIA GOT EXPELLED [sic]”.
 - xi. An instant message exchange between Ms. Calcagni (“PrTyLiLsHoRtY”) and Justin Childs, a Winthrop High School cheerleader (“xow4e2e0dox”), in which Mr. Childs reports that “Shana was just telling me that u [sic] weren't in school . . . and that u [sic] got expelled or something”.
 - xii. November 11, 2003 Letter from Ralph and Maureen Calcagni to School Resource Officer Chris Carson, which states, “Shana continues her badgering of Mia telling people she is expelled, that she has painted the signs and that she is out either due to a miscarriage or an abortion.”
- c. Exhibit 4: A true and complete copy of *Help Us Get Mia* (referred to as “*Help Us Get Mia*” in BookSurge's Memorandum of Law and Statement of Material Facts).

REDACTED

d. Exhibit 5: Plaintiff's Answers to Interrogatories of Defendant BookSurge, LLC, Oct. 17, 2007. Sandler Def. Dep. I Ex. 5 includes Ms. Sandler's original list of 45 allegedly libelous or private facts statements in *Help Us Get Mia* (Attachment A).

i. Interrogatory Ans. No. 5: Ms. Sandler admits she has not "suffered an economic or pecuniary loss yet" from the allegedly libelous statements.

ii. Interrogatory Ans. No. 8: Ms. Sandler states "I seek damages for the harm to my reputation and emotional distress I suffered as a result of the false statements about me in the book. I cannot quantify those damages."

20. Attached as **Exhibit F** [REDACTED & FILED UNDER SEAL] are excerpts of Ms. Sandler's January 2008 deposition (referred to as "Sandler Def. Dep. II" in BookSurge's Memorandum of Law and Statement of Material Facts).

21. Exhibit F also contains the following exhibits to Ms. Sandler's January 2008 deposition:

a. Exhibit 8: Plaintiff's amended list of 12 allegedly libelous or private facts statements in *Help Us Get Mia* (Attachment A, amended Jan. 17, 2008).

b. Exhibit 10 – HPU000001-05, -08 [FILED UNDER SEAL]: Excerpt of a compilation of records obtained from High Point University.

[REDACTED]

[REDACTED]

[REDACTED]

REDACTED

[REDACTED]

[REDACTED]

- c. Exhibit 11 – 02146 [FILED UNDER SEAL]: Voluntary Statement of [REDACTED] to the Winthrop Police Department, Nov. 20, 2003. [REDACTED]

[REDACTED]

[REDACTED]

- d. Exhibit 12 – 02152-53 [FILED UNDER SEAL]: Voluntary Statement of [REDACTED] to the Winthrop Police Department, Nov. 25, 2003. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- e. Exhibit 13 – 02205-10 [FILED UNDER SEAL]: Maine Attorney General Summary of Interview of [REDACTED], Jan. 21, 2004. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- f. Exhibit 14 – 02143-44 [FILED UNDER SEAL]: [REDACTED]

Voluntary Statement to the Winthrop Police Department, Nov. 21, 2003.

REDACTED

[REDACTED]

[REDACTED].

- g. Exhibit 16 – C 01701, C 01710-11 [FILED UNDER SEAL]: An excerpt of the Maine Attorney General Office’s collection of IMs, emails, and web postings provided by [REDACTED], June 2, 2004. [REDACTED]

[REDACTED]

[REDACTED]

- h. Exhibit 19 – C 00407-409: Ms. Sandler myspace.com posting, June 19, 2005. At C 00409, Ms. Sandler revealed that she attends High Point University.

- i. Exhibit 26 – WPD000076 [FILED UNDER SEAL]: Kennebec County Sheriff’s report [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- j. Exhibit 30 [FILED UNDER SEAL]: Anti-harassment Order served on [REDACTED] [REDACTED] by Winthrop Police Department, Oct. 30, 2003. [REDACTED]

[REDACTED]

- k. Exhibit 31 – WHS000176 [FILED UNDER SEAL]: First page of Officer Chris Carson’s police report [REDACTED]

[REDACTED]

REDACTED

- l. Exhibit 32 – WHS000178-179 [FILED UNDER SEAL]: Affirmative

Action Incident Report, Oct. 21, 2003, [REDACTED]

- m. Exhibit 33 – WHS000182-183 [FILED UNDER SEAL]: Affirmative

Action Officer Pat Larson's Notes from telephone conversation with

[REDACTED] on Friday, Oct. 31, 2003. [REDACTED]

- n. Exhibit 34 – WHS000184-189 [FILED UNDER SEAL]: Affirmative

Action Officer Meeting Memorandum, Nov. 6, 2003. [REDACTED]

- o. Exhibit 35 – WHS000190-193 [FILED UNDER SEAL]: Affirmative

Action Officer Pat Larson's Notes [REDACTED]

[REDACTED], Nov. 7, 2003. [REDACTED]

REDACTED

p. Exhibit 36 – WHS000194-196 [FILED UNDER SEAL]: Report of Affirmative Action Officer Pat Larson [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

q. Exhibit 37 – WHS000262 [FILED UNDER SEAL]: Email from [REDACTED]
[REDACTED] to Winthrop School District superintendent, Jan. 6, 2004. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

r. Exhibit 38 – WHS000263-265 [FILED UNDER SEAL]: Emails between [REDACTED] and Winthrop School District superintendent and letter from Winthrop School District superintendent [REDACTED]
[REDACTED] Jan. 4, 2004. [REDACTED]
[REDACTED]
[REDACTED]

s. Exhibit 39 – WHS000266-268 [FILED UNDER SEAL]: [REDACTED] letter to Winthrop School District superintendent [REDACTED]

REDACTED

[REDACTED], Dec. 29, 2003. [REDACTED]

[REDACTED]

- t. Exhibit 40 – WHS000506 [FILED UNDER SEAL]: Calcagnis’ Letter to the Editor, printed in Community Advertiser, Jan. 5, 2004. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- u. Exhibit 41 – WHS000391 [FILED UNDER SEAL]: Instant message between [REDACTED]

[REDACTED] from Winthrop School District files. [REDACTED]

[REDACTED]

[REDACTED]

22. Attached as **Exhibit G** are excerpts of Maureen Calcagni’s November 2007 deposition (referred to as “M. Calcagni Dep. I” in BookSurge’s Memorandum of Law and Statement of Material Facts).

23. Attached as **Exhibit H** [REDACTED & FILED UNDER SEAL] are excerpts of Maureen Calcagni’s January 2008 deposition (referred to as “M. Calcagni Dep. II” in BookSurge’s Memorandum of Law and Statement of Material Facts).

24. Exhibit H also contains the following exhibits to Maureen Calcagni’s January 2008 deposition:

- a. Exhibit 12 – C 00208-216: This exhibit contains an article from the Capital Weekly regarding Ms. Calcagni’s civil prosecution for a hate

REDACTED

crime. This exhibit also contains correspondence between the Calcagnis' attorney, district attorney's office, and attorney general's office regarding newspaper coverage of the civil hate crime prosecution and the Calcagnis' frustration that Ms. Calcagni's prosecution was made public.

- b. Exhibit 14 – WHS000281-282 [FILED UNDER SEAL]: [REDACTED] complaint letter to Maine Department of Education, Feb. 15, 2004.
- c. Exhibit 15 – CAL000090-95 [FILED UNDER SEAL]: Maine Attorney General Summary of Interview of [REDACTED], Feb. 10, 2004. [REDACTED]
[REDACTED]
- d. Exhibit 18 – CAL000275, -280 [FILED UNDER SEAL]: Excerpt of Brief of Defendant/Appellant (Mia Calcagni), Docket No. AP05-03, Dec. 6, 2005. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- e. Exhibit 24 – 03279, 03443, 03447 [FILED UNDER SEAL]: Excerpt of [REDACTED] trial testimony in *State v. Mia Calcagni*, Docket No. AUG-JV-04-6, July 1, 2004. [REDACTED]
[REDACTED]
- f. Exhibit 25 – 02076, 02079 [FILED UNDER SEAL]: Excerpt of Juvenile Defendant's Objection to Reopen Evidence and Closing Argument,

REDACTED

Docket No. AUG-JV-04-006, Aug. 2, 2004. [REDACTED]

- [REDACTED]
- g. Exhibit 26 – CAL000155, CAL000158-159, CAL000161 [FILED UNDER SEAL]: Excerpt of the Deposition of [REDACTED] March 11, 2005, for the civil hate crime prosecution of Mia Calcagni. [REDACTED]

- [REDACTED]
- h. Exhibit 27 – 03020, 03098, 03102-03 [FILED UNDER SEAL]: Excerpt of [REDACTED] trial testimony in *State v. Mia Calcagni*, Docket No. AUG-JV-04-6, June 17, 2004. [REDACTED]

- [REDACTED]
- i. Exhibit 28 – 03020, 03098, 03108 [FILED UNDER SEAL]: Excerpt of [REDACTED] trial testimony in *State v. Mia Calcagni*, Docket No. AUG-JV-04-6, June 17, 2004. [REDACTED]

- [REDACTED]
- j. Exhibit 29 – C 00407-409: Ms. Sandler’s myspace.com posting downloaded by Maureen Calcagni, June 19, 2005. At C 00409, Ms. Sandler revealed attendance at High Point University in North Carolina.

- k. Exhibit 30 – C 00374-375 [FILED UNDER SEAL]: [REDACTED] letter to Winthrop School District superintendent, Nov. 24, 2003. [REDACTED]

REDACTED

25. Attached as **Exhibit I** are excerpts of Ralph Calcagni's November 2007 deposition (referred to as "R. Calcagni Dep. I" in BookSurge's Memorandum of Law and Statement of Material Facts).
26. Exhibit I also contains the following exhibits to Ralph Calcagni's November 2007 deposition:
- a. Exhibit 4: Article and letter to editor printed in *Capital Weekly* regarding school disciplinary issues involving Ms. Calcagni and Ms. Sandler and swastika incident (excerpt of R. Calcagni Dep. I Ex. 4).
 - b. Exhibit 8: Articles and letters to the editor printed in *Community Advertiser*, *Capital Weekly*, and *Kennebec Journal* regarding school disciplinary issues involving Ms. Calcagni and Ms. Sandler and swastika incident.
27. Attached as **Exhibit J** [REDACTED & FILED UNDER SEAL] are excerpts of Ralph Calcagni's January 2008 deposition (referred to as "R. Calcagni Dep. II" in BookSurge's Memorandum of Law and Statement of Material Facts).
28. Exhibit J also contains the following exhibit to Ralph Calcagni's January 2008 deposition:
- a. Exhibit 22 – WHS000403-404 [FILED UNDER SEAL]: Winthrop School District superintendent's March 30, 2004 letter [REDACTED]
[REDACTED]
[REDACTED]

REDACTED

29. Attached as **Exhibit K** are excerpts of Peter Mars's January 2008 deposition (referred to as "Mars Dep." in BookSurge's Memorandum of Law and Statement of Material Facts).

Winthrop High School/School District Documents:

30. Attached as **Exhibit L** (WHS000174) [FILED UNDER SEAL] is the [REDACTED] November 25, 2003 letter to Winthrop Police Department School Resource Officer Carson [REDACTED]
[REDACTED]
[REDACTED]

31. Attached as **Exhibit M** [FILED UNDER SEAL] is a compilation of documents obtained from the Winthrop School District [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

32. Attached as **Exhibit N** (WHS000197-200, -202-203, -205, -238, -485) [FILED UNDER SEAL] is a compilation of letters and emails sent by the [REDACTED] to various employees of the Winthrop School District. [REDACTED]
[REDACTED]
[REDACTED]

REDACTED

33. Attached as **Exhibit O** (WHS000264-268, -575-577) [FILED UNDER SEAL] is a compilation of documents obtained from the Winthrop School District

[REDACTED]

34. Attached as **Exhibit P** (WHS000393, -405-410, -418-419, -421-422) [FILED UNDER SEAL] is a compilation of documents obtained from the Winthrop School District [REDACTED]

[REDACTED]

Maranacook Community High School/Maranacook Area School District Documents:

35. Attached as **Exhibit Q** (MCHS000006, -08, -15, -17-18) [FILED UNDER SEAL] is a compilation of documents obtained from Maranacook Community High School/Maranacook Area School District [REDACTED]

[REDACTED]

[REDACTED]

Maine Attorney General Documents:

36. Attached as **Exhibit R** (CAL000112-117) [FILED UNDER SEAL] is the Maine Attorney General Summary of Interview of [REDACTED], Feb. 2, 2004.

37. Attached as **Exhibit S** (02166-79) [FILED UNDER SEAL] is the Maine Attorney General Summary of Interview of [REDACTED], Feb. 18, 2004.

38. Attached as **Exhibit T** [FILED UNDER SEAL] is a compilation of excerpts of other Maine Attorney General interviews with students involved in the swastika incident ([REDACTED]).

REDACTED

39. Attached as **Exhibit U** (02668-70, 02673) [FILED UNDER SEAL] is an excerpt of the Deposition of [REDACTED], Feb. 1, 2005, for the civil hate crime prosecution of Ms. Calcagni.

40. Attached as **Exhibit V** (CAL000168-170) [FILED UNDER SEAL] is an excerpt of the Deposition of [REDACTED], Feb. 15, 2005, for the civil hate crime prosecution of Ms. Calcagni.

Winthrop Police Department Documents:

41. Attached as **Exhibit W** (C 00182) [FILED UNDER SEAL] is an Oct. 30, 2003 anti-harassment order issued to [REDACTED] by the Winthrop Police Department.

42. Attached as **Exhibit X** (WPD000015-18) [FILED UNDER SEAL] is a true and complete copy of Winthrop Police Department Officer Chris Carson's report.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

43. Attached as **Exhibit Y** (WPD000025-32) [FILED UNDER SEAL] is a true and complete copy of Winthrop Police Department Officer Lynne Doucette's report.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

REDACTED

44. Attached as **Exhibit Z** (WPD000077-78) [FILED UNDER SEAL] is a true and complete copy of [REDACTED] Voluntary Statement to the Winthrop Police Department, Nov. 26, 2003.
45. Attached as **Exhibit AA** (WPD000083-84) [FILED UNDER SEAL] is a true and complete copy of [REDACTED] Voluntary Statement to the Winthrop Police Department, Nov. 26, 2003.
46. Attached as **Exhibit BB** (WPD000088-89) [FILED UNDER SEAL] is a true and complete copy of [REDACTED] Voluntary Statement to the Winthrop Police Department (undated).
47. Attached as **Exhibit CC** (WPD000085) [FILED UNDER SEAL] is a true and complete copy of [REDACTED] Voluntary Statement to the Winthrop Police Department, Nov. 21, 2003.

Other Documents:

48. Attached as **Exhibit DD** (C00098-102, C00787-789, C01905-11) is a compilation of newspaper and magazine articles about teen suicide and youth discontent in Winthrop, Maine, including a *Sports Illustrated* article regarding the recent suicides.
49. Attached as **Exhibit EE** (C00327-330) [REDACTED & FILED UNDER SEAL] is an email exchange between Peter Mars and Maureen Calcagni. Mars posed the numbered questions in the email and Maureen Calcagni provided the answers to the questions. Mars discussed and authenticated this email exchange in his deposition at Mars Dep. 169:1-14, 170:24-25 – 171:1-15.

50. Attached as **Exhibit FF** are true and complete copies of the Court's scheduling orders that set October 30, 2007 as the deadline for amendment of the pleadings and joinder of parties.

51. Attached as **Exhibit GG** is a true and complete copy of Ralph and Maureen Calcagni's November 9, 2007 Answer of Defendants Ralph Calcagni and Maureen Calcagni to Crossclaim by Defendant BookSurge, LLC and Crossclaim Against Defendant BookSurge, LLC.

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

Executed this 17th day of March, 2008.

/s/ Matthew J. Segal

MATTHEW J. SEGAL