

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

**DECLARATION OF DAVID SYMONDS IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT BY BOOKSURGE, LLC**

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

1. I hereby submit this Declaration in support of the Motion for Summary Judgment by BookSurge, LLC. I am over the age of 18, have personal knowledge of the facts herein, and am competent to testify thereto.

2. I am the general manager of BookSurge, and a vice-president of On-Demand Publishing, LLC (“On-Demand”). BookSurge is a trade name for On-Demand.

3. On-Demand is not a traditional publishing company. As its name suggests, On-Demand is a “print on demand” company. “Print on demand”, or POD, generally refers to digital printing technology that allows a complete book to be printed and bound in a very short period of time at a very modest cost. POD also permits single book printing without requiring large print runs to be manufactured or inventoried. In other words, POD technology makes it possible to produce books in very small lots, rather than in larger print runs of several hundred or

several thousand (as in the case of traditional publishing). Through the use of POD technology, we allow authors that wish to self-publish their works the ability to print their manuscripts, primarily through the internet. We do not pay advances to authors or take responsibility for marketing of their work in the manner that a traditional publisher would. Instead, authors pay us to place their work into a format fit for distribution. Depending on what services the author purchases, this may include formatting of digital files and printing.

4. In 2007 alone, On-Demand made available for distribution more than 360,000 titles. As of the writing of this declaration, our total catalog exceeds 500,000 titles. We do not read or review submissions for content in any way (nor could we). We do not accept or reject submissions based on content.

5. On-Demand does not offer or undertake any fact checking services on any of our submissions. Fact checking is the responsibility of the self-publishing authors or submitting parties. In the event that an author wishes to purchase editing services, these services are outsourced to another entity. Even then, the editing services provided are technical only (such as review for grammar), and do not include a review of the content of a submission. As a practical matter, given the volume of submissions that we receive each year, there is no way that we could provide fact checking or substantive review of works that we receive. If we were required to do so, we would no longer be able to offer self publishing authors the ability to print their work. Requiring this type of substantive review of each submission we receive would essentially require us to assume the role of a traditional publisher, with all the expense that entails, and would substantially limit the content we could accept or produce. As a result, authors would no longer have the option to self publish their work.

6. The printing of the book *Help Us Get Mia* highlights what I have said above. Ralph Calcagni purchased a package from BookSurge known as "Author's Express PDF". Under the "Author's Express PDF" package, the author uploads through the internet a completed copy of his or her work in "PDF" file format, and we print the file in a "book" format. This is the process Mr. Calcagni followed – he uploaded a completed copy of *Help Us Get Mia* through

the BookSurge website. The fee for the PDF upload for *Help Us Get Mia*, not including the 250 printed copies of the book, would have been \$99. In the case of Mr. Calcagni, the \$99 fee was waived, and the total cost of this process for *Help Us Get Mia* was \$1499 (the cost of the 250 printed copies of the book). We also offer our authors the option to list their book for sale on Amazon.com, but we do not charge the author for this. Transmittal of these materials occurs through an electronic feed. Access to Amazon.com, however, is not unique to BookSurge. In fact, any self-publishing or self-published author, whether they have worked with BookSurge or not, can register independently as an author on Amazon.com, with no additional cost.

7. In the case of an “Author’s Express PDF” submission, the copyright for the book remains with the author, which allows the author to freely market or sell the book, including to a traditional publisher even after it has been printed by a self-publishing company. As such, BookSurge does not prepare the “copyright” page of the book – it is submitted by the author with their PDF file. This was the case with Mr. Calcagni’s submission. Because the author submits the copyright page, it varies in appearance, text and format. Examples of various BookSurge copyright pages are attached as Exhibit A. Some self-publishing authors who do not own their own ISBN (“International Standard Book Number”) may use a BookSurge number on that page. An ISBN is a number assigned to printed books for identification and inventory purposes. Until recently, these numbers were generally available for purchase in bulk, which made it very difficult for a self-publishing author to acquire an ISBN number for his or her own use. Mr. Calcagni did not own an ISBN and used a BookSurge ISBN on his copyright page.

8. BookSurge had no knowledge of any previous attempts by Mr. Calcagni to publish or self-publish *Help Us Get Mia*. BookSurge was not asked to and did not review or have any knowledge of the content of *Help Us Get Mia*.

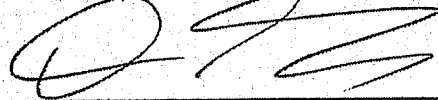
9. To my knowledge, no person at BookSurge or On-Demand knew or has ever met Shana Sandler, the plaintiff in this case. Certainly the company bears her no ill will.

10. According to our records, On-Demand printed 840 copies of *Help Us Get Mia*. Ralph Calcagni purchased 760 of these copies. A copy of our records verifying this print run is attached as Exhibit B.

11. There was no contract between the Calcagnis and BookSurge that required BookSurge to indemnify the Calcagnis.

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

EXECUTED this 8th Day of March, 2008 at Charleston, South Carolina



DAVID SYMONDS

EXHIBIT A

Garfield, Brian Wynne, 1939-

Death Sentence

First published MCMLXXV by M. Evans and Company (New York)

Subsequent republications by Bantam Books, Mysterious Press et al.

I. Title

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Printed in the United States of America.

10 9 8 7 6 5 4 3 2 1
First Edition

EXHIBIT B

SEARCH CRITERIA FOR REPORT

1. Select the date range:

From:
 To:

BOOKSURGE LLC

Revenue Statement
 Oct 1, 2002 to Oct 31, 2007

Ralph Calcagni - GPUB07226
 5A Union Street
 POB. 5
 Winthrop, ME 04964

Report created on: Oct 30, 2007

Order #	Order Date	Price	Qty	Line Total
Retail				
PO000338626.1	Sep 15, 2006	14.99	1	3.75
PO000342266.1	Sep 27, 2006	14.99	1	3.75
PO000342428.1	Sep 27, 2006	14.99	1	3.75
PO000342569.1	Sep 26, 2006	14.99	1	3.75
PO000342688.1	Sep 28, 2006	14.99	1	3.75
PO000342761.1	Sep 28, 2006	14.99	1	3.75
PO000342769.1	Sep 28, 2006	14.99	1	3.75
PO000343466.1	Oct 1, 2006	14.99	1	3.75
PO000343497.1	Oct 1, 2006	14.99	1	3.75
PO000344093.1	Oct 3, 2006	14.99	1	3.75
PO000344218.1	Oct 3, 2006	14.99	1	3.75
PO000344526.1	Oct 4, 2006	14.99	1	3.75
PO000344577.1	Oct 4, 2006	14.99	1	3.75
PO000344985.1	Oct 5, 2006	14.99	1	3.75
PO000344986.1	Oct 5, 2006	14.99	1	3.75
PO000345461.1	Oct 5, 2006	14.99	1	3.75
PO000345309.1	Oct 6, 2006	14.99	1	3.75
PO000345456.1	Oct 6, 2006	14.99	1	3.75
PO000345541.1	Oct 8, 2006	14.99	1	3.75
PO000347263.1	Oct 13, 2006	14.99	1	3.75
PO000347886.1	Oct 13, 2006	14.99	1	3.75
PO000347894.1	Oct 15, 2006	14.99	1	3.75
PO000349182.1	Oct 17, 2006	14.99	1	3.75
PO000349299.1	Oct 17, 2006	14.99	1	3.75
PO000349365.1	Oct 17, 2006	14.99	1	3.75
PO000349406.1	Oct 17, 2006	14.99	1	3.75
PO000350444.1	Oct 19, 2006	24.99	4	14.99
PO000371966.1	Dec 9, 2006	14.99	1	3.75
PO000372482.1	Dec 9, 2006	14.99	1	3.75
PO000423921.1	Jun 5, 2007	14.99	1	3.75
PO000432715.1	Jul 20, 2007	14.99	2	7.49
PO000442471.1	Aug 20, 2007	14.99	1	3.75
FC Retail				
Amazon FC - 0423	Oct 6, 2006	14.99	1	3.75
Amazon FC - 5666	Oct 7, 2006	14.99	1	3.75
Amazon FC - 0182	Oct 8, 2006	14.99	1	3.75
Amazon FC - 7666	Oct 8, 2006	14.99	1	3.75
Amazon FC - 8917	Oct 9, 2006	14.99	1	3.75
Amazon FC - 4941	Oct 11, 2006	14.99	1	3.75
Amazon FC - 1502	Oct 11, 2006	14.99	1	3.75
Amazon FC - 3669	Oct 11, 2006	14.99	1	3.75
Amazon FC - 9313	Oct 11, 2006	14.99	1	3.75
Amazon FC - 4465	Oct 12, 2006	14.99	1	3.75
Amazon FC - 0443	Oct 13, 2006	14.99	1	3.75
Amazon FC - 4510	Oct 25, 2006	14.99	1	3.75
Amazon FC - 5902	Oct 25, 2006	14.99	1	3.75
Amazon FC - 4839	Oct 27, 2006	14.99	1	3.75
Amazon FC - 4901	Oct 28, 2006	14.99	1	3.75
Amazon FC - 6320	Oct 30, 2006	14.99	1	3.75
Amazon FC - 4514	Nov 4, 2006	14.99	1	3.75
Amazon FC - 5352	Nov 13, 2006	14.99	1	3.75
Amazon FC - 9225	Nov 14, 2006	14.99	1	3.75
Amazon FC - 6300	Nov 15, 2006	14.99	1	3.75
Amazon FC - 6300	Nov 15, 2006	14.99	1	3.75
Amazon FC - 0866	Nov 15, 2006	14.99	1	3.75
Amazon FC - 7631	Nov 29, 2006	14.99	1	3.75
Amazon FC - 5663	Dec 11, 2006	14.99	1	3.75
Amazon FC - 6104	Dec 13, 2006	14.99	1	3.75
Amazon FC - 3212	Dec 22, 2006	14.99	1	3.75
Amazon FC - 4017	Jan 24, 2007	14.99	1	3.75
Amazon FC - 9305	Jan 24, 2007	14.99	1	3.75
Amazon FC - 8429	Jan 26, 2007	14.99	1	3.75
Amazon FC - 4040	Jan 30, 2007	14.99	1	3.75
Amazon FC - 4226	Feb 4, 2007	14.99	1	3.75
Amazon FC - 8536	Feb 9, 2007	14.99	1	3.75
Amazon FC - 8536	Feb 9, 2007	14.99	1	3.75
Amazon FC - 8952	Feb 25, 2007	14.99	1	3.75
Amazon FC - 4247	Mar 5, 2007	14.99	1	3.75
Amazon FC - 4019	Mar 9, 2007	14.99	1	3.75
Amazon FC - 1028	Mar 16, 2007	14.99	1	3.75
Amazon FC - 8845	Mar 16, 2007	14.99	1	3.75
Amazon FC - 0759	Apr 4, 2007	14.99	1	3.75
Distributor				
PO000358059.1	Nov 13, 2006	14.99	4	6.00
PO000410112.1	Mar 30, 2007	14.99	1	1.50
Wholesale				
PO000339189.1	Sep 18, 2006	14.99	250	0.00
PO000343744.1	Oct 2, 2006	14.99	250	0.00
PO000337348.1	Nov 10, 2006	14.99	250	0.00
			840	288.73

Total Revenue: 288.73

This royalty report is reflected as of May 1, 2006.
 Royalty information is updated every 24-hours and this report may not reflect royalties received between updates.
 Note that changes to a list price for a title may take up to one week to reflect.
 As such, the changes to compensation will not reflect until this action is complete.