

No. 08-2457

---

IN THE  
**UNITED STATES COURT OF APPEALS**  
FOR THE FIRST CIRCUIT

---

**THREE ANGELS BROADCASTING NETWORK, INC.,**  
**an Illinois Non-Profit Corporation;**  
**DANNY LEE SHELTON,**

*Plaintiffs-Appellees,*

v.

**GAILON ARTHUR JOY; ROBERT PICKLE,**

*Defendants-Appellants.*

---

On Appeal from the United States District Court  
for the District of Massachusetts  
Case No. 07-40098

---

**JOINT APPENDIX — PAGES JA0001–JA0384**

---

GAILON ARTHUR JOY, *PRO SE*  
P.O. Box 37  
Sterling, MA 01564  
(978) 333-6052

ROBERT PICKLE, *PRO SE*  
1354 County Highway 21  
Halstad, MN 56548  
(218) 456-2568

**JOINT APPENDIX**  
**TABLE OF CONTENTS**

<b>Doc. #</b>	<b>Date Filed</b>	<b>Doc. Description (&amp; pages selected if not all) ..... Page #</b>
		Docket sheet for District of Massachusetts case no. 07-cv-40098-FDS ..... JA0001
1	Apr. 6, '07	Plaintiffs' complaint ..... JA0025
9	May 21, '07	Defendants' Answer, part 1 ..... JA0046
9-2	May 21, '07	Defendants' Answer, part 2 ..... JA0071
10-3	May 24, '07	Stenson's affidavit in support of permanent impoundment ..... JA0094
10-5	May 24, '07	Ewing's affidavit in support of permanent impoundment (pp. 2-5) ..... JA0099
17	June 25, '07	Transcript of May 10, 2007, hearing on plaintiffs' motion to seal case (pp. 1-2, 8, 13-14, 18-21, 24) .... JA0103
18	July 20, '07	Plaintiffs' Rule 26(f) conference report (p. 1-4) ..... JA0113
19	July 20, '07	Defendants' Rule 26(f) conference report (p. 1-4) ... JA0117
23	Aug. 13, '07	Plaintiffs' Local Rule 16.1(d)(3) certification ..... JA0121
30-2	Nov. 2, '07	Order granting status conference and imaging of Joy's hard drives ..... JA0123
32	Nov. 16, '07	Plaintiffs' emergency motion for status conf. .... JA0125
33-2	Nov. 16, '07	Order on form of electronic discovery (pp. 1, 3-7) ... JA0127
37	Dec. 14, '07	Pickle's affidavit for Pickle's motion to compel ..... JA0133
40-2	Dec. 18, '07	Plaintiffs' proposed protective order (pp. 1-3, 7) ..... JA0138
42	Dec. 18, '07	Hayes' affidavit for plaintiffs' motion for protective order (pp. 1-3) ..... JA0142
44	Dec. 18, '07	Stenson's affidavit for plaintiffs' motion for protective order (pp. 4-5) ..... JA0145
46	Dec. 28, '07	Hayes' affidavit opposing Pickle's motion to compel (pp. 1-2) ..... JA0147
49	Jan. 2, '07	Pickle's affidavit opposing motion for protective order ..... JA0149
56	Mar. 5, '07	Pickle's affidavit supporting Pickle's motion for

<b>Doc. #</b>	<b>Date Filed</b>	<b>Doc. Description (&amp; pages selected if not all) ..... Page #</b>
		leave to file supplemental memorandum (p. 1) ..... JA0155
57	Mar. 20, '07	Pickle's proposed protective order ..... JA0156
58	Mar. 20, '07	Plaintiffs' proposed protective order ..... JA0168
59	Mar. 21, '07	Joy's proposed protective order ..... JA0182
63	May 15, '07	Pickle's affidavit supporting Pickle's motion to compel ..... JA0194
68	May 29, '08	Hayes' affidavit opposing Pickle's motion to compel (pp. 1-3, 9-11) ..... JA0198
71	June 10, '08	Pickle's affidavit supporting defendants' motion to extend discovery deadlines ..... JA0204
76	June 25, '08	Kingsbury's affidavit supporting plaintiffs' motion to limit scope of discovery (pp. 1, 3-4) ..... JA0208
77	July 9, '08	Transcript of May 7, 2008, status conference (pp. 1-2, 6-13, 15-18) ..... JA0211
81	July 9, '08	Pickle's affidavit opposing plaintiffs' motion to limit scope and methods of discovery..... JA0225
89	July 17, '08	Transcript of Mar. 7, 2008, motion hearing (pp. 1, 4-5, 10, 14-16, 19-27, 30-33, 36-42) ..... JA0238
100	Sept. 8, '08	Pickle's affidavit supporting defendants' motion for leave to serve subpoenas upon Delta Airlines and port director (pp. 1, 3-5) ..... JA0265
103	Sept. 8, '08	Pickle's affidavit supporting defendants' motion to extend discovery deadlines ..... JA0269
107	Sept. 11, '08	Order on plaintiffs' motion to limit scope of discovery and Pickle's motion to compel ..... JA0281
109	Sept. 16, '08	Pickle's affidavit supporting reply to response to defendants' motion to serve subpoenas upon U.S. Atty. Cox and the Fjarli Foundation ..... JA0286
114	Oct. 1, '08	Pickle's affidavit supporting reply to response to defendants' motion to serve subpoenas upon Delta Airlines and a port director (pp. 1-3, 5-6) ..... JA0291
116	Oct. 1, '08	Simpson's affidavit supporting plaintiffs' motion to enforce protective order ..... JA0296

<b>Doc. #</b>	<b>Date Filed</b>	<b>Doc. Description (&amp; pages selected if not all) ..... Page #</b>
120	Oct. 23, '08	Plaintiffs' motion for voluntary dismissal ..... JA0299
121	Oct. 23, '08	Plaintiffs' memorandum supporting plaintiffs' motion for voluntary dismissal ..... JA0302
122	Oct. 23, '08	Simpson's affidavit supporting plaintiffs' motion for voluntary dismissal ..... JA0313
123	Oct. 23, '08	Thompson's affidavit supporting plaintiffs' motion for voluntary dismissal ..... JA0317
125	Oct. 23, '08	Pickle's affidavit supporting defendants' motion for hearing on subpoena served upon Lovejoy and Gray Hunter Stenn ..... JA0321
126	Oct. 30, '08	Defendants' memorandum opposing plaintiffs' motion for voluntary dismissal ..... JA0323
127	Oct. 30, '08	Pickle's affidavit opposing plaintiffs' motion for voluntary dismissal ..... JA0343
132	Nov. 13, '08	Pickle's affidavit supporting defendants' motion to impose costs ..... JA0354
144	Dec. 3, '08	Transcript of Dec. 14, 2007, status conference (pp. 1-2, 9-17, 21-23, 29) ..... JA0358
146	Dec. 5, '08	Transcript of September 11, 2008, status conference (pp. 1-2, 4-5, 7-10, 13-16) ..... JA0373

APPEAL, CASREF, TRADE

**United States District Court  
District of Massachusetts (Worcester)  
CIVIL DOCKET FOR CASE #: 4:07-cv-40098-FDS**

Three Angels Broadcasting v Joy, et al.,  
Assigned to: Judge F. Dennis Saylor, IV  
Referred to: Magistrate Judge Timothy S. Hillman  
Cause: 28:1338 Trademark Infringement

Date Filed: 04/06/2007  
Date Terminated: 11/03/2008  
Jury Demand: Plaintiff  
Nature of Suit: 840 Trademark  
Jurisdiction: Federal Question

<b>Date Filed</b>	<b>#</b>	<b>Docket Text</b>
04/06/2007		Case Assigned to Judge F. Dennis Saylor, IV. (Shattuck, Deborah) (Entered: 04/06/2007)
04/06/2007	<u>1</u>	COMPLAINT against Gailon Arthur Joy, Robert Pickle filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # Exhibits to complaint# civil cover sheets)(Jones, Sherry) Additional attachment(s) added on 5/14/2007 (Hassett, Kathy). (Entered: 04/06/2007)
04/06/2007		Filing fee: \$ 350.00, receipt number 405057 for <u>1</u> Complaint. (Jones, Sherry) (Entered: 04/06/2007)
04/06/2007		Summons Issued as to Gailon Arthur Joy, Robert Pickle. (Jones, Sherry) (Entered: 04/06/2007)
04/06/2007	<u>2</u>	EX PARTE MOTION for preliminary impoundment and request for a hearing on the issue of permanent impoundment by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # <u>1</u> proposed order)(Jones, Sherry) (Entered: 04/06/2007)
04/06/2007	<u>3</u>	MEMORANDUM in Support re <u>2</u> MOTION to Seal Document filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # <u>1</u> exhibits to memo in support)(Jones, Sherry) (Entered: 04/06/2007)
04/06/2007	<u>4</u>	REPORT on the filing of trademark case. (Jones, Sherry) (Entered: 04/06/2007)
04/25/2007		Judge F. Dennis Saylor IV: Electronic ORDER entered granting <u>2</u> Motion to Seal case. (Castles, Martin) (Entered: 04/25/2007)
04/25/2007	<u>5</u>	Judge F. Dennis Saylor IV: PRELIMINARY ORDER OF IMPOUNDMENT entered re <u>2</u> MOTION to Seal Document <u>1</u> Complaint filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Hassett, Kathy) (Entered: 04/25/2007)
04/25/2007		ELECTRONIC NOTICE of Hearing on Motion to seal: Motion Hearing set for Thursday 5/10/2007 at 2:00PM in Courtroom 2 before Judge F. Dennis Saylor

JA0001

		IV. (Castles, Martin) (Entered: 04/25/2007)
05/02/2007	<u>6</u>	MOTION for Leave to Appear Pro Hac Vice for admission of Gerald S. Duffy, William Penwell, Jerrie M. Hayes & Kristin L. Kingsbury by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # <u>1</u> attorney certifications)(Jones, Sherry) (Entered: 05/02/2007)
05/04/2007		Filing fee: \$ 200.00, receipt number 405079 for <u>6</u> MOTION for Leave to Appear Pro Hac Vice for admission of Gerald S. Duffy, william Penwell, Jerrie M. Hayes & Kristin L. Kingsbury (Jones, Sherry) (Entered: 05/04/2007)
05/09/2007		Judge F. Dennis Saylor IV: Electronic ORDER entered granting <u>6</u> Motion for Leave to Appear Pro Hac Vice. Added Gerald Duffy for Three Angels Broadcasting Network, Inc., William Christopher Penwell for Three Angels Broadcasting Network, Inc., Jerrie M. Hayes for Three Angels Broadcasting Network, Inc., Kristin L. Kingsbury for Three Angels Broadcasting Network, Inc. (Castles, Martin) (Entered: 05/09/2007)
05/10/2007	<u>7</u>	NOTICE of Appearance by Laird J. Heal on behalf of Gailon Arthur Joy, Robert Pickle. (Jones, Sherry) (Entered: 05/10/2007)
05/10/2007	<u>8</u>	Opposition re <u>2</u> MOTION to Seal Document and permanent impoundment <u>1</u> Complaint filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # <u>1</u> Exhibit)(Jones, Sherry) (Entered: 05/10/2007)
05/10/2007		ElectronicClerk's Notes for proceedings held before Judge F. Dennis Saylor IV: Motion Hearing held on 5/10/2007 re <u>2</u> MOTION to Seal case filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton, Case called, Counsel appear for motion hearing, Court hears arguments of counsel, Court takes motion under advisement, Court orders plaintiff to file reply to opposition by 5/24/07, Dft's sur-reply due by 6/7/07, Court sets further status conference: Status Conference set for 6/21/2007 at 3:00PM in Courtroom 2 before Judge F. Dennis Saylor IV. (Court Reporter M. Kusa-Ryll.) (Castles, Martin) (Entered: 05/10/2007)
05/21/2007	<u>9</u>	ANSWER to Complaint by Gailon Arthur Joy, Robert Pickle. (Attachments: # <u>1</u> Part 2)(Hassett, Kathy) (Entered: 05/21/2007)
05/24/2007	<u>10</u>	REPLY to Response to Motion re <u>2</u> MOTION to Seal Document and Permanent Impoundment re <u>1</u> Complaint filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # <u>1</u> Text of Proposed Order # <u>2</u> Affidavit of Mollie Steenson# <u>3</u> Exhibits to Affidavit of Mollie Steenson# <u>4</u> Affidavit of Larry Ewing)(Hassett, Kathy) (Entered: 05/24/2007)
06/08/2007	<u>11</u>	NOTICE of Pro Se Appearance by Gailon Arthur Joy. (Jones, Sherry) (Entered: 06/08/2007)
06/08/2007	<u>12</u>	SUR-REPLY to Motion re <u>2</u> MOTION to Seal Document <u>1</u> Complaint filed by Gailon Arthur Joy. (Attachments: # <u>1</u> proposed order)(Jones, Sherry) (Entered: 06/08/2007)

06/08/2007	<a href="#"><u>13</u></a>	MOTION for Extension of Time to 6/11/07 to File response to supplemental pleadings by Gailon Arthur Joy, Robert Pickle, c/s.(Jones, Sherry) (Entered: 06/08/2007)
06/08/2007	<a href="#"><u>14</u></a>	MOTION for Sanctions, MOTION to Strike supplemental pleadings by Gailon Arthur Joy, Robert Pickle. (Attachments: # <a href="#"><u>1</u></a> exhibit part 1# <a href="#"><u>2</u></a> exhibit part 2# <a href="#"><u>3</u></a> exhibit part 3)(Jones, Sherry) (Entered: 06/08/2007)
06/11/2007	<a href="#"><u>15</u></a>	SUPPLEMENTAL MEMORANDUM in Opposition to Plaintiff's Motion for permanent impoundment re <a href="#"><u>2</u></a> MOTION to Seal Document filed by Robert Pickle. (Attachments: # <a href="#"><u>1</u></a> Exhibit)(Jones, Sherry) (Entered: 06/12/2007)
06/21/2007		Judge F. Dennis Saylor IV: Electronic ORDER entered finding as moot <a href="#"><u>13</u></a> Motion for Extension of Time to File. (Castles, Martin) (Entered: 06/21/2007)
06/21/2007		Judge F. Dennis Saylor IV: Electronic ORDER entered denying <a href="#"><u>14</u></a> Motion for Sanctions and denying <a href="#"><u>14</u></a> Motion to Strike. (Castles, Martin) (Entered: 06/21/2007)
06/21/2007		Judge F. Dennis Saylor IV: Electronic ORDER entered. Order to Unseal Case.(Castles, Martin) (Entered: 06/21/2007)
06/21/2007		Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor IV: Status Conference held on 6/21/2007. Case called, Counsel for plaintiffs, Counsel for dft Pickel and dft Joy (pro-se) appear for status conference, Court orders case unsealed for the reasons stated in open court, Court sets case for scheduling conference on 7/23/07 at 3:00pm. Court rules denying motion for sanctions and to strike, (Court Reporter M. Kusa-Ryll.) (Castles, Martin) (Entered: 06/21/2007)
06/21/2007	<a href="#"><u>16</u></a>	NOTICE of Scheduling Conference:Scheduling Conference set for Monday 7/23/2007 at 3:30PM in Courtroom 2 before Judge F. Dennis Saylor IV. (Castles, Martin) (Entered: 06/21/2007)
06/25/2007	<a href="#"><u>17</u></a>	TRANSCRIPT of Motion Hearing held on May 10, 2007 before Judge Saylor. Court Reporter: Marianne Kusa-Ryll. The original transcripts are maintained by the Clerk's Office. Copies may be obtained by contacting the court reporter at 508/929-3399 or the Clerk's Office. (Scalfani, Deborah) (Entered: 06/25/2007)
07/20/2007	<a href="#"><u>18</u></a>	REPORT of Rule 26(f) Planning Meeting. (Pucci, John) (Entered: 07/20/2007)
07/20/2007	<a href="#"><u>19</u></a>	First JOINT SUBMISSION pursuant to Local Rule 16.1 (d) by Gailon Arthur Joy, Robert Pickle.(Heal, Laird) (Entered: 07/20/2007)
07/23/2007		Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor IV: Scheduling Conference held on 7/23/2007. Case called, Counsel for plaintiff, Counsel for dft Pickel and pro-se defendant Joy appear for scheduling conference, Scheduling order to issue, Court to refer matter to Magistrate Judge Hillman for a ruling on electronic discovery requirements. (Court Reporter M. Kusa-Ryll.) (Castles, Martin) (Entered: 07/23/2007)

07/23/2007		Judge F. Dennis Saylor IV: Electronic ORDER entered. REFERRING CASE to Magistrate Judge Timothy S. Hillman, Referred for: Hearing and Order on Electronic Discovery requirements.(Castles, Martin) (Entered: 07/23/2007)
07/24/2007	<u>20</u>	Judge F. Dennis Saylor IV: ORDER entered. SCHEDULING ORDER:Case Management Conference set for 12/13/2007 02:00 PM in Courtroom 2 before Judge F. Dennis Saylor IV.,Status Conference set for 5/6/2008 02:00 PM in Courtroom 2 before Judge F. Dennis Saylor IV.,Amended Pleadings due by 9/15/2007.,Discovery to be completed by 4/30/2008.,Motions due by 9/5/2008.(Castles, Martin) (Entered: 07/24/2007)
07/24/2007		ELECTRONIC NOTICE of Hearing :Telephone Status Conference set for 7/26/2007 02:30 PM in Courtroom 1 before Magistrate Judge Timothy S. Hillman, cc/cl. (Roland, Lisa) (Entered: 07/24/2007)
07/27/2007		Electronic Clerk's Notes for proceedings held before Judge Timothy S. Hillman : Status Conference held on 7/27/2007. Case called, Counsel (Richards, Hayes, Heal, Joy-Pro-se) appear by telephone, Counsel discuss issues of Electronic Discovery, Counsel/Parties to have their experts discuss issues, and unless the Court is notified that issues have been resolved, further hearing is scheduled for August 9, 2007 @ 2:00 pm, Order to issue. (Digital Recording 2:34 p.) (Roland, Lisa) (Entered: 07/27/2007)
07/27/2007	<u>21</u>	Judge Timothy S. Hillman : ORDER entered re: Electronic Discovery, cc/cl. (Roland, Lisa) (Entered: 07/27/2007)
08/07/2007		ELECTRONIC NOTICE of Hearing :Evidentiary Hearing Under Rule 16 set for 8/9/2007 02:00 PM in Courtroom 1 before Magistrate Judge Timothy S. Hillman, cc/cl. (Entered: 08/07/2007)
08/09/2007		Electronic Clerk's Notes for proceedings held before Judge Timothy S. Hillman : Evidentiary Hearing re discovery held on 8/9/2007. Case called, Counsel (Hayes, Duffy, Richards, Heal) Joy-Pro-se & Defendant Pickle via video conference appear, Pla calls Lanterman, Cross by Attorney Heal, Cross by Mr. Joy, Re-Direct, Counsel argue, Matter taken under advisement. (Digital Recording 2:17 p.) (Roland, Lisa) (Entered: 08/13/2007)
08/13/2007	<u>23</u>	CERTIFICATION pursuant to Local Rule 16.1 by Three Angels Broadcasting Network, Inc., Danny Lee Shelton.(Richards, J.) (Entered: 08/13/2007)
08/13/2007		Judge Timothy S. Hillman : Electronic ORDER entered re Discovery Issue. "The parties are to submit a Proposed Order to this court within 14 days of the date of this order with respect to the format that any electronically stored information shall be provided to the opposing party. This order should include, but need not be limited to, the protocol to be employed, the methodology for dealing with confidential information, and any 'claw back' agreements." cc/cl(Roland, Lisa) (Entered: 08/13/2007)
08/23/2007	<u>24</u>	Proposed Document(s) submitted by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. Document received: Proposed Order Governing Production of Electronically Stored Information. (Richards, J.) (Entered: 08/23/2007)



08/27/2007	<a href="#">25</a>	Proposed Document(s) submitted by Robert Pickle. Document received: Proposed Order. (Heal, Laird) (Entered: 08/27/2007)
08/27/2007	<a href="#">26</a>	Proposed Document(s) submitted by Gailon Arthur Joy. Document received: Proposed Order. (Heal, Laird) (Entered: 08/27/2007)
08/27/2007	<a href="#">27</a>	MEMORANDUM OF LAW by Gailon Arthur Joy to <a href="#">26</a> Proposed Document(s) submitted. (Attachments: # <a href="#">1</a> Supplement Certificate of Service)(Heal, Laird) (Entered: 08/27/2007)
10/24/2007	<a href="#">29</a>	MOTION for Hearing <i>Status Conference</i> by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # <a href="#">1</a> Exhibit Joy Bankruptcy Petition)(Pucci, John) (Entered: 10/24/2007)
10/26/2007		Judge F. Dennis Saylor IV: Electronic ORDER entered. REFERRING MOTION <a href="#">29</a> MOTION for Hearing <i>Status Conference</i> filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc. to Magistrate Judge Timothy S. Hillman(Castles, Martin) Motions referred to Timothy S. Hillman. (Entered: 10/26/2007)
11/02/2007	<a href="#">30</a>	Judge Timothy S. Hillman : ORDER entered granting <a href="#">29</a> Motion for Status Conference. Hearing set for November 13, 2007 @ 1:00 pm IN BOSTON. (Roland, Lisa) (Entered: 11/02/2007)
11/02/2007		Set Hearings: Status Conference set for 11/13/2007 01:00 PM IN BOSTON, Courtroom 16 before Magistrate Judge Timothy S. Hillman. (Roland, Lisa) (Entered: 11/02/2007)
11/10/2007	<a href="#">31</a>	NOTICE by Robert Pickle of <i>Appearance Pro Se</i> filed by Laird Heal on behalf of Pickle (Attachments: # <a href="#">1</a> Certificate of Service)(Heal, Laird) (Entered: 11/10/2007)
11/13/2007		Electronic Clerk's Notes for proceedings held before Judge Timothy S. Hillman : Status Conference held on 11/13/2007. Case called, Counsel (Pucci, Duffy, Heal, Joy-pro-se, Pickle-Pro-se by telephone) appear, The Court inquires about representation of Defendants, Attorney Heal confirms that he does not represent either Defendant in this case, Counsel discuss case, Order to issue. (Digital Recording 2:20 p.) (Roland, Lisa) (Entered: 11/13/2007)
11/13/2007		NOTICE of Withdrawal of Appearance. As Attorney Heal states in open court that he no longer represents either defendant, and they are both Pro-Se, Attorney Laird J. Heal is terminated. (Roland, Lisa) (Entered: 11/13/2007)
11/16/2007	<a href="#">32</a>	Emergency MOTION for Hearing <i>Status Conference</i> by Three Angels Broadcasting Network, Inc., Danny Lee Shelton.(Pucci, John) (Entered: 11/16/2007)
11/16/2007		Judge F. Dennis Saylor IV: Electronic ORDER entered. REFERRING MOTION <a href="#">32</a> Emergency MOTION for Hearing <i>Status Conference</i> filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc. to Magistrate Judge Timothy S. Hillman.(Castles, Martin) Motions referred to Timothy S. Hillman. (Entered: 11/16/2007)

11/16/2007	<a href="#">33</a>	Judge Timothy S. Hillman : FINDINGS AND ORDER entered. (Roland, Lisa) (Entered: 11/16/2007)
11/16/2007		Judge Timothy S. Hillman : Electronic ORDER entered reserving ruling on <a href="#">32</a> EMERGENCY Motion for Hearing. "This Court's Order setting up the cc of the Defendants' equipment is stayed until further order of this Court. The parties shall inform my Clerk of dates that they are available for a further status conference." cc/cl (Roland, Lisa) (Entered: 11/16/2007)
11/19/2007		Judge Timothy S. Hillman : Electronic ORDER entered denying <a href="#">32</a> Motion for Status Conference. "The Plaintiff's Emergency Motion for Hearing status confrence is denied without prejudice to renew after seeking relief from the automatic stay provisions in the Bankruptcy Court" (Roland, Lisa) (Entered: 11/19/2007)
11/20/2007	<a href="#">34</a>	Opposition re <a href="#">32</a> Emergency MOTION for Hearing <i>Status Conference</i> filed by Robert Pickle. (Smith3, Dianne) Additional attachment(s) added on 11/21/2007 (Smith3, Dianne). (Entered: 11/20/2007)
12/14/2007	<a href="#">35</a>	MOTION to Compel Plaintiffs to produce Rule 26 documents and MOTION for Sanctions by Robert Pickle, c/s.(Jones, Sherry) (Entered: 12/14/2007)
12/14/2007	<a href="#">36</a>	MEMORANDUM in Support re <a href="#">35</a> MOTION to Compel MOTION for Sanctions filed by Robert Pickle, c/s. (Jones, Sherry) (Entered: 12/14/2007)
12/14/2007	<a href="#">37</a>	AFFIDAVIT of Robert Pickle in Support re <a href="#">35</a> MOTION to Compel MOTION for Sanctions filed by Robert Pickle. (Attachments: # <a href="#">1</a> Exhibits)(Jones, Sherry) (Entered: 12/14/2007)
12/14/2007	<a href="#">38</a>	MOTION for leave of the court to file electronically by Robert Pickle, c/s.(Jones, Sherry) (Entered: 12/14/2007)
12/14/2007	<a href="#">39</a>	AFFIDAVIT of Robert Pickle in Support re <a href="#">38</a> MOTION for leave of the court to file electronically filed by Robert Pickle. (Jones, Sherry) (Entered: 12/14/2007)
12/14/2007		Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor IV: Case Management Conference held on 12/14/2007. Case called, Counsel and dfts Pro-se (Joy and Pickle) appear for case management conference, Parties inform court of current status of discovery and Bankruptcy proceedings, Automatic stay under the Bankruptcy Court has been lifted, Plaintiff's request extension of the scheduling order, Court grants request in part, Court will extend scheduling order by 90 days, Order to issue, Status conference set for 5/6/08 will remain scheduled, Court grants dft's leave to file electronically, (Court Reporter: M. Kusa-Ryll.)(Attorneys present: Hayes/Richards/Pucci) (Castles, Martin) (Entered: 12/14/2007)
12/14/2007		AMENDED Scheduling Order Deadlines: Status Conference set for 5/6/2008 at 2:00PM in Courtroom 2 before Judge F. Dennis Saylor IV., Fact Discovery to be completed by 7/30/2008., Dispositive Motions due by 12/5/2008. Requests for production of documents and requests for admissions to be served by 5/28/08, Depositions completed by 7/30/08, Plaintiff's experts disclosed by 8/30/08 and

		defendant's experts disclosed by 9/30/08, Expert depositions completed by 10/31/08. (Castles, Martin) (Entered: 12/14/2007)
12/14/2007		Judge F. Dennis Saylor IV: Electronic ORDER entered granting <a href="#">38</a> Motion to file electronically. Dft's Joy and Pickle are both granted permission to file electronically. Pro-se dfts must register for electronic filing. To register go to the Court website at www.mad.uscourts.gov. (Castles, Martin) (Entered: 12/14/2007)
12/18/2007	<a href="#">40</a>	MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # <a href="#">1</a> Exhibit A - Protective Order)(Richards, J.) (Entered: 12/18/2007)
12/18/2007	<a href="#">41</a>	MEMORANDUM in Support re <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 12/18/2007)
12/18/2007	<a href="#">42</a>	AFFIDAVIT of Jerrie Hayes in Support re <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 12/18/2007)
12/18/2007	<a href="#">43</a>	AFFIDAVIT of Danny Shelton in Support re <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 12/18/2007)
12/18/2007	<a href="#">44</a>	AFFIDAVIT of Mollie Steenson in Support re <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 12/18/2007)
12/28/2007	<a href="#">45</a>	Opposition re <a href="#">35</a> MOTION to Compel MOTION for Sanctions filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 12/28/2007)
12/28/2007	<a href="#">46</a>	AFFIDAVIT of Jerrie Hayes re <a href="#">45</a> Opposition to Motion to Compel and For Sanctions by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 12/28/2007)
01/02/2008	<a href="#">47</a>	Opposition re <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> filed by Robert Pickle, c/s. (Jones, Sherry) (Entered: 01/02/2008)
01/02/2008	<a href="#">48</a>	MEMORANDUM in Opposition re <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> filed by Robert Pickle, c/s. (Jones, Sherry) (Entered: 01/02/2008)

01/02/2008	<a href="#">49</a>	AFFIDAVIT of Robert Pickle in Opposition re <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> filed by Robert Pickle. (Attachments: # <a href="#">1</a> Exhibits)(Jones, Sherry) (Entered: 01/02/2008)
02/13/2008		Judge F. Dennis Saylor, IV: Electronic ORDER entered. REFERRING MOTION <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc., and <a href="#">35</a> MOTION to Compel MOTION for Sanctions filed by Robert Pickle to Magistrate Judge Magistrate Judge Timothy S. Hillman.(Castles, Martin) Motions referred to Timothy S. Hillman. (Entered: 02/13/2008)
02/28/2008		ELECTRONIC NOTICE of Hearing on Motion <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> , <a href="#">35</a> MOTION to Compel MOTION for Sanctions : Motion Hearing set for 3/7/2008 02:30 PM in Courtroom 1 before Magistrate Judge Timothy S. Hillman. (Roland, Lisa) (Entered: 02/28/2008)
03/03/2008	<a href="#">50</a>	Supplemental MEMORANDUM in Opposition re <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> filed by Robert Pickle. (Pickle, Robert) (Entered: 03/03/2008)
03/03/2008	<a href="#">51</a>	Supplemental AFFIDAVIT of Robert Pickle in Opposition re <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> filed by Robert Pickle. (Attachments: # <a href="#">1</a> Exhibit Ex. A, # <a href="#">2</a> Exhibit Ex. B, # <a href="#">3</a> Exhibit Ex. C, # <a href="#">4</a> Exhibit Ex. D, # <a href="#">5</a> Exhibit Ex. E, # <a href="#">6</a> Exhibit Ex. F, # <a href="#">7</a> Exhibit Ex. G, # <a href="#">8</a> Exhibit Ex. H, # <a href="#">9</a> Exhibit Ex. I, # <a href="#">10</a> Exhibit Ex. J, # <a href="#">11</a> Exhibit Ex. K (Ex. B-G), # <a href="#">12</a> Exhibit Ex. K (Ex. H-J), # <a href="#">13</a> Exhibit Ex. K (Ex. K-S), # <a href="#">14</a> Exhibit Ex. K (Ex. T-ZZ), # <a href="#">15</a> Exhibit Ex. K (Ex. AA-EE))(Pickle, Robert) (Entered: 03/03/2008)
03/04/2008	<a href="#">52</a>	MOTION to Strike <a href="#">50</a> Memorandum in Opposition to Motion, MOTION for Leave to File ( Responses due by 3/18/2008) by Three Angels Broadcasting Network, Inc., Danny Lee Shelton.(Richards, J.) (Entered: 03/04/2008)
03/04/2008	<a href="#">53</a>	MEMORANDUM in Support re <a href="#">52</a> MOTION to Strike <a href="#">50</a> Memorandum in Opposition to Motion MOTION for Leave to File filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 03/04/2008)
03/05/2008	<a href="#">54</a>	MOTION for Leave to File <i>Supplemental Memorandum in Opposition to Plaintiffs' Motion for Protective Order</i> by Robert Pickle.(Pickle, Robert) (Entered: 03/05/2008)
03/05/2008	<a href="#">55</a>	MEMORANDUM in Support re <a href="#">54</a> MOTION for Leave to File <i>Supplemental Memorandum in Opposition to Plaintiffs' Motion for Protective Order</i> filed by Robert Pickle. (Pickle, Robert) (Entered: 03/05/2008)
03/05/2008		Judge F. Dennis Saylor, IV: Electronic ORDER entered. REFERRING MOTION <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion</i>

		<i>for Protective Order and Request for Oral Argument</i> filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc., <a href="#">35</a> MOTION to Compel MOTION for Sanctions filed by Robert Pickle, <a href="#">54</a> MOTION for Leave to File <i>Supplemental Memorandum in Opposition to Plaintiffs' Motion for Protective Order</i> filed by Robert Pickle, <a href="#">52</a> MOTION to Strike <a href="#">50</a> Memorandum in Opposition to Motion MOTION for Leave to File filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc. to Magistrate Judge Timothy S. Hillman(Castles, Martin) Motions referred to Timothy S. Hillman. (Entered: 03/05/2008)
03/05/2008	<a href="#">56</a>	AFFIDAVIT of Robert Pickle in Support re <a href="#">54</a> MOTION for Leave to File <i>Supplemental Memorandum in Opposition to Plaintiffs' Motion for Protective Order</i> filed by Robert Pickle. (Pickle, Robert) (Entered: 03/05/2008)
03/07/2008		Electronic Clerk's Notes for proceedings held before Magistrate Judge Timothy S. Hillman: Motion Hearing held on 3/7/2008 re <a href="#">40</a> MOTION for Protective Order <i>Notice of Motion and Motion for Protective Order and Request for Oral Argument</i> filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc., <a href="#">35</a> MOTION to Compel MOTION for Sanctions filed by Robert Pickle, <a href="#">54</a> MOTION for Leave to File <i>Supplemental Memorandum in Opposition to Plaintiffs' Motion for Protective Order</i> filed by Robert Pickle, <a href="#">52</a> MOTION to Strike <a href="#">50</a> Memorandum in Opposition to Motion MOTION for Leave to File filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc. Case called, Counsel & Pro-Se parties appear, Counsel argue motions, Matters taken under advisement, Order to issue. (Digital Recording 2:32.)(Attorneys present: Hayes, Richards, Gailon Joy-pro-se, Robert Pickle-pro-se-by telephone) (Roland, Lisa) (Entered: 03/10/2008)
03/10/2008		Magistrate Judge Timothy S. Hillman: Electronic ORDER entered granting in part and denying in part <a href="#">35</a> Motion to Compel; denying <a href="#">35</a> Motion for Sanctions. "The Plaintiffs shall provide all Rule 26 (a)(1) documents that are not privileged or confidential to the Defendants on or before March 28, 2008. Both parties are invited to provide this court with a proposed confidentiality order on or before March 20, 2008, which will govern the identification and disclosure of those document that any party feels is privileged and/or confidential. I will then issue a further order regarding the dissemination of confidential or privileged documents. The parties are warned that abuse of the confidentiality order and its process could result in the imposition of sanctions. In all other respects, the Defendants motion is denied." (Roland, Lisa) (Entered: 03/10/2008)
03/10/2008		Magistrate Judge Timothy S. Hillman: Electronic ORDER entered granting in part and denying in part <a href="#">40</a> Motion for Protective Order. "Per the provisions of my order on Defendant Robert Pickles Motion to Compel Plaintiff to Produce Rule 26(a)(1) Documents and for Sanctions (document #35), the parties are invited to provide this court with a proposed confidentiality order on or before March 20, 2008, which will govern the identification and disclosure of those documents that any party feels are privileged and/or confidential. I will issue a further order regarding the production of privileged and/or confidential documents. Until such time as this court enters a confidentiality order, the

		plaintiffs may withhold from production those documents referenced in this motion. The parties are warned that abuse of the confidentiality process, including but not limited to the improper designation of documents as privileged or confidential, could result in the imposition of sanctions. In all other respects, the Defendants motion is denied." (Roland, Lisa) (Entered: 03/10/2008)
03/10/2008		Magistrate Judge Timothy S. Hillman: Electronic ORDER entered granting in part and denying in part <a href="#">52</a> MOTION to Strike 50 Memorandum in Opposition to Motion, MOTION for Leave to File. "The Plaintiffs Motion to Strike, or, in the Alternative, for leave to File a Reply to, Defendant Pickles Supplemental Memorandum and Affidavit is granted with respect to the request to strike and denied in all other respects." (Roland, Lisa) (Entered: 03/10/2008)
03/10/2008		Magistrate Judge Timothy S. Hillman: Electronic ORDER entered denying <a href="#">54</a> Motion for Leave to File. (Roland, Lisa) (Entered: 03/10/2008)
03/20/2008	<a href="#">57</a>	Proposed Document(s) submitted by Robert Pickle. Document received: Proposed Confidentiality Order. (Court efiled this document; problem with ECF system) (Hassett, Kathy) (Entered: 03/20/2008)
03/20/2008	<a href="#">58</a>	Proposed Document(s) submitted by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. Document received: Plaintiffs' Proposed Confidentiality Order. (Richards, J.) (Entered: 03/20/2008)
03/21/2008	<a href="#">59</a>	Proposed Document(s) submitted by Gailon Arthur Joy. Document received: proposed order governing identification and disclosure of privileged and/or confidential documents. (Hassett, Kathy) (Entered: 03/21/2008)
04/17/2008	<a href="#">60</a>	Magistrate Judge Timothy S. Hillman: CONFIDENTIALITY AND PROTECTIVE ORDER.(Roland, Lisa) (Entered: 04/18/2008)
05/01/2008		ELECTRONIC NOTICE OF RESCHEDULING: Status Conference reset for 5/7/2008 at 3:00PM in Courtroom 2 before Judge F. Dennis Saylor IV. (Castles, Martin) (Entered: 05/01/2008)
05/07/2008		Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor, IV: Status Conference held on 5/7/2008, Case Called, Counsel and dfts pro-se appear for status conference, Parties inform the Court of the status of discovery, Both plaintiffs and defendants anticipate issues with discovery that will need court intervention, Court informs parties to file motions to seek relief, Court extends the time to serve production of document requests to 6/11/08, Court sets a further status conference, ( Status Conference set for 7/31/2008 at 2:00PM in Courtroom 2 before Judge F. Dennis Saylor IV.). (Court Reporter: M. Kusa-Ryll.) (Castles, Martin) (Entered: 05/07/2008)
05/15/2008	<a href="#">61</a>	MOTION to Compel <i>3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant Pickle's Requests to Produce</i> by Robert Pickle.(Pickle, Robert) (Entered: 05/15/2008)
05/15/2008	<a href="#">62</a>	MEMORANDUM in Support re <a href="#">61</a> MOTION to Compel <i>3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant</i>

		<i>Pickle's Requests to Produce</i> filed by Robert Pickle. (Pickle, Robert) (Entered: 05/15/2008)
05/15/2008	<a href="#">63</a>	AFFIDAVIT in Support re <a href="#">61</a> MOTION to Compel <i>3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant Pickle's Requests to Produce</i> filed by Robert Pickle. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K, # <a href="#">12</a> Exhibit L, # <a href="#">13</a> Exhibit M, # <a href="#">14</a> Exhibit N, # <a href="#">15</a> Exhibit O, # <a href="#">16</a> Exhibit P, # <a href="#">17</a> Exhibit Q, # <a href="#">18</a> Exhibit R, # <a href="#">19</a> Exhibit S, # <a href="#">20</a> Exhibit T, # <a href="#">21</a> Exhibit U, # <a href="#">22</a> Exhibit V, # <a href="#">23</a> Exhibit W, # <a href="#">24</a> Exhibit X, # <a href="#">25</a> Exhibit Y, # <a href="#">26</a> Exhibit Z, # <a href="#">27</a> Exhibit AA, # <a href="#">28</a> Exhibit BB, # <a href="#">29</a> Exhibit CC (A-I), # <a href="#">30</a> Exhibit CC (J-R), # <a href="#">31</a> Exhibit CC (S-X), # <a href="#">32</a> Exhibit CC (Y-EE), # <a href="#">33</a> Exhibit DD, # <a href="#">34</a> Exhibit EE, # <a href="#">35</a> Exhibit FF, # <a href="#">36</a> Exhibit GG)(Pickle, Robert) (Entered: 05/15/2008)
05/15/2008	<a href="#">64</a>	Proposed Document(s) submitted by Robert Pickle. Document received: Proposed Order to Compel. (Pickle, Robert) (Entered: 05/15/2008)
05/22/2008	<a href="#">65</a>	MOTION for Leave to Appear Pro Hac Vice for admission of M. Gregory Simpson by Three Angels Broadcasting Network, Inc., Danny Lee Shelton.(Richards, J.) (Entered: 05/22/2008)
05/22/2008	<a href="#">66</a>	ADDENDUM re <a href="#">65</a> MOTION for Leave to Appear Pro Hac Vice for admission of M. Gregory Simpson <i>Certificate of M. Gregory Simpson</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 05/22/2008)
05/29/2008	<a href="#">67</a>	Opposition re <a href="#">61</a> MOTION to Compel <i>3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant Pickle's Requests to Produce</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 05/29/2008)
05/29/2008	<a href="#">68</a>	AFFIDAVIT of Jerrie Hayes in Opposition re <a href="#">61</a> MOTION to Compel <i>3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant Pickle's Requests to Produce</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit, # <a href="#">3</a> Exhibit, # <a href="#">4</a> Exhibit, # <a href="#">5</a> Exhibit, # <a href="#">6</a> Exhibit, # <a href="#">7</a> Exhibit, # <a href="#">8</a> Exhibit, # <a href="#">9</a> Exhibit, # <a href="#">10</a> Exhibit, # <a href="#">11</a> Exhibit, # <a href="#">12</a> Exhibit, # <a href="#">13</a> Exhibit, # <a href="#">14</a> Exhibit, # <a href="#">15</a> Exhibit, # <a href="#">16</a> Exhibit, # <a href="#">17</a> Exhibit, # <a href="#">18</a> Exhibit, # <a href="#">19</a> Exhibit, # <a href="#">20</a> Exhibit, # <a href="#">21</a> Exhibit, # <a href="#">22</a> Exhibit, # <a href="#">23</a> Exhibit)(Richards, J.) (Entered: 05/29/2008)
06/10/2008	<a href="#">69</a>	MOTION for Extension of Time to 90 days later for all deadlines to conduct discovery by Gailon Arthur Joy, Robert Pickle. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Pickle, Robert) (Entered: 06/10/2008)
06/10/2008	<a href="#">70</a>	MEMORANDUM in Support re <a href="#">69</a> MOTION for Extension of Time to 90 days later for all deadlines to conduct discovery filed by Robert Pickle. (Pickle, Robert) (Entered: 06/10/2008)
06/10/2008	<a href="#">71</a>	AFFIDAVIT in Support re <a href="#">69</a> MOTION for Extension of Time to 90 days later for all deadlines to conduct discovery filed by Robert Pickle. (Attachments: # <a href="#">1</a>

		Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Pickle, Robert) (Entered: 06/10/2008)
06/20/2008		Filing fee/payment: \$ 50., receipt number BST004291 for <u>65</u> MOTION for Leave to Appear Pro Hac Vice for admission of M. Gregory Simpson (Gawlik, Cathy) (Entered: 06/20/2008)
06/23/2008		Judge F. Dennis Saylor, IV: Electronic ORDER entered. REFERRING MOTION <u>61</u> MOTION to Compel <i>3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant Pickle's Requests to Produce</i> filed by Robert Pickle to Magistrate Judge Timothy S. Hillman(Castles, Martin) Motions referred to Timothy S. Hillman. (Entered: 06/23/2008)
06/23/2008		Judge F. Dennis Saylor, IV: Electronic ORDER entered granting <u>65</u> Motion for Leave to Appear Pro Hac Vice; Added M. Gregory Simpson for Three Angels Broadcasting Network, Inc. and Danny Lee Shelton. <b>Attorneys admitted Pro Hac Vice must register for electronic filing. To register go to the Court website at <a href="http://www.mad.uscourts.gov">www.mad.uscourts.gov</a>. Select Forms and then scroll down to CM/ECF Forms.</b> (Castles, Martin) (Entered: 06/23/2008)
06/24/2008	<u>72</u>	RESPONSE to <u>69</u> MOTION for Extension of Time to 90 days later for all deadlines to conduct discovery filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) Modified on 6/24/2008 (Hassett, Kathy). (Entered: 06/24/2008)
06/24/2008	<u>73</u>	AFFIDAVIT of M. Gregory Simpson re <u>72</u> Response to Motion. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit)(Richards, J.) Modified on 6/24/2008 (Hassett, Kathy). (Entered: 06/24/2008)
06/24/2008		Notice of correction to docket made by Court staff. Correction: documents #72 and #73 corrected because: Incorrect events selected. (Hassett, Kathy) (Entered: 06/24/2008)
06/25/2008	<u>74</u>	MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> by Three Angels Broadcasting Network, Inc., Danny Lee Shelton.(Simpson, M.) (Entered: 06/25/2008)
06/25/2008	<u>75</u>	MEMORANDUM in Support re <u>74</u> MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 06/25/2008)
06/25/2008	<u>76</u>	AFFIDAVIT in Support re <u>75</u> Memorandum in Support of Motion. (Attachments: # <u>1</u> Exhibit 1-3, # <u>2</u> Exhibit 4-16, # <u>3</u> Exhibit 17-18, # <u>4</u> Exhibit 20-21)(Simpson, M.) (Entered: 06/25/2008)
06/27/2008		Judge F. Dennis Saylor, IV: Electronic ORDER entered: "The motion to extend all deadlines for discovery by 90 days is GRANTED. Plaintiff's request for sanctions against defendant Pickle will be heard at the next status conference on September 10, 2008 at 3:00 p.m."granting <u>69</u> Motion for Extension of Time Discovery to be completed by 9/9/2008. Status Conference reset for 9/10/2008 03:00 PM in Courtroom 2 before Judge F. Dennis Saylor IV. Previous status



		conference set for 7/31/08 is cancelled. (Jones, Sherry) (Entered: 06/27/2008)
07/09/2008	<a href="#">77</a>	Transcript of Status Conference held on May 7, 2008, before Judge Saylor. Court Reporter: Marianne Kusa-Ryll at 508/929-3399. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Redaction Request due 7/28/2008. Redacted Transcript Deadline set for 8/6/2008. Release of Transcript Restriction set for 10/6/2008. (Scalfani, Deborah) (Entered: 07/09/2008)
07/09/2008	<a href="#">78</a>	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, a copy of which is attached to this entry.. (Scalfani, Deborah) (Entered: 07/09/2008)
07/09/2008	<a href="#">79</a>	Opposition re <a href="#">74</a> MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 07/09/2008)
07/09/2008	<a href="#">80</a>	MEMORANDUM in Opposition re <a href="#">74</a> MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 07/09/2008)
07/09/2008	<a href="#">81</a>	AFFIDAVIT of Robert Pickle in Opposition re <a href="#">74</a> MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> filed by Robert Pickle. (Attachments: # <a href="#">1</a> Exhibit A-I, # <a href="#">2</a> Exhibit J (A-N), # <a href="#">3</a> Exhibit J (O-EE), # <a href="#">4</a> Exhibit K-N, # <a href="#">5</a> Exhibit O (A-X), # <a href="#">6</a> Exhibit O (Y-MM), # <a href="#">7</a> Exhibit O (NN-YY), # <a href="#">8</a> Exhibit O (ZZ-KKK), # <a href="#">9</a> Exhibit P-GG, # <a href="#">10</a> Exhibit HH-UU)(Pickle, Robert) (Entered: 07/09/2008)
07/09/2008	<a href="#">82</a>	MOTION for Leave to File <i>under Seal seven Exhibits for Affidavit in Opposition to Motion for Protective Order (Documents declared confidential by Plaintiffs and pages from personal tax returns)</i> by Robert Pickle.(Pickle, Robert) (Entered: 07/09/2008)
07/09/2008	<a href="#">83</a>	CERTIFICATE OF SERVICE by Robert Pickle re <a href="#">80</a> Memorandum in Opposition to Motion, <a href="#">81</a> Affidavit in Opposition to Motion,. (Pickle, Robert) (Entered: 07/09/2008)
07/10/2008	<a href="#">84</a>	MOTION for Leave to File <i>Amended Motion to File Under Seal</i> by Robert Pickle. (Attachments: # <a href="#">1</a> Exhibit Proposed Amended Motion to File Under Seal)(Pickle, Robert) (Entered: 07/10/2008)
07/10/2008	<a href="#">85</a>	MOTION for Extension of Time to 6pm EST (7pm EDT) on July 9, 2008 to File Response/Reply as to <a href="#">74</a> MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 07/10/2008)
07/10/2008		Judge F. Dennis Saylor, IV: Electronic ORDER entered REFERRING MOTION <a href="#">82</a> MOTION for Leave to File <i>under Seal seven Exhibits for Affidavit in Opposition to Motion for Protective Order (Documents declared confidential by Plaintiffs and pages from personal tax returns)</i>

		filed by Robert Pickle, <a href="#">84</a> MOTION for Leave to File <i>Amended Motion to File Under Seal</i> filed by Robert Pickle, <a href="#">85</a> MOTION for Extension of Time to 6pm EST (7pm EDT) on July 9, 2008 to File Response/Reply as to <a href="#">74</a> MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> MOTION for Extension of Time to 6pm EST (7pm EDT) on July 9, 2008 to File Response/Reply as to <a href="#">74</a> MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> filed by Robert Pickle, Gailon Arthur Joy, <a href="#">74</a> MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc. referred to Timothy S. Hillman.(Roland, Lisa) (Entered: 07/10/2008)
07/11/2008		ELECTRONIC NOTICE of Hearing on Motion <a href="#">74</a> MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> , <a href="#">61</a> MOTION to Compel <i>3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant Pickle's Requests to Produce</i> : Motion Hearing set for 7/24/2008 10:00 AM in Courtroom 1 before Magistrate Judge Timothy S. Hillman. (Roland, Lisa) (Entered: 07/11/2008)
07/15/2008		Magistrate Judge Timothy S. Hillman: Electronic ORDER entered finding as moot <a href="#">82</a> Motion for Leave to File. (Roland, Lisa) (Entered: 07/15/2008)
07/15/2008		Magistrate Judge Timothy S. Hillman: Electronic ORDER entered granting <a href="#">84</a> Motion for Leave to File Amended Motion to File Under Seal; Counsel using the Electronic Case Filing System should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Roland, Lisa) (Entered: 07/15/2008)
07/15/2008		Magistrate Judge Timothy S. Hillman: Electronic ORDER entered granting <a href="#">85</a> Motion for Extension of Time to File Response/Reply re <a href="#">74</a> MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> . Responses due by 7/16/2008 (Roland, Lisa) (Entered: 07/15/2008)
07/16/2008	<a href="#">86</a>	Amended MOTION for Leave to File <i>under Seal</i> by Robert Pickle.(Pickle, Robert) (Entered: 07/16/2008)
07/16/2008	<a href="#">87</a>	MOTION for Extension of Time to July 18, 2008 to File Response/Reply <i>Memorandum to Defendants Opposition to Plaintiffs Motion for Protective Order Limiting Scope and Methods of Discovery</i> by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # <a href="#">1</a> )(Pucci, John) (Entered: 07/16/2008)
07/17/2008	<a href="#">89</a>	Transcript of Motion Hearing held on March 7, 2008, before Judge Hillman. Court Reporter: Transcribed by MaryannYoung at 508/384-2003. The Transcript may be purchased through Maryann Young, viewed at the public terminal, or viewed through PACER after it is released. Redaction Request due 8/4/2008. Redacted Transcript Deadline set for 8/14/2008. Release of Transcript Restriction set for 10/13/2008. (Scalfani, Deborah) Modified on 12/5/2008

		(Scalfani, Deborah). (Entered: 07/17/2008)
07/17/2008	<a href="#">90</a>	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, a copy of which is attached to this entry.. (Scalfani, Deborah) (Entered: 07/17/2008)
07/18/2008		Magistrate Judge Timothy S. Hillman: Electronic ORDER entered granting <a href="#">86</a> Amended MOTION for Leave to File under Seal by Robert Pickle. Counsel should now file the document for which leave to file has been granted in accordance with the CM/ECF Administrative Procedures. Counsel must include - Leave to file granted on (date of order)- in the caption of the document. (Roland, Lisa) (Entered: 07/18/2008)
07/18/2008		Magistrate Judge Timothy S. Hillman: Electronic ORDER entered finding as moot <a href="#">87</a> Extension of Time to July 18, 2008 to File Response/Reply Memorandum to Defendants Opposition to Plaintiffs Motion for Protective Order Limiting Scope and Methods of Discovery by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. Original deadlines remain in place, Opposition due 7/18/2008. (Roland, Lisa) (Entered: 07/18/2008)
07/18/2008	<a href="#">91</a>	REPLY to Response to <a href="#">74</a> MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Kingsbury, Kristin) (Entered: 07/18/2008)
07/18/2008	<a href="#">92</a>	AFFIDAVIT in Support re <a href="#">91</a> Reply to Response to Motion. (Kingsbury, Kristin) (Entered: 07/18/2008)
07/21/2008	<a href="#">93</a>	Sealed Document. (Hassett, Kathy) (Entered: 07/21/2008)
07/24/2008		Electronic Clerk's Notes for proceedings held before Magistrate Judge Timothy S. Hillman: Motion Hearing held on 7/24/2008 re <a href="#">61</a> MOTION to Compel <i>3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant Pickle's Requests to Produce</i> filed by Robert Pickle, <a href="#">74</a> MOTION for Protective Order <i>Limiting Scope and Methods of Discovery and Request for Oral Argument</i> filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc. Case called, Counsel appear, Parties argue Motions, Matters taken under advisement, Order to issue. (Digital Recording 10:16.)(Attorneys present: Simpson, Pucci, Joy-Pro-se, Pickle-Pro-Se via telephone) (Roland, Lisa) (Entered: 07/24/2008)
08/25/2008	<a href="#">94</a>	MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation</i> ) by Gailon Arthur Joy, Robert Pickle. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Pickle, Robert) (Entered: 08/25/2008)
08/26/2008	<a href="#">95</a>	MEMORANDUM in Support re <a href="#">94</a> MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation</i> ) filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 08/26/2008)

08/26/2008	<a href="#">96</a>	AFFIDAVIT of Robert Pickle in Support re <a href="#">94</a> MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation</i> ) filed by Robert Pickle. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J)(Pickle, Robert) (Entered: 08/26/2008)
09/08/2008		ELECTRONIC NOTICE OF RESCHEDULING: Status Conference reset for Thursday 9/11/2008 at 3:30PM in Courtroom 2 before Judge F. Dennis Saylor IV. (Castles, Martin) (Entered: 09/08/2008)
09/08/2008	<a href="#">97</a>	MEMORANDUM in Opposition re <a href="#">94</a> MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation</i> ) filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Kingsbury, Kristin) (Entered: 09/08/2008)
09/08/2008	<a href="#">98</a>	MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines</i> ) by Gailon Arthur Joy, Robert Pickle. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Pickle, Robert) (Entered: 09/08/2008)
09/08/2008	<a href="#">99</a>	MEMORANDUM in Support re <a href="#">98</a> MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines</i> ) filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 09/08/2008)
09/08/2008	<a href="#">100</a>	AFFIDAVIT in Support re <a href="#">98</a> MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines</i> ) and <a href="#">104</a> AMENDED MOTION FOR DISCOVERY filed by Robert Pickle. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K, # <a href="#">12</a> Exhibit L, # <a href="#">13</a> Exhibit M, # <a href="#">14</a> Exhibit N, # <a href="#">15</a> Exhibit O, # <a href="#">16</a> Exhibit P, # <a href="#">17</a> Exhibit Q, # <a href="#">18</a> Exhibit R, # <a href="#">19</a> Exhibit S, # <a href="#">20</a> Exhibit T, # <a href="#">21</a> Exhibit U)(Pickle, Robert) Modified on 9/9/2008 (Jones, Sherry). (Entered: 09/08/2008)
09/08/2008	<a href="#">101</a>	MOTION for Extension of Time to 90 days later for all deadlines to conduct discovery by Gailon Arthur Joy, Robert Pickle. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Pickle, Robert) (Entered: 09/08/2008)
09/08/2008	<a href="#">102</a>	MEMORANDUM in Support re <a href="#">101</a> MOTION for Extension of Time to 90 days later for all deadlines to conduct discovery filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 09/08/2008)
09/08/2008	<a href="#">103</a>	AFFIDAVIT in Support re <a href="#">101</a> MOTION for Extension of Time to 90 days later for all deadlines to conduct discovery filed by Robert Pickle. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E)(Pickle, Robert) (Entered: 09/08/2008)
09/09/2008		Notice of correction to docket made by Court staff. Correction: document #98&99 will be re-filed by Mr. Pickle, he noticed a clerical error, he entered the wrong date on the signature line. (Jones, Sherry) (Entered: 09/09/2008)

09/09/2008	<a href="#">104</a>	Amended MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines</i> ) by Gailon Arthur Joy, Robert Pickle. (Attachments: # <a href="#">1</a> Text of Proposed Order)(Pickle, Robert) (Entered: 09/09/2008)
09/09/2008	<a href="#">105</a>	Amended MEMORANDUM in Support re <a href="#">104</a> Amended MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines</i> ) filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 09/09/2008)
09/11/2008	<a href="#">106</a>	Magistrate Judge Timothy S. Hillman: ORDER entered denying <a href="#">61</a> Motion to Compel without prejudice; granting in part and denying in part <a href="#">74</a> Motion for Protective Order as provided in order. (Roland, Lisa) (Entered: 09/11/2008)
09/11/2008	<a href="#">107</a>	Magistrate Judge Timothy S. Hillman: ORDER entered Amending <a href="#">106</a> Order on Motion to Compel, Order on Motion for Protective Order. (Roland, Lisa) (Entered: 09/11/2008)
09/11/2008		Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor, IV: Status Conference held on 9/11/2008; Case called, Counsel and dfts pro-se appear for status conference, Court rules finding as moot <a href="#">98</a> Motion for Discovery; Amended motion filed, Court will refer pending motions for issue of subpoenas and motion to extend discovery deadlines to Magistrate Judge Hillman for ruling, Court orders plaintiff to re-file request for sanctions as a motion, Motion to be filed by 9/16/08, Court sets further status conference, (Status Conference set for 10/30/2008 at 3:00PM in Courtroom 2 before Judge F. Dennis Saylor IV.). (Court Reporter: M. Kusa-Ryll.)(Attorneys present: Simpson,Richards/Pro se dfts Joy & Pickle) (Castles, Martin) Modified on 9/12/2008 (Castles, Martin). Modified on 9/12/2008 (Castles, Martin). (Entered: 09/12/2008)
09/12/2008		Judge F. Dennis Saylor, IV: Electronic ORDER entered. REFERRING MOTION <a href="#">94</a> MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation</i> ) filed by Robert Pickle, Gailon Arthur Joy, <a href="#">104</a> Amended MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines</i> ) filed by Robert Pickle, Gailon Arthur Joy, <a href="#">101</a> MOTION for Extension of Time to 90 days later for all deadlines to conduct discovery filed by Robert Pickle, Gailon Arthur Joy to Magistrate Judge Timothy S. Hillman(Castles, Martin) Motions referred to Timothy S. Hillman. (Entered: 09/12/2008)
09/16/2008	<a href="#">108</a>	REPLY to Response to <a href="#">94</a> MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation</i> ) filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 09/16/2008)
09/16/2008	<a href="#">109</a>	AFFIDAVIT in Support re <a href="#">108</a> Reply to Response to Motion for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation</i> ). (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B,

		# <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K, # <a href="#">12</a> Exhibit L, # <a href="#">13</a> Exhibit M, # <a href="#">14</a> Exhibit N, # <a href="#">15</a> Exhibit O, # <a href="#">16</a> Exhibit P)(Pickle, Robert) (Entered: 09/16/2008)
09/22/2008	<a href="#">110</a>	MEMORANDUM in Opposition re <a href="#">104</a> Amended MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines</i> ) filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Kingsbury, Kristin) (Entered: 09/22/2008)
09/22/2008	<a href="#">111</a>	MOTION Joining Defendants' Motion Seeking an Extension of all Deadlines in the Scheduling Order by Three Angels Broadcasting Network, Inc., Danny Lee Shelton.(Kingsbury, Kristin) (Entered: 09/22/2008)
09/24/2008		Judge F. Dennis Saylor, IV: Electronic ORDER entered. REFERRING MOTION <a href="#">111</a> MOTION Joining Defendants' Motion Seeking an Extension of all Deadlines in the Scheduling Order filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc., to Magistrate Judge Timothy S. Hillman(Castles, Martin) Motions referred to Timothy S. Hillman. (Entered: 09/24/2008)
09/30/2008	<a href="#">112</a>	MOTION to Enforce Protective Order by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # <a href="#">1</a> Memorandum, # <a href="#">2</a> Affidavit)(Richards, J.) (Entered: 09/30/2008)
10/01/2008	<a href="#">113</a>	REPLY to Response to <a href="#">98</a> MOTION for Discovery ( <i>Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines</i> ) filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 10/01/2008)
10/01/2008	<a href="#">114</a>	AFFIDAVIT re <a href="#">113</a> Reply to Response to Motion <i>for Discovery (Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines)</i> . (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K, # <a href="#">12</a> Exhibit L, # <a href="#">13</a> Exhibit M, # <a href="#">14</a> Exhibit N, # <a href="#">15</a> Exhibit O, # <a href="#">16</a> Exhibit P, # <a href="#">17</a> Exhibit Q, # <a href="#">18</a> Exhibit R, # <a href="#">19</a> Exhibit S, # <a href="#">20</a> Exhibit T, # <a href="#">21</a> Exhibit U, # <a href="#">22</a> Exhibit V, # <a href="#">23</a> Exhibit W, # <a href="#">24</a> Exhibit X, # <a href="#">25</a> Exhibit Y, # <a href="#">26</a> Exhibit Z)(Pickle, Robert) (Entered: 10/01/2008)
10/01/2008		Notice of correction to docket made by Court staff. Correction: document #112, memorandum and affidavit will be removed, these should be entered as separate entries and linked to the motion, counsel to re-file the memo and affidavit as two separate entries. (Jones, Sherry) (Entered: 10/01/2008)
10/01/2008	<a href="#">115</a>	MEMORANDUM in Support re <a href="#">112</a> MOTION to Enforce Protective Order filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 10/01/2008)
10/01/2008	<a href="#">116</a>	AFFIDAVIT in Support re <a href="#">112</a> MOTION to Enforce Protective Order filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 10/01/2008)

10/06/2008	<a href="#">117</a>	MOTION for Leave to File <i>Under Seal</i> by Three Angels Broadcasting Network, Inc., Danny Lee Shelton.(Simpson, M.) (Entered: 10/06/2008)
10/10/2008	<a href="#">118</a>	NOTICE by Three Angels Broadcasting Network, Inc., Danny Lee Shelton re <a href="#">117</a> MOTION for Leave to File <i>Under Seal Withdrawal of Motion</i> (Simpson, M.) (Entered: 10/10/2008)
10/10/2008	<a href="#">119</a>	NOTICE by Three Angels Broadcasting Network, Inc., Danny Lee Shelton re <a href="#">112</a> MOTION to Enforce Protective Order <i>Withdrawal of Motion</i> (Simpson, M.) (Entered: 10/10/2008)
10/14/2008		Motions terminated: <a href="#">112</a> MOTION to Enforce Protective Order filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc., see document #119 <a href="#">117</a> MOTION for Leave to File <i>Under Seal</i> filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc. see document #118. (Hassett, Kathy) (Entered: 10/14/2008)
10/23/2008	<a href="#">120</a>	MOTION to Dismiss <i>voluntary</i> by Three Angels Broadcasting Network, Inc., Danny Lee Shelton.(Simpson, M.) (Entered: 10/23/2008)
10/23/2008	<a href="#">121</a>	MEMORANDUM in Support re <a href="#">120</a> MOTION to Dismiss <i>voluntary</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 10/23/2008)
10/23/2008	<a href="#">122</a>	AFFIDAVIT in Support re <a href="#">120</a> MOTION to Dismiss <i>voluntary</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # <a href="#">1</a> Exhibit)(Simpson, M.) (Entered: 10/23/2008)
10/23/2008	<a href="#">123</a>	AFFIDAVIT of Walt Thompson in Support re <a href="#">120</a> MOTION to Dismiss <i>voluntary</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 10/23/2008)
10/23/2008	<a href="#">124</a>	Emergency MOTION for Hearing by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 10/23/2008)
10/23/2008	<a href="#">125</a>	AFFIDAVIT of Robert Pickle in Support re <a href="#">124</a> Emergency MOTION for Hearing filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # <a href="#">1</a> Exhibit A)(Pickle, Robert) (Entered: 10/23/2008)
10/30/2008	<a href="#">126</a>	MEMORANDUM in Opposition re <a href="#">120</a> MOTION to Dismiss <i>voluntary</i> filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 10/30/2008)
10/30/2008	<a href="#">127</a>	AFFIDAVIT in Opposition re <a href="#">120</a> MOTION to Dismiss <i>voluntary</i> filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # <a href="#">1</a> Exhibit, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K, # <a href="#">12</a> Exhibit L, # <a href="#">13</a> Exhibit M, # <a href="#">14</a> Exhibit N, # <a href="#">15</a> Exhibit O, # <a href="#">16</a> Exhibit P, # <a href="#">17</a> Exhibit Q, # <a href="#">18</a> Exhibit R, # <a href="#">19</a> Exhibit S, # <a href="#">20</a> Exhibit T, # <a href="#">21</a> Exhibit U, # <a href="#">22</a> Exhibit V, # <a href="#">23</a> Exhibit W, # <a href="#">24</a> Exhibit X, # <a href="#">25</a> Exhibit Y, # <a href="#">26</a> Exhibit Z, # <a href="#">27</a> Exhibit AA, # <a href="#">28</a> Exhibit BB, # <a href="#">29</a> Exhibit CC, # <a href="#">30</a> Exhibit DD, # <a href="#">31</a> Exhibit EE, # <a href="#">32</a> Exhibit FF, # <a href="#">33</a> Exhibit GG, # <a href="#">34</a> Exhibit HH, # <a href="#">35</a> Exhibit II, # <a href="#">36</a> Exhibit JJ, # <a href="#">37</a> Exhibit KK, # <a href="#">38</a> Exhibit LL, # <a href="#">39</a> Exhibit MM, # <a href="#">40</a> Exhibit NN, # <a href="#">41</a> Exhibit OO, # <a href="#">42</a> Exhibit PP, # <a href="#">43</a>

		Exhibit QQ, # <a href="#">44</a> Exhibit RR, # <a href="#">45</a> Exhibit SS)(Pickle, Robert) (Entered: 10/30/2008)
10/30/2008	<a href="#">128</a>	CERTIFICATE OF SERVICE by Robert Pickle re <a href="#">127</a> Affidavit in Opposition to Motion,,, <a href="#">126</a> Memorandum in Opposition to Motion <i>for Voluntary Dismissal</i> . (Pickle, Robert) (Entered: 10/30/2008)
10/30/2008		Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor, IV: Status Conference held on 10/30/2008. Case called, Counsel and dft's pro-se appear for status conference, Court hears arguments of counsel re: motion to dismiss, Court rules granting <a href="#">120</a> Motion to Dismiss without prejudice; The Court orders dismissal with conditions stated on the record, Any renewed claims brought by plaintiff shall be brought in this division in the District of MA. as ordered on the record, Court orders all confidential documents returned, All subpoenas are ordered moot, Records in possession of Mag. Judge will be returned, Court orders any motion for costs to be filed by 11/21/08. Order of dismissal to issue, (Court Reporter: M. Kusa-Ryll.)(Attorneys present: Simpson,Pucci/Dft's Joy and Pickle - Pro se) (Castles, Martin) (Entered: 10/31/2008)
11/03/2008	<a href="#">129</a>	Judge F. Dennis Saylor, IV: ORDER entered. ORDER DISMISSING CASE.(Castles, Martin) (Entered: 11/03/2008)
11/13/2008	<a href="#">130</a>	MOTION for Costs by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 11/13/2008)
11/13/2008	<a href="#">131</a>	MEMORANDUM in Support re <a href="#">130</a> MOTION for Costs filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 11/13/2008)
11/13/2008	<a href="#">132</a>	AFFIDAVIT of Robert Pickle in Support re <a href="#">130</a> MOTION for Costs filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C)(Pickle, Robert) (Entered: 11/13/2008)
11/13/2008	<a href="#">133</a>	NOTICE OF APPEAL as to <a href="#">129</a> Order Dismissing Case by Gailon Arthur Joy, Robert Pickle NOTICE TO COUNSEL: A Transcript Report/Order Form, which can be downloaded from the First Circuit Court of Appeals web site at <a href="http://www.ca1.uscourts.gov/clerks/transcript.htm">http://www.ca1.uscourts.gov/clerks/transcript.htm</a> MUST be completed and submitted to the Court of Appeals. Appeal Record due by 12/3/2008. (Pickle, Robert) (Entered: 11/13/2008)
11/17/2008	<a href="#">134</a>	Certified and Transmitted Record on Appeal to US Court of Appeals re <a href="#">133</a> Notice of Appeal # <a href="#">1</a> docket sheet) (Hassett, Kathy). (Entered: 11/17/2008)
11/17/2008	<a href="#">135</a>	NOTICE OF ATTORNEY PAYMENT OF FEES as to <a href="#">133</a> Notice of Appeal, by Defendants Gailon Arthur Joy, Robert Pickle. Payment Type : APPEAL. (Pickle, Robert) (Entered: 11/17/2008)
11/19/2008	<a href="#">136</a>	Supplemental Record on Appeal transmitted to US Court of Appeals re <a href="#">133</a> Notice of Appeal, Documents included: 22, 28, 88, 93. (Hassett, Kathy) (Entered: 11/19/2008)



11/19/2008	<a href="#">137</a>	TRANSCRIPT ORDER FORM by all defendants for proceedings held on 5/10/07, 12/14/07, 9/11/08, 10/30/08 before Judge F. Dennis Saylor IV, re <a href="#">133</a> Notice of Appeal, Transcript due by 12/18/2008. (Pickle, Robert) (Entered: 11/19/2008)
11/26/2008		Remark: receipt from USCA, received the supplemental certificate. (Jones, Sherry) (Entered: 11/26/2008)
11/26/2008	<a href="#">138</a>	MOTION to Unseal Document ( <i>Docket # 22, # 28, and # 88</i> ) by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 11/26/2008)
11/26/2008	<a href="#">139</a>	MEMORANDUM in Opposition re <a href="#">130</a> MOTION for Costs filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 11/26/2008)
11/26/2008	<a href="#">140</a>	MEMORANDUM in Opposition re <a href="#">130</a> MOTION for Costs filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 11/26/2008)
11/28/2008	<a href="#">141</a>	Transcript of Status Conference/Motion for Voluntary Dismissal held on October 30, 2008, before Judge Saylor. COA Case No. 08-2457. Court Reporter: Marianne Kusa-Ryll at 508/929-3399. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Redaction Request due 12/16/2008. Redacted Transcript Deadline set for 12/26/2008. Release of Transcript Restriction set for 2/23/2009. (Scalfani, Deborah) (Entered: 11/28/2008)
11/28/2008	<a href="#">142</a>	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, a copy of which is attached to this entry.. (Scalfani, Deborah) (Entered: 11/28/2008)
11/28/2008		Filing fee/payment: \$ 455.00, receipt number BST007345 for <a href="#">133</a> Notice of Appeal (payment was attempted through pay.gov on 11/13/08) (Russo, Patricia) (Entered: 11/28/2008)
11/28/2008	<a href="#">143</a>	Supplemental Record on Appeal transmitted to US Court of Appeals re <a href="#">133</a> Notice of Appeal, Documents included: 17, 77 and 89 (Scalfani, Deborah) (Entered: 11/28/2008)
12/01/2008		Notice of correction to docket made by Court staff. Correction: document #139 corrected because: incorrect document attached, counsel refiled as document #140. (Hassett, Kathy) (Entered: 12/01/2008)
12/03/2008	<a href="#">144</a>	Transcript of Telephonic Status Conference held on December 14, 2007, before Judge Saylor. COA Case No. 08-2457. Court Reporter: Marianne Kusa-Ryll at 508/929-3399. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Redaction Request due 12/22/2008. Redacted Transcript Deadline set for 12/31/2008. Release of Transcript Restriction set for 2/28/2009. (Scalfani, Deborah) Modified on 12/3/2008 (Scalfani, Deborah). (Entered: 12/03/2008)

12/03/2008	<a href="#">145</a>	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, a copy of which is attached to this entry.. (Scalfani, Deborah) (Entered: 12/03/2008)
12/05/2008	<a href="#">146</a>	Transcript of Status Conference held on September 11, 2008, before Judge Saylor. COA Case No. 08-2457. Court Reporter: Marianne Kusa-Ryll at 508/929-3399. The Transcript may be purchased through the Court Reporter, viewed at the public terminal, or viewed through PACER after it is released. Redaction Request due 12/23/2008. Redacted Transcript Deadline set for 1/2/2009. Release of Transcript Restriction set for 3/2/2009. (Scalfani, Deborah) (Entered: 12/05/2008)
12/05/2008	<a href="#">147</a>	NOTICE is hereby given that an official transcript of a proceeding has been filed by the court reporter in the above-captioned matter. Counsel are referred to the Court's Transcript Redaction Policy, a copy of which is attached to this entry.. (Scalfani, Deborah) (Entered: 12/05/2008)
12/08/2008	<a href="#">148</a>	Opposition re <a href="#">138</a> MOTION to Unseal Document ( <i>Docket # 22, # 28, and # 88</i> ) filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 12/08/2008)
12/08/2008	<a href="#">149</a>	REPLY to Response to <a href="#">130</a> MOTION for Costs filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 12/08/2008)
12/08/2008	<a href="#">150</a>	AFFIDAVIT of Lynette Rhodes in Support re <a href="#">130</a> MOTION for Costs filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 12/08/2008)
12/08/2008	<a href="#">151</a>	AFFIDAVIT of Laird Heal in Support re <a href="#">130</a> MOTION for Costs filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # <a href="#">1</a> Exhibit A)(Pickle, Robert) (Entered: 12/08/2008)
12/08/2008	<a href="#">152</a>	AFFIDAVIT in Support re <a href="#">149</a> Reply to Response to Motion, <a href="#">130</a> MOTION for Costs. (Attachments: # <a href="#">1</a> Exhibit B, # <a href="#">2</a> Exhibit C, # <a href="#">3</a> Exhibit D, # <a href="#">4</a> Exhibit E, # <a href="#">5</a> Exhibit F, # <a href="#">6</a> Exhibit G, # <a href="#">7</a> Exhibit H, # <a href="#">8</a> Exhibit I, # <a href="#">9</a> Exhibit J, # <a href="#">10</a> Exhibit K, # <a href="#">11</a> Exhibit L, # <a href="#">12</a> Exhibit M, # <a href="#">13</a> Exhibit N, # <a href="#">14</a> Exhibit O, # <a href="#">15</a> Exhibit P, # <a href="#">16</a> Exhibit Q, # <a href="#">17</a> Exhibit R, # <a href="#">18</a> Exhibit S)(Pickle, Robert) (Entered: 12/08/2008)
12/08/2008	<a href="#">153</a>	MOTION for Leave to File <i>under Seal Exhibit A for Doc. # 152</i> by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 12/08/2008)
12/08/2008	<a href="#">154</a>	MEMORANDUM in Support re <a href="#">153</a> MOTION for Leave to File <i>under Seal Exhibit A for Doc. # 152</i> filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 12/08/2008)
12/08/2008	<a href="#">155</a>	AFFIDAVIT of Robert Pickle in Support re <a href="#">153</a> MOTION for Leave to File <i>under Seal Exhibit A for Doc. # 152</i> filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B)(Pickle, Robert) (Entered: 12/08/2008)

12/10/2008	<a href="#">156</a>	NOTICE by Gailon Arthur Joy, Robert Pickle re <a href="#">138</a> MOTION to Unseal Document ( <i>Docket # 22, # 28, and # 88</i> ) <i>Withdrawal of Motion</i> (Pickle, Robert) (Entered: 12/10/2008)
12/10/2008	<a href="#">157</a>	AFFIDAVIT in Support re <a href="#">156</a> Notice (Other) by Gailon Arthur Joy, Robert Pickle re <a href="#">138</a> MOTION to Unseal Document ( <i>Docket # 22, # 28, and # 88</i> ) <i>Withdrawal of Motion</i> . (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B)(Pickle, Robert) (Entered: 12/10/2008)
12/16/2008	<a href="#">160</a>	Receipt for Documents for In Camera Review. (Roland, Lisa) (Entered: 12/23/2008)
12/22/2008	<a href="#">158</a>	MEMORANDUM in Opposition re <a href="#">153</a> MOTION for Leave to File <i>under Seal Exhibit A for Doc. # 152</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 12/22/2008)
12/22/2008	<a href="#">159</a>	AFFIDAVIT of M. Gregory Simpson in Opposition re <a href="#">153</a> MOTION for Leave to File <i>under Seal Exhibit A for Doc. # 152</i> filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # <a href="#">1</a> Exhibit 1-7)(Simpson, M.) (Entered: 12/22/2008)
12/29/2008	<a href="#">161</a>	REPLY to Response to <a href="#">153</a> MOTION for Leave to File <i>under Seal Exhibit A for Doc. # 152</i> filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 12/29/2008)
12/29/2008	<a href="#">162</a>	AFFIDAVIT in Support re <a href="#">161</a> Reply to Response to Motion <i>for Leave to File under Seal Exhibit A for Doc. # 152</i> . (Attachments: # <a href="#">1</a> Exhibit A, # <a href="#">2</a> Exhibit B, # <a href="#">3</a> Exhibit C, # <a href="#">4</a> Exhibit D, # <a href="#">5</a> Exhibit E, # <a href="#">6</a> Exhibit F, # <a href="#">7</a> Exhibit G, # <a href="#">8</a> Exhibit H, # <a href="#">9</a> Exhibit I, # <a href="#">10</a> Exhibit J, # <a href="#">11</a> Exhibit K, # <a href="#">12</a> Exhibit L, # <a href="#">13</a> Exhibit M, # <a href="#">14</a> Exhibit N, # <a href="#">15</a> Exhibit O, # <a href="#">16</a> Exhibit P, # <a href="#">17</a> Exhibit Q, # <a href="#">18</a> Exhibit R, # <a href="#">19</a> Exhibit S)(Pickle, Robert) (Entered: 12/29/2008)
12/30/2008		Notice of correction to docket made by Court staff. Correction: Exhibit O of Robert Pickle's Affidavit in support of doc.# 162. It has a tax i.d. listed, clerk has made this exhibit private. Mr. Pickle should re-file just the exhibit in redacted form to be in compliance with the Policy of the Judicial Conference of the United States, the E-Government Act of 2002 and Local Rule 5.3(a) parties shall refrain from including, or shall partially redact where inclusion is necessary, the following personal data identifiers from all filings submitted to the court, including exhibits thereto: social security numbers, names of minor children, dates of birth, and financial account numbers. Filers are directed to <a href="http://www.mad.uscourts.gov/caseinfo/pdf/notice-ecfprivacy1-06_000.pdf">http://www.mad.uscourts.gov/caseinfo/pdf/notice-ecfprivacy1-06_000.pdf</a> for additional information.. (Jones, Sherry) Modified on 1/9/2009 (Shattuck, Deborah). (Entered: 12/30/2008)
12/30/2008	<a href="#">163</a>	EXHIBIT O re <a href="#">162</a> Affidavit in Support, re <a href="#">161</a> Reply to Response to Motion <i>for Leave to File under Seal Exhibit A for 152</i> . by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) Modified on 12/31/2008 (Jones, Sherry). (Entered: 12/30/2008)

<b>PACER Service Center</b>			
<b>Transaction Receipt</b>			
01/11/2009 13:15:05			
<b>PACER Login:</b>	pp2015	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	4:07-cv-40098-FDS Start date: 4/1/2007 End date: 1/30/2009
<b>Billable Pages:</b>	16	<b>Cost:</b>	1.28

---

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS : 0

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No. 07-40098FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

**PLAINTIFFS' COMPLAINT**

Three Angels Broadcasting Network, Inc. (hereinafter "3ABN") and Danny Lee Shelton (hereinafter "Shelton") (hereinafter collective "Plaintiffs"), as and for their Complaint against Defendants Gailon Arthur Joy (hereinafter "Joy") and Robert Pickle (hereinafter "Pickle") (hereinafter collectively "Defendants") do hereby state and allege as follows:

**NATURE OF THE ACTION**

1. This action arises under the trademark laws of the United States, namely Title 15 of the United States Code (15 U.S.C. §1051 *et seq.*) and Title 17 of the United States Code (17 U.S.C. §501 *et seq.*), and under state and federal common law and is for trademark infringement, trademark dilution, defamation, and intentional interference with advantageous economic prospective business advantage.

RECEIPT # 4050657  
AMOUNT \$ 350.00  
SUMMONS ISSUED   
LOCAL RULE 4.1   
WAIVER FORM   
MCF ISSUED   
BY DPTY. CLK. S. J. [Signature]  
DATE 4-6-07

**PARTIES**

2. Plaintiff Three Angels Broadcasting Network, Inc. is a non-profit corporation organized and existing under the laws of the state of Illinois, with its principle place of business located at 3391 Charley Good Road, West Frankfurt, Illinois 62896.

3. Individual Plaintiff Danny Lee Shelton is a resident of Illinois and is the current President of Plaintiff Three Angels Broadcasting Network, Inc.

4. Defendant Gailon Arthur Joy is a resident of Sterling, Massachusetts. Joy is the register of the internet domain name “save3abn.com” and, upon information and belief, is the host, author, and webmaster of the internet web sites “www.save3abn.com” and “www.save3abn.org.”

5. Defendant Robert Pickle is a resident of Halstad, Minnesota.

**JURISDICTION**

6. This court has original subject matter jurisdiction over this matter pursuant to 15 U.S.C. §1121 as an action arising under the Federal Trademark Act and pursuant to 28 U.S.C. §1338 as an action arising under an Act of Congress related to copyright and trademark. This court also has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1332 as an action where the matter in controversy is between citizens of different states and the amount in controversy exceeds \$75,000 (exclusive of costs and interest).

7. The Court has personal jurisdiction over Defendant Joy as he is a resident of the District and State of Massachusetts. The Court has personal jurisdiction over Defendant Pickle as he has purposefully availed himself of the jurisdiction of this Court pursuant to the Massachusetts Long Arm statute and the United States Constitution.

**VENUE**

8. Venue in this District is proper pursuant to 28 U.S.C. §1391 because it is the judicial district where one or more of the Defendants resides and because it is a judicial district in which a substantial part of the events giving rise to Plaintiffs' claims and causes of action occurred.

**FACTUAL ALLEGATIONS RELEVANT TO ALL COUNTS**

***Three Angels Broadcasting***

9. Founded in 1985 and incorporated in 1986, 3ABN is an Illinois non-profit corporation, the primary business of which is to operate and manage a Christian television and radio broadcast ministry. Plaintiff Shelton was an original founder of 3ABN and has been continuously involved in the ministry and its operations since its inception. Today, Shelton serves as President of 3ABN and is one of 3ABN's on-air ministry and music presenters.

10. Although many of 3ABN's employees and volunteers, including Plaintiff Shelton, are members of the Seventh-Day Adventist faith, 3ABN is a non-denominational Christian ministry which is not owned by, affiliated with, or financed by any specific church, denomination, or organization.

11. 3ABN, whose ministry focus is "Mending Broken People," offers a broad, Christ-centered slate of programming for adults and children that includes both spiritual (worship, Bible study, inspirational music) and lifestyle (health, cooking, smoking cessation) presentations.

12. Since its inception, Shelton and 3ABN have worked tirelessly to promote 3ABN's ministry and to spread its unique, non-denominational "Return to God" message. For over two decades, 3ABN has spent countless hours and hundreds of thousands of dollars publicizing itself through print and broadcast advertisements, special live events, direct-mail campaigns, and

group presentations. While building a successful worldwide ministry, Plaintiffs have also successfully built considerable name recognition and goodwill for themselves and for their moniker “3ABN.”

13. Today, 3ABN is one of the larger Christian networks in North America and, operating from its headquarters and primary production facility in West Frankfort, Illinois, 3ABN broadcasts 24-hour television and radio programming through a global satellite network with potential viewers and listeners well into the millions. In support of its global ministry, 3ABN also operates a production facility in Nizhny Novogorod, Russia, and television facilities in the Philippines and New Guinea.

14. As a provider of religious, spiritual and ministerial program services, 3ABN depends upon its reputation for theological integrity, operational capability, and financial soundness, in order to attract new viewers and listeners, retain current viewers and listeners, and sustain financial support for the ministry. 3ABN relies extensively and almost exclusively on the donations of viewers and supporters for its continued operation.

#### ***3ABN's Trademarks***

15. To protect its rights and goodwill, 3ABN has registered “3ABN” and “Three Angels Broadcasting Network” as trademarks with the United States Patent and Trademark Office.

16. On October 19, 2004, Registration No. 2895078 (Classes 009, 016, 038, and 041) on the Principal Register of the U.S. Patent and Trademark Office, was duly and legally issued to Three Angels Broadcasting Network, Inc. for the mark 3ABN, claiming a date of first use of January 1985, as applied to “(a) videocassettes, audio cassettes and compact disks on which are recorded video and audio programs in the fields of religion, health, nutrition, education, family



life, and programs directed to children and teenagers;” (b) “books, magazines and newsletters featuring the subjects of religion, health, nutrition, education, family life, and subject matter directed to children and teenagers;” (c) “radio and television broadcast services, satellite broadcasting services, information services provided on a global computer network in the nature of lectures, sermons, articles and study materials in the field of religion, health, nutrition, education, family, life, and subject matter directed to children and teens;” and (d) “production and distribution of radio and television programming for broadcast and audio and video programming for release on a global computer network and directly to the public.” A copy of the Certificate of Registration is attached hereto as **Exhibit A**.

17. On May 25, 2004, Registration No. 2844695 (Class 09) on the Principal Register of the U.S. Patent and Trademark Office, was duly and legally issued to Three Angels Broadcasting Network, Inc. for the mark Three Angels Broadcasting Network, claiming a date of first use of January 1985, as applied to “prerecorded video cassettes and audio cassettes featuring musical performances, sermons, lectures, and interviews in the fields of religion, health, education and family life; and prerecorded compact disks and digital video disks featuring musical performances, sermons, lectures and interviews in the fields of religion, health, education and family life.” A copy of the Certificate of Registration is attached hereto as **Exhibit B**.

18. On March 23, 2004, Registration No. 2825028 (Class 016) on the Principal Register of the U.S. Patent and Trademark Office, was duly and legally issued to Three Angels Broadcasting Network, Inc. for the mark Three Angels Broadcasting Network, claiming a date of first use of January 1985 as applied to “books, magazines, newsletters, pamphlets all in the fields

of religion, health, education, and family life.” A copy of the Certificate of Registration is attached hereto as **Exhibit C**.

19. On April 20, 2004, Registration No. 2834345 (Class 038) on the Principal Register of the U.S. Patent and Trademark Office was duly and legally issued to Three Angels Broadcasting Network, Inc. for the mark Three Angels Broadcasting Network, claiming a date of first use of January 1985 as applied to “radio and television broadcasting services, satellite broadcasting services.” A copy of the Certificate of Registration is attached hereto as **Exhibit D**.

20. On June 28, 2005, Registration No. 2963899 (Class 041) on the Principal Register of the U.S. Patent and Trademark Office, was duly and legally issued to Three Angels Broadcasting Network, Inc. for the mark Three Angels Broadcasting Network, claiming a date of first use of January 1985 as applied to “production of radio and television programs; distribution of radio and television programs for others; programming, namely, scheduling of audio and video programs on a global computer network; television and radio programming.” A copy of the Certificate of Registration is attached hereto as **Exhibit E**.

21. The registration of the marks set forth in paragraphs 16 through 20 (hereinafter collectively referred to as “3ABN Marks”) constitute *prima facie* evidence of 3ABN’s exclusive right to use and register the 3ABN Marks or any colorable imitations thereof.

22. As a consequence of 3ABN’s continuous and widespread global use, promotion, and marketing of the 3ABN Marks, 3ABN has acquired substantial and protectable goodwill in such Marks. 3ABN has also extensively used and advertised the 3ABN Marks for decades, making the 3ABN Marks instantly recognizable to the public consumer as symbols of 3ABN’s ministry, message, programming, broadcasting, and audio-visual products.

*3ABN's Trademark on the Internet*

23. In conjunction with the provision of information services on the global computer network, 3ABN also has a considerable presence on the World Wide Web, with its primary website at "www.3abn.org" (North America) and secondary web sites at "www.3abnaustralia.org.au" (Australia) and "www.3angels.ru" (Russia). These web sites offer pastoral support (prayer requests, online Bible study, etc.), streaming audio and video programs, and information about 3ABN's mission and operations. Visitors can also use the 3ABN website to purchase 3ABN-produced inspirational books and music recordings and to make financial donations to the ministry.

24. In further protection of its trademarks and use of the 3ABN Marks on the internet, 3ABN has also registered over three dozen internet domain names, all of which contain Plaintiff's registered "3ABN" trademark, including but not limited to the following:

3ABN.com  
3ABN.org  
3ABN.tv  
3ABNtelevision.com  
3ABNradio.com  
3ABNmusic.com  
3ABNbooks.com  
3ABNtv.com  
3ABNtv.org

*Defendant's Website*

25. In January 2007, 3ABN discovered that Defendant Joy had registered the domain name "save3ABN.com" with NamesDirect.com, Inc. (hereinafter "Infringing Domain"). A copy of the registration information for the domain name is attached hereto as **Exhibit F**.

26. In March, 2007, 3ABN discovered that Defendant Joy had registered the domain name “save3ABN.org” with NamesDirect.com, Inc. (hereinafter “Directing Domain”). A copy of the registration information for the domain name is attached hereto as **Exhibit G**.

27. Defendants have constructed and published a website at the Infringing Domain URL that contains information antithetical to 3ABN’s message. Specifically, the website, “www.save3abn.com” (hereinafter “Infringing Website”), which is registered to Defendant Joy, contains gross misstatements of fact concerning 3ABN’s actions and operations, contains baseless and untrue allegations of criminal conduct by the organization, and disparaging characterizations of 3ABN and its broadcast network.

28. Defendants have also imbedded the Infringing Website with metatags “3ABN,” “3-ABN,” and “Three Angels Broadcasting Network” (hereinafter “Infringing Metatags”), which are words and phrases utilized by internet users’ search-engines to find and locate websites that use the 3ABN Marks.

29. Defendants have also registered the domain name “www.save3ABN.org,” (hereinafter “the Directing Website”) and use the Website at that URL to direct visitors to the “www.save3ABN.com” website.

30. The Infringing Website also contains an unauthorized embedded copy of a copyrighted 3ABN broadcast, which visitors can either launch and watch while on the Infringing Website or duplicate by copying the program, via electronic download, from the Infringing Website.

31. The Infringing Domain, Infringing Website, Directing Website, and Infringing Metatags incorporate a trademark that Three Angels Broadcasting Network, Inc. has continuously used for over twenty years in connection with its ministry, broadcasts, and related

audio and video products. Notwithstanding the reputation and goodwill represented by the 3ABN Marks, and Defendants' awareness thereof, and, upon information and belief, precisely because of said awareness, Defendants (a) willfully registered, used, and plan to continue using the Infringing Domain, and (b) willfully used and plan to continue to use the Infringing Website, Directing Website, and Metatags.

32. The registration and/or the use and planned use of the Infringing Domain, Infringing Website, Directing Website, and Infringing Metatags by the Defendants have been without 3ABN's consent or authorization.

33. The registration and/or the use and planned used of the Infringing Domain, Infringing Website, Directing Website, and Metatags by the Defendants have caused and are likely to cause confusion and mistake in the minds of the public and, in particular, tends to and in fact does deceptively and falsely create the impression that the Infringing Domain, and the content therein, are affiliated with and authorized, sponsored, or approved by 3ABN.

34. Not only would persons familiar with the 3ABN Marks be likely to believe that the Infringing Domain and Infringing Website originate with and are sponsored by 3ABN, but any such confusion could seriously injure 3ABN to the extent that the content of the Infringing Website located at the Infringing Domain negatively reflects upon the reputation, goodwill and character established by 3ABN for its ministry, broadcast, and corporation over the past 22 years. Because of the confusion engendered by Defendants' unauthorized uses of the 3ABN Marks, 3ABN's valuable goodwill with respect to its trademarks is jeopardized by Defendants.

35. The registration and/or the use and planned use of the Infringing Domain by Defendant has been deliberate, designed specifically to trade upon the enormous goodwill and familiarity of the 3ABN Marks, in order to lure the public to a site that disparages and defames

the organization. 3ABN's use of the 3ABN Marks predates any use Defendant may have made in connection with the term "3ABN."

36. The registration and/or the use and planned use of the Infringing Domain, Directing Website, and Infringing Metatags by the Defendant has been deliberate, designed specifically to trade upon the enormous goodwill and familiarity of the 3ABN Marks in order to wrongfully identify Plaintiff as the source of the Infringing "www.save3abn.com" Website.

37. On or about January 30, 2007, 3ABN demanded in writing that Defendants cease and desist from, among other things, all unauthorized use of the 3ABN Marks, including but not limited to the Infringing Domain and Infringing Website. Defendants have to date failed and refused to comply with the demands of that cease and desist letter.

***Defendants' Conspiratorial Conduct***

38. Upon information and belief, Gailon Joy and Robert Pickle are members of the Seventh Day Adventist Church and met former 3ABN director and employee Linda Shelton through their common religious affiliation.

39. Upon information and belief, Linda Shelton has communicated to Gailon Joy and Robert Pickle statements critical of 3ABN, its board of directors, its officers and/or its employees for them to publish as her agents.

40. Upon information and belief, Gailon Joy and Robert Pickle desire to see Linda Shelton reinstated as an employee and director at 3ABN and intend to discredit and damage the ministry as a means of facilitating Linda Shelton's reinstatement.

41. Gailon Joy and Robert Pickle are visitors and frequent participants in various websites and chat rooms that are frequented by members of the Seventh-Day Adventist Church, where Defendants have, by electronic posting, published numerous statements related to 3ABN

and Danny Shelton. Joy also operates a website at “www.save3ABN.com” where he has also published numerous statements related to 3ABN and Danny Shelton. Joy also operates a website at “www.save3ABN.org” where he directs visitors to the “www.save3ABN.com” website.

42. Gailon Joy and Robert Pickle have, upon information and belief, conspired, and colluded to enable, facilitate, encourage, and promote the publication and dissemination of defamatory, disparaging, and slanderous statements regarding 3ABN and its President Danny Shelton at the internet website “www.save3ABN.com,” and other internet websites, wherein numerous false statements regarding 3ABN and its President Danny Shelton have been published by Defendants.

43. Defendants have participated in this conspiracy by jointly authoring many or all of the published statements on “www.save3ABN.com” and by jointly authoring statements published by one or both of them on websites frequented by members of the Seventh-Day Adventist Church, such as “www.blackstda.com,” “www.maritime-sda-online.org,” “www.christianforum.com,” and the Yahoo Prophecy Board forum.

44. Defendants have also participated in this conspiracy by jointly marketing, advertising, and promoting the “www.save3ABN.com” website, which they have done by posting electronic links to the website on numerous bulletin boards and websites frequented by members of the Seventh-Day Adventist Church, by mailing advertising postcards to Seventh-Day Adventist Churches across the United States directing Church Members to the “www.save3ABN.com” website, and by encouraging Internet users to visit the “www.save3ABN.com” website to “learn the truth” about 3ABN and its President Danny Shelton.

45. Defendants have also participated in this conspiracy by each disseminating, distributing, and reprinting the other's published statements.

***Defendants' Untrue Statements***

46. Gailon Joy and Robert Pickle have published numerous untrue statements that 3ABN and its President Danny Shelton have committed financial improprieties with donated ministry funds. Among those untrue statements made by Joy and Pickle are, *inter alia*, that:

a. For the last several years, the international television ministry known as Three Angels' Broadcasting Network (3ABN) has found itself beset by a growing number of moral, ethical, and financial allegations. Despite the serious nature of these allegations, repeated calls for investigation, reform, and accountability have gone unheeded by its officers and directors.

b. Danny Shelton purchased a 3-year-old van using 3ABN funds, then sold the van to a member of his family for just \$10.00.

c. Danny Shelton purchased new furniture with 3ABN funds, put the new furniture in his residence, and put the old furniture from his residence on the 3ABN television set.

d. Danny Shelton used 3ABN funds to purchase used furniture from his sister, Tammy Chance, at nearly new prices (enabling Ms. Chance to buy brand new furniture for her home), for use in a 3ABN guest house, but, instead of putting the used furniture in the 3ABN guest house, Mr. Shelton gave the furniture to yet another family member and used 3ABN funds to purchase brand new furniture for the guest house.

e. The 3ABN Board of Directors has failed in its responsibility to oversee and manage 3ABN's financial assets.



f. Danny Shelton laundered money through 3ABN donations to Cherie Peters, in order to make payments that had been expressly prohibited by the 3ABN Board of directors.

g. 3ABN Board members have personally enriched themselves as officers and directors of 3ABN in violation of the Internal Revenue Code.

h. Danny Shelton wrongfully withheld book royalties from 3ABN and refused to disclose those royalties in proceedings before a court of law related to the distribution of marital assets.

i. Danny Shelton has directed 3ABN Chief Financial Officer Larry Ewing to not answer questions concerning Danny Shelton's personal finances, expenses, bonuses or book royalties in a Family Court proceeding, which was initiated by Linda Shelton regarding division of marital assets and that Mr. Ewing has complied and refused to answer questions posed to him by the Court.

j. Danny Shelton has used the 3ABN corporate plane for personal uses.

k. Danny Shelton spent \$600,000 of 3ABN funds for radio station WDQN without Board approval and paid in excess of its fair market value, which was only \$250,000.

47. Each and every one of the statements set forth above is false and Defendants published them with malice, either knowing them to be false or with wanton and reckless disregard for the truth or falsity of the statements.

48. Gailon Joy and Robert Pickle have published numerous untrue statements that 3ABN and its President Danny Shelton have committed administrative and operational improprieties at 3ABN and that the organization is not properly or competently managed by its

managers, officers, and directors. Among those untrue statements made by Defendants are, *inter alia*, that:

- a. 3ABN engages in nepotism in the hiring and firing of staff.
- b. 3ABN violated the Federal Equal Opportunity Act by taking adverse employment actions against two whistle-blower employees of 3ABN's Trust Services division.
- c. The 3ABN Board of Directors has failed in its responsibility to oversee the governance and administration of the organization.
- d. Danny Shelton and 3ABN would not permit an ecumenical Seventh-Day Adventist-related, fact-finding tribunal proposed and directed by Adventist-laymen's Services and Industries ("ASI") to investigate all allegations related to the ministry and confined the tribunal to only those allegations involving Linda Shelton's removal and the Shelton's' divorce.

49. Each and every one of the statements set forth above is false and Defendants published them with malice, either knowing them to be false or with wanton and reckless disregard for the truth or falsity of the statements.

50. Gailon Joy and Robert Pickle have made numerous published untrue statements that 3ABN and its President Danny Shelton acted without grounds in removing Linda Shelton from the 3ABN Board of Directors, that Danny Shelton had no grounds for divorcing Linda Shelton, that 3ABN and Danny Shelton conspired to hide evidence and information concerning the removal and divorce, and that 3ABN and Danny Shelton have lied and made otherwise purposeful misstatements concerning the Shelton's' divorce and Danny Shelton's remarriage. Among those untrue statements made by Defendants are, *inter alia*, that:

- a. Danny Shelton and ASI conspired to exclude Gailon Joy from participating in a fact-finding tribunal regarding Linda Shelton's divorce and removal from 3ABN.
- b. Danny Shelton and ASI conspired to prevent various allegations and issues from being included in the fact-finding tribunal.
- c. It was Danny Shelton that participated in an extra-marital affair by becoming "involved" in "after hours activities" with 3ABN employee Brenda Walsh.
- d. During his marriage to Linda Shelton, Danny Shelton had several inappropriate extra-marital relationships, of which 3ABN staff and board members were aware.
- e. Danny Shelton was preparing to divorce Linda Shelton beginning in 2003.
- f. Danny Shelton conducted an inappropriate relationship with from August 2004 until they were married in 2006, and 3ABN's officers and directors were aware of the relationship.
- g. Danny Shelton lied by claiming to have joint title with Linda Shelton to a Toyota Sequoia automobile.
- h. The 3ABN board of directors had no authority to authorize Danny Shelton's adulterous marriage or to allow his continued employment by and direction of 3ABN.
- i. Danny Shelton perjured himself through the course of court proceedings relating to his divorce from Linda Shelton.

51. Each and every one of the statements set forth above is false and Defendants published them with malice, either knowing them to be false or with wanton and reckless disregard for the truth or falsity of the statements.

52. Defendants' conduct as heretofore set forth evidences a malicious and purposeful campaign of defamation, slander, and disparagement intended and designed to embarrass, discredit, and defame 3ABN and its President Danny Shelton and to vitiate, dishonor, and impair the reputation and goodwill of 3ABN and its President Danny Shelton.

**CAUSES OF ACTION**

**COUNT I: Infringement of Trademark (15 U.S.C. § 1114)**

53. Plaintiffs restate and reallege Paragraphs 1 through 52 above, and hereby incorporate them by reference, as though fully set forth herein.

54. Plaintiff 3ABN is the creator and proper owner and holder of the trademarks "3ABN" and "Three Angels Broadcasting Network" and has registered the same with the United States Patent and Trademark Office.

55. Defendant Joy has used Plaintiff 3ABN's Marks in the registered domain names "save3abn.com" and "save3abn.org."

56. Defendant Joy has used Plaintiff 3ABN's Marks in the internet websites "www.save3abn.com" and "www.save3abn.org."

57. Defendant Joy has used Plaintiff 3ABN's Marks in the embedded metatags "3ABN," "3-ABN," and "Three Angels Broadcasting Network" on the Infringing Website.

58. Defendant Joy has used Plaintiff 3ABN's Marks in commerce in connection with 3ABN's provision of ministerial and informational services.

59. Defendant Joy's use of Plaintiff 3ABN's Marks is without Plaintiffs' authorization, permission, or license, and does not otherwise constitute a permissible use.

60. Defendant Joy's use of 3ABN's Marks has been willful and deliberate, designed specifically to trade upon the enormous goodwill associated with 3ABN and its 3ABN Marks.

61. Defendant Joy's unauthorized use of 3ABN's Marks is likely to lead the public to believe the Infringing Website is associated with, sponsored by, related to, affiliated with, or originates with 3ABN when, in fact, it is not.

62. Plaintiff has been damaged by Defendant Joy's infringement of its "3ABN" Marks, in an amount to be proven at trial, and is entitled to treble damages, costs, and attorneys' fees, pursuant to 15 U.S.C. §1117.

63. 3ABN's goodwill is of enormous value, and 3ABN will suffer irreparable harm should Defendant Joy's infringement be allowed to continue to the detriment of 3ABN's reputation and goodwill.

64. Defendant Joy's infringement will continue unless enjoined by this Court and with respect to these continuing violations, Plaintiff has no adequate remedy at law and is therefore entitled to injunctive relief.

**COUNT II: Dilution of Trademark (15 U.S.C. §1125(c))**

65. Plaintiff restates and realleges Paragraphs 1 through 64 above, and hereby incorporates them by reference, as though fully set forth herein.

66. Through Plaintiff 3ABN's extensive use of the 3ABN Marks to identify its broadcast ministry, through Plaintiffs' development of goodwill surrounding the Marks by its successful operation and expansion of the broadcast ministry, and through Plaintiffs' promotion and marketing efforts utilizing the Marks, the 3ABN Marks are now recognized worldwide as symbols of a dedicated, principled, Christ-centered ministry that is theologically faithful,

operationally sound, and financially conscientious. 3ABN's Marks are famous marks of inestimable value to 3ABN and are relied upon by the public in distinguishing 3ABN from other ministries, broadcasters, and recording producers.

67. After the 3ABN Marks had become famous, Defendant Joy willfully intended to trade upon 3ABN's reputation and the fame of its Marks by using the Marks in the Infringing Domain, Infringing Website, Directing Website, and Infringing Metatags.

68. The use and planned use of the 3ABN Marks by Defendant Joy has tarnished and disparaged, and thereby diluted, and is likely to continue to tarnish, disparage, and thereby dilute, the distinctive quality of and goodwill associated with the Marks.

69. Defendant Joy's willful dilution of 3ABN's Marks has injured Plaintiff in an amount to be proven at trial.

70. 3ABN's trademarks are of enormous value, and 3ABN will suffer irreparable harm should Defendant Joy's trademark dilution be allowed to continue to the detriment of 3ABN.

71. Defendant Joy's dilutive activities will continue unless enjoined by this Court and, with respect to these continuing violations, 3ABN has no adequate remedy at law and is therefore entitled to injunctive relief.

### **COUNT III: Defamation**

72. Plaintiffs restate and reallege Paragraphs 1 through 71 above, and hereby incorporate them by reference, as though fully set forth herein.

73. Defendants have made numerous false statements of fact with regard to both 3ABN and its President Danny Shelton.

74. Defendants have published those statements on the Internet and at the website “www.save3ABN.com” and have thereby communicated those false statements to someone other than the Plaintiffs.

75. Defendants’ false statements refer to Plaintiffs’ trade, business and profession, contain false accusations of the commission of a crime by both Plaintiffs, and impute serious misconduct to Plaintiffs 3ABN and Danny Shelton and are therefore defamatory *per se*.

76. Defendants’ false statements were purposefully and maliciously designed and made to embarrass, discredit, and defame 3ABN and its President Danny Shelton and to vitiate, dishonor, and impair the reputation and goodwill of 3ABN and its President Danny Shelton.

77. Defendants’ false statements have tended to and have in fact harmed the reputation and goodwill of both 3ABN and its President Danny Shelton, and have served to lower 3ABN and President Danny Shelton in the estimation of the community.

78. As a direct and proximate result of the damage done to Plaintiffs’ reputations by Defendants’ defamatory and disparaging statements, viewers have ceased support of the ministry and donors have reduced or stopped donations to 3ABN.

**COUNT IV: Intentional Interference With Advantageous Economic Relations**

79. Plaintiffs restate and reallege Paragraphs 1 through 78 above, and hereby incorporate them by reference, as though fully set forth herein.

80. Defendants have made numerous false statements of fact with regard to both 3ABN and its President Danny Shelton.

81. Defendants have published those statements in an effort to discredit 3ABN and its President Danny Shelton and in order to cause present and prospective viewers and donors to the ministry to discontinue their financial support of the ministry.

82. Defendants have intentionally interfered, tortiously and/or with improper motive or means, with 3ABN's present and prospective advantageous economic relationships with viewers and donors.

83. As a direct and proximate result of Defendant's actions, viewers and donors have discontinued their financial support of the ministry.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury for all issues so triable.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully pray:

1. That judgment be entered in favor of Plaintiffs and against Defendants for all claims in Plaintiffs' Complaint on the grounds that Defendants have knowingly and willfully infringed upon and diluted Plaintiffs' trademarks, have willfully and maliciously defamed plaintiffs, and have willfully and intentionally interfered with Plaintiffs' advantageous economic relations.
2. That a permanent injunction issue restraining Defendants, their agents, successors, assigns and all others in concert and privity with Defendants, from infringing on 3ABN's Marks and dilution of 3ABN's Marks.
3. That a permanent injunction issue restraining Defendants, their agents, successors, assigns and all others in concert and privity with Defendants, from using the 3ABN Marks in any internet domain name, internet website name, or internet website metatags.
4. That a permanent injunction issue restraining Defendants, their agents, successors, assigns and all others in concert and privity with Defendants, from using the Infringing Domain, Directing Domain or the Infringing Website.



5. That Defendant Joy be ordered to immediately surrender the Infringing Domain and transfer registration of the Infringing Domain and Directing website to Plaintiff 3ABN, completing all paperwork necessary to transfer and paying all fees and costs associated with transfer of the domain registration.

6. That Defendants be ordered to immediately remove from all print and electronic publications the false statements of fact alleged herein and otherwise established at trial.

7. That Defendants be ordered to immediately publish a retraction of the false statements of fact alleged herein and otherwise established at trial, and to publish that retraction in the same forms and forum and to the same general and specific audience as the false statements were originally made.

8. That compensatory damages be awarded to Plaintiffs in an amount to be determined at trial, but in no event less than \$75,000 (exclusive of costs and interest).

9. That statutory damages be awarded Plaintiffs in an amount to be determined at trial.

10. That Plaintiffs be awarded all costs and fees, including attorneys' fees, incurred in the prosecution of this action.

11. That Plaintiffs are awarded such other and further relief as this Honorable Court may deem just and equitable.

Dated: April 5, 2007

**FIERST, PUCCI & KANE, LLC**

By: 

John P. Pucci, BBO# 407560

J. Lizette Richards, BBO#649413

64 Gothic Street

Northampton, MA 01060

Tel: 413-584-8067

Fax: 413-585-8067

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

_____ )	
Three Angels Broadcasting Network, an )	
Illinois non-profit corporation, )	
and )	
Danny Lee Shelton, individually, )	
) )	
Plaintiffs )	
) )	C.A. No. 07-40098-FDS
vs. )	
) )	
Gailon Arthur Joy )	
and )	
Robert Pickle )	
) )	
Defendants )	
) )	
_____ )	

**DEFENDANTS' ANSWERS TO PLAINTIFFS COMPLAINT**

NOW COME Robert Pickle and Gailon Arthur Joy and offer this as their Answer to the Complaint of the Three Angels Broadcasting Network and Danny Lee Shelton, including the text of the Complaint for the pleasure and convenience of the Court:

**NATURE OF THE ACTION**

1. This action arises under the trademark laws of the United States, namely Title 15 of the United States Code (15 U.S.C. § 1051 *et seq.*) and Title 17 of the United States Code (17 U.S.C. §501 *et seq.*), and under state and federal common law and is for trademark infringement, trademark dilution, defamation, and intentional interference with advantageous economic prospective business advantage.

Defendants Answer to 1: a: Trademark Infringement: Plaintiffs are left to their proof as to the applicability of the trademark registration as it relates to the allegations of trademark

infringement as the trademarks appear to be specifically limited and therefore the defendant Joy denies the applicability of trademark infringement; b: Trademark Dilution: Plaintiffs are left to their proof as to the applicability of the trademark registration and as to the basis for any dilution thereof, therefore the defendant Joy denies the allegation of the applicability of trademark dilution; c: Defamation: Defendant is left to their proof that USC Title 15, USC Title 17, state or federal common law applies to the allegation of defamation and therefore the defendant Joy denies the applicability of the allegation of defamation; d: Plaintiff is left to their proof that USC Title 15, USC Title 17, state or federal common law applies to the allegation of intentional interference with advantageous economic prospective business advantage and therefore the defendant Joy denies the applicability of the allegation.

### **PARTIES**

2. Plaintiff Three Angels Broadcasting Network, Inc. is a non-profit corporation organized and existing under the laws of the state of Illinois, with its principle place of business located at 3391 Charley Good Road, West Frankfurt, Illinois 62896.

Defendants Answer to 2: Plaintiffs are left to their proof that Three Angels Broadcasting Network, Inc is a non-profit corporation organized and existing under the laws of the state of Illinois or that it's principle place of business is located at 3391 Charley Good Road, West Frankfurt, Illinois 62896 and defendant Joy asserts that he has insufficient proof to establish whether Three Angels Broadcasting Network, Inc is a non-profit corporation and therefore asserts the right to amend his answer upon attaining sufficient

evidence to create a foundation for his answer. Therefore denied.

3. Individual Plaintiff Danny Lee Shelton is a resident of Illinois and is the current President of Plaintiff Three Angels Broadcasting Network, Inc.

Defendants Answer to 3: Plaintiff Danny Lee Shelton is left to his proof that he is a resident of Illinois and Defendants has insufficient evidence upon which to base an answer to the allegation that the Plaintiff is the current President of Plaintiff Three Angels Broadcasting Network, Inc as a recent live televised program of the Plaintiff Three Angels Broadcasting Network, Inc demonstrated that the president may have been conferred upon another person not yet a party to this action by referenced agreements relating to a merger. Therefore denied.

4. Defendant Gailon Arthur Joy is a resident of Sterling, Massachusetts. Joy is the register of the internet domain name “save3abn.com” and, upon information and belief, is the host, author, and webmaster of the internet web sites “www.save3abn.com” and [www.save3abn.org](http://www.save3abn.org).

Deft Joy’s Answer to 4: Admitted except as to the allegations regarding domain name registration.

Deft Pickle’s Answer to 4: Plaintiffs are left to their proof and therefore denied.

5. Defendant Robert Pickle is a resident of Halstad, Minnesota.

Deft Joy’s Answer to 5: Defendant Joy has insufficient knowledge to admit or deny.

Deft Pickle’s Answer to 5: Defendant is a resident of Norman County, Mn, therefore denied.

**JURISDICTION**

6. This court has original subject matter jurisdiction over this matter pursuant to 15 U.S.C. §1121 as an action arising under the Federal Trademark Act and pursuant to 28 U.S.C. §1338 as an action arising under an Act of Congress related to copyright and trademark. This court also has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1332 as an action where the matter in controversy is between citizens of different states and the amount in controversy exceeds \$75,000 (exclusive of costs and interest).

Defendants Answer to 6: The Plaintiffs are left to their proof as to jurisdiction as it relates to 15 U.S.C. §1121 and 28 U.S.C. §1338; Defendant has insufficient knowledge to know whether 28 U.S.C. §1332 applies and Plaintiffs have provided no such evidence to support such a claim, therefore Defendants denies the controversy exceeds \$75,000, therefore, Jurisdiction is left to the proof of the Plaintiffs. Therefore denied.

7. The Court has personal jurisdiction over Defendant Joy as he is a resident of the District and State of Massachusetts. The Court has personal jurisdiction over Defendant Pickle as he has purposefully availed himself of the jurisdiction of this Court pursuant to the Massachusetts Long Arm statute and the United States Constitution.

Defendant Joy's Answer to 7: Defendants admits he is a resident of the District and State of Massachusetts; Defendants has insufficient knowledge to determine if the Court has Jurisdiction; Therefore denied.

Defendant Pickle's Answer: Defendant Pickle did not waive or object to personal jurisdiction at the first appearance before the court on this matter, and admitted on that basis.

**VENUE**

8. Venue in this District is proper pursuant to 28 U.S.C. §1391 because it is the judicial district where one or more of the Defendants resides and because it is a judicial district in which a substantial part of the events giving rise to Plaintiffs' claims and causes of action occurred.

Answer of Defendants to 8: Admitted

**FACTUAL ALLEGATIONS RELEVANT TO ALL COUNTS**

***Three Angels Broadcasting***

9. Founded in 1985 and incorporated in 1986, 3ABN is an Illinois non-profit corporation, the primary business of which is to operate and manage a Christian television and radio broadcast ministry. Plaintiff Shelton was an original founder of 3ABN and has been continuously involved in the ministry and its operations since its inception. Today, Shelton serves as President of 3ABN and is one of 3ABN's on-air ministry and music presenters.

Answer of Defendants to 9: Admitted that 3ABN was incorporated as a general not for profit in 1986; However, Defendants has insufficient knowledge to determine if the corporation remains a not for profit entity and in fact alleges sufficient information to question the current status of the corporations non-profit status in as much as the Defendants have, upon information and belief, sufficient information to believe that 3ABN may actually be controlled by Plaintiff Danny Lee Shelton and that Plaintiff treats the corporation as his own asset and purposefully profits from the same.

10. Although many of 3ABN's employees and volunteers, including Plaintiff Shelton, are members of the Seventh-Day Adventist faith, 3ABN is a non-denominational

Christian ministry which is not owned by, affiliated with, or financed by any specific church, denomination, or organization.

Answer of Defendants to 10: Denied as Upon information and belief, 3ABN is largely supported by donations of nearly 100,000 Seventh-day Adventist denominational laymen with nearly five thousand providing regular sustaining gifts, several thousand laymen having entrusted sums as gifts, donations, trusts, and tithes of their earnings to 3ABN fully believing that the network teaches the “undiluted three angels messages”, created to “counteract the counterfeit” teachings regarding God’s Ten Commandment law of love; a teaching unique to the Seventh-day Adventist Denomination, broadcast via satellite media to all the world; Upon information and belief 3ABN and Danny Lee Shelton enjoys special affiliation with Adventist-laymen’s Services and Industries, Inc, an SDA lay businessmen's group having direct affiliation with the General Conference of Seventh-day Adventists; Upon information and belief 3ABN and Danny Lee Shelton still subscribes to a “Joint Declaration of Commitment” between the General Conference of Seventh-day Adventists and 3ABN;

And upon declaration of the parties, the Plaintiffs are currently in the process of a merger with Amazing Facts, upon information and belief, a denominational ministry affiliate; Plaintiffs, upon information and belief, has a direct affiliation and joint venture in an entity referred to as the Atlantic Union [Conference of Seventh-day Adventists] Adventist Media, affiliated with 3ABN. Therefore denied.

11. 3ABN, whose ministry focus is “Mending Broken People,” offers a broad, Christ-centered slate of programming for adults and children that includes both spiritual

(worship, Bible study, inspirational music) and lifestyle (health, cooking, smoking cessation) presentations.

Answer of Defendants to 11: Plaintiff is left to their proof as to the ministry's focus; Deft believes that upon information and belief SDA laymen everywhere are under the deceptive assumption that the ministry is an SDA laymen's proselytizing outreach media ministry to the entire world.

12. Since its inception, Shelton and 3ABN have worked tirelessly to promote 3ABN's ministry and to spread its unique, non-denominational "Return to God" message. For over two decades, 3ABN has spent countless hours and hundreds of thousands of dollars publicizing itself through print and broadcast advertisements, special live events, direct-mail campaigns, and group presentations. While building a successful worldwide ministry, Plaintiffs have also successfully built considerable name recognition and goodwill for themselves and for their moniker "3ABN."

Answer of Defendants to 12: Plaintiffs are left to their proof of their tireless effort, however, upon information and belief, SDA laymen everywhere have been under the deceptive assumption that 3ABN promotes the messages unique to the Seventh-day Adventist Denomination and that the ministry deceptively has promoted itself as an SDA proselytizing outreach media ministry to the entire world and promoted to SDA church rallies that it was promoting the SDA message and bringing souls into the SDA churches, therefore, upon information and belief the Moniker "3ABN" is an SDA laymen's media ministry moniker with a unique SDA denominational Three Angels Messages. Therefore denied.



13. Today, 3ABN is one of the larger Christian networks in North America and, operating from its headquarters and primary production facility in West Frankfort, Illinois, 3ABN broadcasts 24-hour television and radio programming through a global satellite network with potential viewers and listeners well into the millions. In support of its global ministry, 3ABN also operates a production facility in Nizhny Novogorod, Russia, and television facilities in the Philippines and New Guinea.

Answer of Defendants to 13:Plaintiff 3ABN is left to its proof as to its size, its global network, its “potential” viewers and listeners vs its actual viewers, its facilities in Russia, the Philippines and New Guinea and the return on investment value by the investors of the Seventh-day Adventist Church for the dollars entrusted as gifts, donations, trusts, and tithes of their earnings to 3ABN;However, upon information and belief, not all sums so entrusted may have been appropriately accounted for. Therefore denied.

14. As a provider of religious, spiritual and ministerial program services, 3ABN depends upon its reputation for theological integrity, operational capability, and financial soundness, in order to attract new viewers and listeners, retain current viewers and listeners, and sustain financial support for the ministry. 3ABN relies extensively and almost exclusively on the donations of viewers and supporters for its continued operation.

Answer of Defendants to 14:Plaintiff is left to their proof as to their theological integrity, operational capability, financial soundness, or their ability to attract new viewers and listeners, retain viewers and listeners, and ability to sustain financial support. Upon information and belief, the actions of the Plaintiff Danny Lee Shelton, purportedly a founder and either current or former president of 3ABN, has conducted himself in such a

way as to violate theological integrity, undermine operational capability, to prey upon the financial soundness of the entity 3ABN and to inappropriately redirect large sums to his personal benefit with and without properly constituted corporate authority. Upon information and belief, the entity 3ABN has failed to take appropriate steps to curb the actions of Danny Lee Shelton, to set up appropriate accounting processes to account for sums gifted, and are purported to have in some cases, either failed to discipline or have endorse by vote or by “affirmation” to the actions undertaken by Danny Lee Shelton that had the affect to undermine 3ABN. Therefore denied.

***3ABN’s Trademarks***

15. To protect its rights and goodwill, 3ABN has registered “3ABN” and “Three Angels Broadcasting Network” as trademarks with the United States Patent and Trademark Office.

Answer of Defendants to 15: If the entity 3ABN is a non-profit religious organization, then it would have no good commercial purpose and therefore would have limited trademark rights and would have no known commercially valuable goodwill, other than its actual or perceived theological integrity or operational integrity. It’s financial soundness is, therefore, entirely dependent upon its theological integrity, not its trademark. Therefore, the plaintiffs are left to their proof that it even needed to protect its rights and goodwill. Therefore denied.

16. On October 19, 2004, Registration No. 2895078 (Classes 009, 016, 038, and 041) on the Principal Register of the U.S. Patent and Trademark Office, was duly and legally issued to Three Angels Broadcasting Network, Inc. for the mark 3ABN, claiming

a date of first use of January 1985, as applied to “(a) videocassettes, audio cassettes and compact disks on which are recorded video and audio programs in the fields of religion, health, nutrition, education, family life, and programs directed to children and teenagers;” (b) “books, magazines and newsletters featuring the subjects of religion, health, nutrition, education, family life, and subject matter directed to children and teenagers;” (c) “radio and television broadcast services, satellite broadcasting services, information services provided on a global computer network in the nature of lectures, sermons, articles and study materials in the field of religion, health, nutrition, education, family, life, and subject matter directed to children and teens;” and (d) “production and distribution of radio and television programming for broadcast and audio and video programming for release on a global computer network and directly to the public.” A copy of the Certificate of Registration is attached hereto as **Exhibit A**.

Answer of Defendants to 16: Deft acknowledges that upon information and belief the Plaintiff 3ABN was issued a limited mark for specific limited purposes that the plaintiffs are left to their proof as to the applicability to the subject action. The Plaintiff Danny Lee Shelton has no such trademark or right or recovery whatsoever under this certificate issued. Therefore denied.

17. On May 25, 2004, Registration No. 2844695 (Class 09) on the Principal Register of the U.S. Patent and Trademark Office, was duly and legally issued to Three Angels Broadcasting Network, Inc. for the mark Three Angels Broadcasting Network, claiming a date of first use of January 1985, as applied to “prerecorded video cassettes and audio cassettes featuring musical performances, sermons, lectures, and interviews in

the fields of religion, health, education and family life; and prerecorded compact disks and digital video disks featuring musical performances, sermons, lectures and interviews in the fields of religion, health, education and family life.” A copy of the Certificate of Registration is attached hereto as **Exhibit B**.

Answer of Defendants to 17: Deft acknowledges that upon information and belief the Plaintiff Three Angels Broadcasting Network was issued a limited mark for specific purposes and the plaintiffs are left to their proof as to the applicability to the subject action. The Plaintiff Danny Lee Shelton has no such trademark or right or recovery whatsoever under this certificate issued. Therefore denied.

**18.** On March 23, 2004, Registration No. 2825028 (Class 016) on the Principal Register of the U.S. Patent and Trademark Office, was duly and legally issued to Three Angels Broadcasting Network, Inc. for the mark Three Angels Broadcasting Network, claiming a date of first use of January 1985 as applied to “books, magazines, newsletters, pamphlets all in the fields of religion, health, education, and family life.” A copy of the Certificate of Registration is attached hereto as **Exhibit C**.

Answer of Defendants to 18: Deft acknowledges that upon information and belief the Plaintiff Three Angels Broadcasting Network was issued a limited mark for specific purposes and the plaintiffs are left to their proof as to the applicability to the subject action. The Plaintiff Danny Lee Shelton has no such trademark or right or recovery whatsoever under this certificate issued. Therefore denied.

**19.** On April 20, 2004, Registration No. 2834345 (Class 038) on the Principal Register of the U.S. Patent and Trademark Office was duly and legally issued to Three

Angels Broadcasting Network, Inc. for the mark Three Angels Broadcasting Network, claiming a date of first use of January 1985 as applied to “radio and television broadcasting services, satellite broadcasting services.” A copy of the Certificate of Registration is attached hereto as **Exhibit D**.

Answer of Defendants to 19: Deft acknowledges that upon information and belief the Plaintiff Three Angels Broadcasting Network was issued a limited mark for specific purposes that the plaintiffs are left to their proof as to the applicability to the subject action. The Plaintiff Danny Lee Shelton has no such trademark or right or recovery whatsoever under this certificate issued. Therefore denied.

**20.** On June 28, 2005, Registration No. 2963899 (Class 041) on the Principal Register of the U.S. Patent and Trademark Office, was duly and legally issued to Three Angels Broadcasting Network, Inc. for the mark Three Angels Broadcasting Network, claiming a date of first use of January 1985 as applied to “production of radio and television programs; distribution of radio and television programs for others; programming, namely, scheduling of audio and video programs on a global computer network; television and radio programming.” A copy of the Certificate of Registration is attached hereto as **Exhibit E**.

Answer of Defendants to 20: Deft acknowledges that upon information and belief the Plaintiff Three Angels Broadcasting Network was issued a limited mark for specific purposes that the plaintiffs are left to their proof as to the applicability to the subject action. The Plaintiff Danny Lee Shelton has no such trademark or right or recovery whatsoever under this certificate issued. Therefore denied.

21. The registration of the marks set forth in paragraphs 16 through 20 (hereinafter collectively referred to as “3ABN Marks”) constitute *prima facie* evidence of 3ABN’s exclusive right to use and register the 3ABN Marks or any colorable imitations thereof.

Answer of Defendants to 21: Denied as all marks are limited marks and certain actions of the Plaintiff 3ABN has abrogated its exclusive rights, if any, it would appear it has limited rights or the rights conferred may not be applicable to the subject action. The Plaintiff Danny Lee Shelton has no such trademark or right or recovery whatsoever under the purported *prima facie* certificate issued. Therefore denied.

22. As a consequence of 3ABN’s continuous and widespread global use, promotion, and marketing of the 3ABN Marks, 3ABN has acquired substantial and protectable goodwill in such Marks. 3ABN has also extensively used and advertised the 3ABN Marks for decades, making the 3ABN Marks instantly recognizable to the public consumer as symbols of 3ABN’s ministry, message, programming, broadcasting, and audio-visual products.

Answer of Defendants to 22: Plaintiff is left to their proof that they have promoted their marks, limited or otherwise, and defendant asserts that if the entity is deemed a non profit religious organization as asserted by plaintiffs, then goodwill would be of no commercial value and plaintiff is estopped from such claim. Further the defendant asserts that Plaintiff Danny Lee Shelton, and 3ABN by affirmation, has undermined any such goodwill the plaintiffs may have acquired, real or imaginary. Therefore denied.

***3ABN’s Trademark on the Internet***

23. In conjunction with the provision of information services on the global computer network, 3ABN also has a considerable presence on the World Wide Web, with its primary website at “www.3abn.org” (North America) and secondary web sites at “www.3abnaustralia.org.au” (Australia) and “www.3angels.ru” (Russia). These web sites offer pastoral support (prayer requests, online Bible study, etc.), streaming audio and video programs, and information about 3ABN’s mission and operations. Visitors can also use the 3ABN website to purchase 3ABN-produced inspirational books and music recordings and to make financial donations to the ministry.

Answer of Defendants to 23: Plaintiff is left to its proof that it has considerable presence on the World Wide Web, or that they offer commercially valuable services. Upon information and belief, the Plaintiff Danny Lee Shelton, can assert no such claim and therefore denied as to plaintiff Shelton. Therefore denied.

24. In further protection of its trademarks and use of the 3ABN Marks on the internet, 3ABN has also registered over three dozen internet domain names, all of which contain Plaintiffs registered “3ABN” trademark, including but not limited to the following:

- 3ABN.com
- 3ABN.org
- 3ABN.tv
- 3ABNtelevision.com
- 3ABNradio.com
- 3ABNmusic.com
- 3ABNbooks.com
- 3ABNtv.com
- 3ABNtv.org

Answer of Defendants to 24: Plaintiff is left to its proof that it has registered any other

domain names on the World Wide Web, However, defendant asserts that such registration does nothing to offer any protection to the 3ABN marks. Further the defendant asserts that the Plaintiffs have not reserved at any time the domain names save3ABN.com or save3ABN.org and therefore have no claim to them. Upon information and belief, the Plaintiff Danny Lee Shelton, can assert no such claim and therefore denied as to plaintiff Shelton. Therefore denied.

*Defendants Website*

**25.** In January 2007, 3ABN discovered that Defendant Joy had registered the domain name “save3ABN.com” with NamesDirect.com, Inc. (hereinafter “Infringing Domain”). A copy of the registration information for the domain name is attached hereto as **Exhibit F**.

Answer of Defendants to 25: Affirmed that Defendants registered said domain names, but denied as to such domain names representing an Infringing Domain.

**26.** In March, 2007, 3ABN discovered that Defendant Joy had registered the domain name “save3ABN.org” with NamesDirect.com, Inc. (hereinafter “Directing Domain”). A copy of the registration information for the domain name is attached hereto as **Exhibit G**.

Answer of Defendants to 26: Plaintiff is left to their proof as to the date the Plaintiffs 3ABN found the domain name. Upon information and belief the Plaintiff Shelton knew or should have known about the domain name at least a month earlier. Therefore denied.

**27.** Defendants have constructed and published a website at the Infringing Domain URL that contains information antithetical to 3ABN’s message. Specifically, the



website, “www.save3abn.com” (hereinafter “Infringing Website”), which is registered to Defendant Joy, contains gross misstatements of fact concerning 3ABN’s actions and operations, contains baseless and untrue allegations of criminal conduct by the organization, and disparaging characterizations of 3ABN and its broadcast network.

Answer of Defendants to 27: Denied that the defendant constructed an infringing domain; defendant asserts that the messages were and remain factual representations of actual interviews with current and former employees of 3ABN, other sources, actual documentation, editorial comments and letters to the editor. Plaintiff 3ABN is left to its proof that such statements contain baseless allegations of criminal conduct by the organization, either by direct action or affirmation, and that such statements are disparaging characterization of 3ABN. Defendants assert that it was the actions of the Plaintiff Danny Lee Shelton, either undisciplined, endorsed or allowed by affirmation that resulted in a disparaging characterization of 3ABN. Defendant requests judicial notice that Plaintiff Shelton has asserted no such allegation as to Plaintiff Shelton and is estopped from such an assertion or recovery. Therefore denied.

28. Defendants have also imbedded the Infringing Website with metatags “3ABN,” “3-ABN,” and “Three Angels Broadcasting Network” (hereinafter “Infringing Metatags”), which are words and phrases utilized by internet users’ search-engines to find and locate websites that use the 3ABN Marks.

Answer of Defendants to 28: Defendants have insufficient knowledge upon which to base a response therefore denied, but reserves the right to amend defendants response.

29. Defendants have also registered the domain name “www.save3ABN.org,”

(hereinafter “the Directing Website”) and use the Website at that URL to direct visitors to the “www.save3ABN.com” website.

Answer of Defendants to 29: Denied.

30. The Infringing Website also contains an unauthorized embedded copy of a copyrighted 3ABN broadcast, which visitors can either launch and watch while on the Infringing Website or duplicate by copying the program, via electronic download, from the Infringing Website.

Answer of Defendants to 30: Denied as to an Infringing website; Denied that the excerpts are unauthorized. Denied that it constitutes the entire broadcast. Admitted that visitors can watch the excerpts as factual statements of the participants utilized as real-time media quotes demonstrating actual intonation, expression and characterization of the quoted participants. Plaintiffs are left to their proof that anyone could or has duplicated or copied the excerpts quoted. Therefore denied.

31. The Infringing Domain, Infringing Website, Directing Website, and Infringing Metatags incorporate a trademark that Three Angels Broadcasting Network, Inc. has continuously used for over twenty years in connection with its ministry, broadcasts, and related audio and video products. Notwithstanding the reputation and goodwill represented by the 3ABN Marks, and Defendants’ awareness thereof, and, upon information and belief, precisely because of said awareness, Defendants (a) willfully registered, used, and plan to continue using the Infringing Domain, and (b) willfully used and plan to continue to use the Infringing Website, Directing Website, and Metatags.

Answer of Defendants to 31: Denied that the websites or metatags incorporate a

trademark of Three Angels Broadcasting Network, Inc. Plaintiff is left to their proof as to the reputation and goodwill of the 3ABN marks, real or imaginary. a) Admitted that Defendant Joy registered the domain names save3ABN.com, save3ABN.org; Plaintiff is left to their proof that the defendant plans to continue using these domains and metatags, if any, real or imaginary: b) see defendants answer to a). Therefore denied.

32. The registration and/or the use and planned use of the Infringing Domain, Infringing Website, Directing Website, and Infringing Metatags by the Defendants have been without 3ABN's consent or authorization.

Answer of Defendants to 32: Defendants denies the existence of an infringing domain or infringing website, and asserts that plaintiffs assertion is barred by precedence and without a legal foundation upon which to make a claim. Defendants admits that to properly registered domains and denies a directing domain. Plaintiff is left to their proof regarding any metatags, real or imaginary, and the legal foundation for such a claim. Plaintiff is also left to their proof of the necessity that defendants have 3ABN's consent or authorization. Therefore denied.

33. The registration and/or the use and planned used of the Infringing Domain, Infringing Website, Directing Website, and Metatags by the Defendants have caused and are likely to cause confusion and mistake in the minds of the public and, in particular, tends to and in fact does deceivingly and falsely create the impression that the Infringing Domain, and the content therein, are affiliated with and authorized, sponsored, or approved by 3ABN.

Answer of Defendants to 33: Denied as to "infringing"; Plaintiffs are left to their proof

that the Defendants have caused or are likely to cause confusion or mistake in the minds of the public, real or imaginary; Denied that the website tends to or in fact does deceivingly and falsely create the impression it is in any way affiliated with and authorized, sponsored, or approved by 3ABN. Defendant asserts that such an allegation is so factually challenged as to constitute a fraud upon the court by the Plaintiffs and Plaintiffs counsel. Therefore denied.

34. Not only would persons familiar with the 3ABN Marks be likely to believe that the Infringing Domain and Infringing Website originate with and are sponsored by 3ABN, but any such confusion could seriously injure 3ABN to the extent that the content of the Infringing Website located at the Infringing Domain negatively reflects upon the reputation, goodwill and character established by 3ABN for its ministry, broadcast, and corporation over the past 22 years. Because of the confusion engendered by Defendants' unauthorized uses of the 3ABN Marks, 3ABN's valuable goodwill with respect to its trademarks is jeopardized by Defendants.

Answer of Defendants to 34: Denied. Defendants assert that the allegation is so factually challenged as to represent a fraud upon the court. Further, defendant re-assert that it was the actions of the Plaintiff Danny Lee Shelton, either undisciplined, endorsed or allowed by affirmation that resulted in possibility that 3ABN's valuable goodwill with respect to its trademarks, either real or imaginary, is jeopardized and results in a disparaging characterization of 3ABN. Therefore denied.

35. The registration and/or the use and planned use of the Infringing Domain by Defendant has been deliberate, designed specifically to trade upon the enormous

goodwill and familiarity of the 3ABN Marks, in order to lure the public to a site that disparages and defames the organization. 3ABN's use of the 3ABN Marks predates any use Defendant may have made in connection with the term "3ABN."

Answer of Defendants to 35: Denied; Defendants have not charged for nor expected or received profit from the website and plaintiff is estopped by judicial precedence from such an assertion by Plaintiffs. Further the defendant reasserts that it was the actions of the Plaintiff Danny Lee Shelton, either undisciplined, endorsed or allowed by affirmation by 3ABN that potentially disparages and defames, either real or imaginary, the organization 3ABN. Therefore denied.

36. The registration and/or the use and planned use of the Infringing Domain, Directing Website, and Infringing Metatags by the Defendant has been deliberate, designed specifically to trade upon the enormous goodwill and familiarity of the 3ABN Marks in order to wrongfully identify Plaintiff as the source of the Infringing "www.save3abn.com" Website.

Answer of Defendants to 36: Denied as to deliberate as a state of mind. Denied as to goodwill and familiarity, real or imaginary. Plaintiff is left to their proof that the website wrongfully identifies the Plaintiff as the source of [www.save3ABN.com](http://www.save3ABN.com) website.

Therefore denied.

37. On or about January 30, 2007, 3ABN demanded in writing that Defendants cease and desist from, among other things, all unauthorized use of the 3ABN Marks, including but not limited to the Infringing Domain and Infringing Website.

Defendants have to date failed and refused to comply with the demands of that cease and

desist letter.

Answer of Defendants to 37: Admitted that the defendant received a demand. Denied that Plaintiff had any foundation in law or that defendant was required to comply with the foundationless demand. Denied that defendant had any legally binding reason to comply with the plaintiffs illegal demand. Therefore denied.

***Defendants' Conspiratorial Conduct***

38. Upon information and belief, Gailon Joy and Robert Pickle are members of the Seventh Day Adventist Church and met former 3ABN director and employee Linda Shelton through their common religious affiliation.

Answer of Defendants to 38: Admitted that defendant Joy and Pickle are each members of their respective Seventh-day Adventist company or church. Denied that defendant Joy or Pickle met Linda Shelton through any known common religious affiliation.

39. Upon information and belief, Linda Shelton has communicated to Gailon Joy and Robert Pickle statements critical of 3ABN, its board of directors, its officers and/or its employees for them to publish as her agents.

Answer of Defendants to 39: Admitted that defendants Joy and Pickle have communicated with Linda Shelton. Defendants lack a basis for confirming or denying that any such communication contained a statement that was critical of 3ABN, its board of directors, its officers and/or its employees, and plaintiffs are left to their proof. Denied that the defendants publish anything as an agent of said Linda Shelton.

40. Upon information and belief, Gailon Joy and Robert Pickle desire to see Linda Shelton reinstated as an employee and director at 3ABN and intend to discredit and

damage the ministry as a means of facilitating Linda Shelton's reinstatement.

Answer of Defendants to 40: Denied that the defendants have ever expressed any desire to re-instate Linda Shelton as an employee. Denied that the defendants intend to discredit and damage the ministry as a means of facilitating Linda Shelton's reinstatement.

Defendants re-assert that it was the actions of 3ABN and Danny Lee Shelton, either unrestrained, endorsed or allowed by affirmation by 3ABN that potentially discredit or damages the ministry, whether real or imaginary.

41. Gailon Joy and Robert Pickle are visitors and frequent participants in various websites and chat rooms that are frequented by members of the Seventh-Day Adventist Church, where Defendants have, by electronic posting, published numerous statements related to 3ABN and Danny Shelton. Joy also operates a website at "www.save3ABN.com" where he has also published numerous statements related to 3ABN and Danny Shelton. Joy also operates a website at "www.save3ABN.org" where he directs visitors to the "www.save3ABN.com" website.

Answer of Defendants to 41: Plaintiff is left to their proof that defendant Joy is a frequent visitor or participant in any website or chat-room, other than save3ABN.com. Defendant Joy admits publishing numerous statements related to the plaintiffs and that some statements have been electronically posted to sites other than save3ABN.com, although denied that defendant Joy posted them.

Defendant Pickle admits visiting chat-rooms and has published statements.

42. Gailon Joy and Robert Pickle have, upon information and belief, conspired, and colluded to enable, facilitate, encourage, and promote the publication and

dissemination of defamatory, disparaging, and slanderous statements regarding 3ABN and its President Danny Shelton at the internet website “www.save3ABN.com,” and other internet websites, wherein numerous false statements regarding 3ABN and its President Danny Shelton have been published by Defendants.

Answer of Defendants to 42: Plaintiff is left to their proof of conspiracy and collusion. Defendant admits that he has published many reports of actions by Plaintiffs. Plaintiff is left to their proof that such reports constitute “defamatory, disparaging, and slanderous statements”. Plaintiffs are left to their proof that any statement is a false statement at bar. Therefore denied.

43. Defendants have participated in this conspiracy by jointly authoring many or all of the published statements on “www.save3ABN.com” and by jointly authoring statements published by one or both of them on websites frequented by members of the Seventh-Day Adventist Church, such as “www.blacksda.com,” “www.maritime-sda-online.org,” “www.christianforum.com,” and the Yahoo Prophecy Board forum.

Answer of Defendants to 43: Denied by defendants that any statement is jointly authored. Admitted that published statements have been posted to save3ABN.com, blacksda.com, And Maritime.org. Plaintiffs are left to their proof of any of defendant joys articles posted to christianforum or the Yahoo prophecy board. Defendant Pickle admits to having published on Christian forum and Yahoo Prophecy Board. Plaintiffs are left to their proof that the separate investigations of Joy and Pickle and the reports resultant constitute conspiracy. Therefore denied.

44. Defendants have also participated in this conspiracy by jointly marketing,



advertising, and promoting the “www.save3ABN.com” website, which they have done by posting electronic links to the website on numerous bulletin boards and websites frequented by members of the Seventh-Day Adventist Church, by mailing advertising postcards to Seventh-Day Adventist Churches across the United States directing Church Members to the “www.save3ABN.com” website, and by encouraging Internet users to visit the “www.save3ABN.com” website to “learn the truth” about 3ABN and its President Danny Shelton.

Answer of Defendants to 44: Plaintiffs are left to their proof that there was any joint marketing, advertising, and promoting of save3ABN.com. Denied that defendant Joy posted electronic links. Admitted that defendant Pickle posted electronic links. Denied as to “learn the truth”. Denied that defendants Joy or Pickle mailed any postcards. Admitted that articles written encouraged readers to visit save3ABN.com.

45. Defendants have also participated in this conspiracy by each disseminating, distributing, and reprinting the other’s published statements.

Answer of Defendants to 45: Plaintiffs are left to their proof that reprinting or disseminating anyone else's statement, real or imaginary, constitutes conspiracy. Therefore denied.

***Defendants’ Untrue Statements***

50. Gailon Joy and Robert Pickle have published numerous untrue statements that 3ABN and its President Danny Shelton have committed financial improprieties with donated ministry funds. Among those untrue statements made by Joy and Pickle are, *inter alia*, that:

Answer of Defendants to 46: Plaintiffs are left to their proof that the statements published are untrue, that the defendants knew them to be untrue. The defendants assert that they properly researched each such statement now challenged and that the factually challenged statements, or unresponsive statements of the plaintiffs constitute an absolute defense in fact against the presumption of wanton and reckless disregard of the truth or falsity of the claims. Therefore denied.

a. For the last several years, the international television ministry known as Three Angels' Broadcasting Network (3ABN) has found itself beset by a growing number of moral, ethical, and financial allegations. Despite the serious nature of these allegations, repeated calls for investigation, reform, and accountability have gone unheeded by its officers and directors.

Answer of Defendants to 46a: Admitted that the ministry is beset by allegations. Plaintiff is left to their proof that any allegation has been properly acted upon by its officers or board of directors. Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

b. Danny Shelton purchased a 3-year-old van using 3ABN funds, then sold the van to a member of his family for just \$10.00.

Answer of Defendants to 46b: Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the

allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

c. Danny Shelton purchased new furniture with 3ABN funds, put the new furniture in his residence, and put the old furniture from his residence on the 3ABN television set.

Answer of Defendants to 46c: Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

d. Danny Shelton used 3ABN funds to purchase used furniture from his sister, Tammy Chance, at nearly new prices (enabling Ms. Chance to buy brand new furniture for her home), for use in a 3ABN guest house, but, instead of putting the used furniture in the 3ABN guest house, Mr. Shelton gave the furniture to yet another family member and used 3ABN funds to purchase brand new furniture for the guest house.

Answer of d Defendants to 46d: Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

e. The 3ABN Board of Directors has failed in its responsibility to

oversee and manage 3ABN's financial assets.

Answer of Defendants to 46e: Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

f. Danny Shelton laundered money through 3ABN donations to Cherie Peters, in order to make payments that had been expressly prohibited by the 3ABN Board of directors.

Answer of Defendants to 46f: Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

g. 3ABN Board members have personally enriched themselves as officers and directors of 3ABN in violation of the Internal Revenue Code.

Answer of Defendants to 46g: Defendants do not recall an allegation that Board Members, other than the President, Danny Lee Shelton, have enriched themselves. If it did then it would be that Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response

upon completion of discovery. Therefore denied.

h. Danny Shelton wrongfully withheld book royalties from 3ABN and refused to disclose those royalties in proceedings before a court of law related to the distribution of marital assets.

Answer of Defendants to 46h: Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

Answer of Defendant Pickle to 46h: Defendant Pickle is unaware of any books that 3ABN has written. Therefore denied.

i. Danny Shelton has directed 3ABN Chief Financial Officer Larry Ewing to not answer questions concerning Danny Shelton's personal finances, expenses, bonuses or book royalties in a Family Court proceeding, which was initiated by Linda Shelton regarding division of marital assets and that Mr. Ewing has complied and refused to answer questions posed to him by the Court.

Answer of Defendants to 46i: Defendants do not recall an allegation that Mr Ewing was posed questions by a court. Otherwise, Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

j. Danny Shelton has used the 3ABN corporate plane for personal uses.

Answer of Defendants to 46j: Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

k. Danny Shelton spent \$600,000 of 3ABN funds for radio station WDQN without Board approval and paid in excess of its fair market value, which was only \$250,000.

Answer of Defendants to 46k: Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

46. Each and every one of the statements set forth above is false and Defendants published them with malice, either knowing them to be false or with wanton and reckless disregard for the truth or falsity of the statements.

Answer of Defendants to 47: Plaintiffs are left to their proof that the statements published are untrue, that the defendants knew them to be untrue. Therefore the defendants assert that that the factually challenged statements, or unresponsive statements of the plaintiffs, constitute an absolute defense in fact against the presumption of wanton and reckless

disregard of the truth or falsity of the claims. Therefore denied.

47. Gailon Joy and Robert Pickle have published numerous untrue statements that 3ABN and its President Danny Shelton have committed administrative and operational improprieties at 3ABN and that the organization is not properly or competently managed by its managers, officers, and directors. Among those untrue statements made by Defendants are, *inter alia*, that:

Answer of Defendants to 48: Plaintiffs are left to their proof that the statements published are untrue, that the defendants knew them to be untrue. Therefore the defendants assert that that the factually challenged statements, or unresponsive statements of the plaintiffs. constitute an absolute defense in fact against the presumption of wanton and reckless disregard of the truth or falsity of the claims. Therefore denied.

a. 3ABN engages in nepotism in the hiring and firing of staff.

Answer of Defendants to 48a: If the allegation has been made, Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

b. 3ABN violated the Federal Equal Opportunity Act by taking adverse employment actions against two whistle-blower employees of 3ABN's Trust Services division.

Answer of Defendants to 48b: Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the

allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

c. The 3ABN Board of Directors has failed in its responsibility to oversee the governance and administration of the organization.

Answer of Defendants to 48c: If the allegation has been made, Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

d. Danny Shelton and 3ABN would not permit an ecumenical Seventh-Day Adventist-related, fact-finding tribunal proposed and directed by Adventist-laymen's Services and Industries ("ASI") to investigate all allegations related to the ministry and confined the tribunal to only those allegations involving Linda Shelton's removal and the Shelton's' divorce.

Answer of Defendants to 48d: Defendants note that the terms "ecumenical" and "Seventh-day Adventism" are mutually inconsistent, the first not being a part of the tenets of the second, therefore any allegation contained in the statement is denied. However, if such an allegation was actually made, Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to



supplement their response upon completion of discovery. Therefore denied.

48. Each and every one of the statements set forth above is false and Defendants published them with malice, either knowing them to be false or with wanton and reckless disregard for the truth or falsity of the statements.

Answer of Defendants to 49: Plaintiffs are left to their proof that the allegations are false, that the defendants knew they were false and therefore represent wanton and disregard for the truth or falsity. Therefore, denied by the defendants.

49. Gailon Joy and Robert Pickle have made numerous published untrue statements that 3ABN and its President Danny Shelton acted without grounds in removing Linda Shelton from the 3ABN Board of Directors, that Danny Shelton had no grounds for divorcing Linda Shelton, that 3ABN and Danny Shelton conspired to hide evidence and information concerning the removal and divorce, and that 3ABN and Danny Shelton have lied and made otherwise purposeful misstatements concerning the Shelton's' divorce and Danny Shelton's remarriage. Among those untrue statements made by Defendants are, *inter alia*, that:

Answer of Defendants to 49: Plaintiffs are left to their proof that the statements published are untrue, that the defendants knew them to be untrue. Therefore the defendants assert that that the factually challenged statements, or unresponsive statements of the plaintiffs. constitute an absolute defense in fact against the presumption of wanton and reckless disregard of the truth or falsity of the claims. Therefore denied..

a. Danny Shelton and ASI conspired to exclude Gailon Joy from participating in a fact-finding tribunal regarding Linda Shelton's divorce and removal from 3ABN.

Answer of Defendants to 49a: Admitted inasmuch as Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

b. Danny Shelton and ASI conspired to prevent various allegations and issues from being included in the fact-finding tribunal.

Answer of Defendants to 49b: Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

c. It was Danny Shelton that participated in an extra-marital affair by becoming “involved” in “after hours activities” with 3ABN employee Brenda Walsh.

Answer of Defendants to 49c: Defendants do not recall such a specific allegation but inasmuch as it is believed to be inferred, Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

d. During his marriage to Linda Shelton, Danny Shelton had several inappropriate extra-marital relationships, of which 3ABN staff and board members were aware.

Answer of Defendants to 49d: Defendants do not recall alleging several extra-marital relationships, and in particular not in any publication such as alleged by Plaintiffs, but inasmuch as plaintiffs believe it is inferred, Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

a. Danny Shelton was preparing to divorce Linda Shelton beginning in 2003.

Answer of Defendants to 49e: Defendants do believe that upon a preponderance of the evidence that was available to the defendants, it be may be inferred, therefore, Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

f. Danny Shelton conducted an inappropriate relationship with from August 2004 until they were married in 2006, and 3ABN's officers and directors were aware of the relationship.

Answer of Defendants to 49f: Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without

sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

g. Danny Shelton lied by claiming to have joint title with Linda Shelton to a Toyota Sequoia automobile.

Answer of Defendants to 49g: Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

h. The 3ABN board of directors had no authority to authorize Danny Shelton's adulterous marriage or to allow his continued employment by and direction of 3ABN.

Answer of Defendants to 49h: The defendants alleged conclusion relates to ecclesiastical authority and ecclesiastical foundation. However, Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

i. Danny Shelton perjured himself through the course of court proceedings relating to his divorce from Linda Shelton.

Answer of Defendants to 49i: Defendants do not recall such an allegation, but inasmuch as the plaintiffs feel it is inferred, Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the

allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

50. Each and every one of the statements set forth above is false and Defendants published them with malice, either knowing them to be false or with wanton and reckless disregard for the truth or falsity of the statements.

Answer of Defendants to 50: Plaintiffs are left to their proof that the statements published are untrue, that the defendants knew them to be untrue. Therefore the defendants assert that that the factually challenged statements, or unresponsive statements of the plaintiffs constitute an absolute defense in fact against the presumption of wanton and reckless disregard of the truth or falsity of the claims. Therefore denied.

51. Defendants' conduct as heretofore set forth evidences a malicious and purposeful campaign of defamation, slander, and disparagement intended and designed to embarrass, discredit, and defame 3ABN and its President Danny Shelton and to vitiate, dishonor, and impair the reputation and goodwill of 3ABN and its President Danny Shelton.

Answer of Defendants to 51: Plaintiffs are left to their proof that the statements published are untrue, that the defendants knew them to be untrue. Therefore the defendants assert that that the factually challenged statements, or unresponsive statements of the plaintiffs constitute an absolute defense in fact against the presumption of wanton and reckless disregard of the truth or falsity of the claims. Therefore denied.

**CAUSES OF ACTION**

**COUNT I: Infringement of Trademark (15 U.S.C. § 1114)**

52. Plaintiffs restate and reallege Paragraphs 1 through 52 above, and hereby incorporate them by reference, as though fully set forth herein.

Answer of Defendants to 52: Defendants leave the plaintiffs to their proof of all prior claims hereto.

53. Plaintiff 3ABN is the creator and proper owner and holder of the trademarks “3ABN” and “Three Angels Broadcasting Network” and has registered the same with the United States Patent and Trademark Office.

Answer of Defendants to 53: Plaintiff is left to their proof that such limited trademarks are applicable to the allegations by plaintiffs. Therefore denied.

54. Defendant Joy has used Plaintiff 3ABN’s Marks in the registered domain names “save3abn.com” and “save3abn.org.”

Answer of Defendants to 54: Denied.

55. Defendant Joy has used Plaintiff 3ABN’s Marks in the internet websites “www.save3abn.com” and [www.save3abn.org](http://www.save3abn.org).

Answer of Defendants: Denied.

56. Defendant Joy has used Plaintiff 3ABN’s Marks in the embedded metatags “3ABN,” “3-ABN,” and “Three Angels Broadcasting Network” on the Infringing Website.

Answer of Defendants: Denied.

57. Defendant Joy has used Plaintiff 3ABN’s Marks in commerce in connection with 3ABN’s provision of ministerial and informational services.

Answer of Defendants: Denied

58. Defendant Joy's use of Plaintiff 3ABN's Marks is without Plaintiffs' authorization, permission, or license, and does not otherwise constitute a permissible use.

Answer of Defendants: Denied

59. Defendant Joy's use of 3ABN's Marks has been willful and deliberate, designed specifically to trade upon the enormous goodwill associated with 3ABN and its 3ABN Marks.

Answer of Defendants : Denied

60. Defendant Joy's unauthorized use of 3ABN's Marks is likely to lead the public to believe the Infringing Website is associated with, sponsored by, related to, affiliated with, or originates with 3ABN when, in fact, it is not.

Answer of Defendants: Denied

61. Plaintiff has been damaged by Defendant Joy's infringement of its "3ABN" Marks, in an amount to be proven at trial, and is entitled to treble damages, costs, and attorneys' fees, pursuant to 15 U.S.C. §1117.

Answer of Defendants : Plaintiff is left to their proof that any damage has been incurred.

Defendant denies Infringement. Plaintiffs right to treble damages is denied as they failed to demonstrate that defendants actions were fraudulent, wanton or deliberate.

Plaintiffs claim for costs and attorneys fees are wanton as the action against the defendants is frivolous, without merit and a fraud upon the court.

62. 3ABN's goodwill is of enormous value, and 3ABN will suffer irreparable harm should Defendant Joy's infringement be allowed to continue to the detriment of

3ABN's reputation and goodwill.

Answer of Defendants : Denied

63. Defendant Joy's infringement will continue unless enjoined by this Court and with respect to these continuing violations, Plaintiff has no adequate remedy at law and is therefore entitled to injunctive relief.

Answer of Defendants : Defendants actions do not constitute infringement and are unlikely to be enjoined by the court, therefore, since the Plaintiffs action is frivolous, without merit and a fraud upon the court, Plaintiffs are without a remedy at law and therefore not entitled to injunctive relief.

**COUNT II: Dilution of Trademark (15 U.S.C. §1125(c)**

64. Plaintiff restates and realleges Paragraphs 1 through 64 above, and hereby incorporates them by reference, as though fully set forth herein.

Answer of Defendants : Plaintiff is left to its proof as to all allegations heretofore.

65. Through Plaintiff 3ABN's extensive use of the 3ABN Marks to identify its broadcast ministry, through Plaintiffs' development of goodwill surrounding the Marks by its successful operation and expansion of the broadcast ministry, and through Plaintiffs' promotion and marketing efforts utilizing the Marks, the 3ABN Marks are now recognized worldwide as symbols of a dedicated, principled, Christ-centered ministry that is theologically faithful, operationally sound, and financially conscientious. 3ABN's Marks are famous marks of inestimable value to 3ABN and are relied upon by the public in distinguishing 3ABN from other ministries, broadcasters, and recording producers.

Answer of Defendants : Denied



66. After the 3ABN Marks had become famous, Defendant Joy willfully intended to trade upon 3ABN's reputation and the fame of its Marks by using the Marks in the Infringing Domain, Infringing Website, Directing Website, and Infringing Metatags.

Answer of Defendants : Denied

67. The use and planned use of the 3ABN Marks by Defendant Joy has tarnished and disparaged, and thereby diluted, and is likely to continue to tarnish, disparage, and thereby dilute, the distinctive quality of and goodwill associated with the Marks.

Answer of Defendants : Denied.

68. Defendant Joy's willful dilution of 3ABN's Marks has injured Plaintiff in an amount to be proven at trial.

Answer of Defendants : Plaintiffs are left to their proof. However, since the Plaintiffs action is frivolous, without merit and a fraud upon the court, Plaintiffs are without a remedy at law and therefore not entitled to damages.

69. 3ABN's trademarks are of enormous value, and 3ABN will suffer irreparable harm should Defendant Joy's trademark dilution be allowed to continue to the detriment of 3ABN.

Answer of Defendants : Denied

70. Defendant Joy's dilutive activities will continue unless enjoined by this Court and, with respect to these continuing violations, 3ABN has no adequate remedy at law and is therefore entitled to injunctive relief.

Answer of Defendants : Defendants assert that since the Plaintiffs action is frivolous, without merit and a fraud upon the court, Plaintiffs are without a remedy at law and therefore not entitled to injunctive relief.

**COUNT III: Defamation**

71. Plaintiffs restate and reallege Paragraphs 1 through 71 above, and hereby incorporates them by reference, as though fully set forth herein.

Answer of Defendants : Plaintiff is left to its proof as to all allegations heretofore.

72. Defendants have made numerous false statements of fact with regard to both 3ABN and its President Danny Shelton.

Answer of Defendants : Denied inasmuch as Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery.

73. Defendants have published those statements on the Internet and at the website “www.save3ABN.com” and have thereby communicated those false statements to someone other than the Plaintiffs.

Answer of Defendants : Plaintiffs are left to their proof that any allegation is in fact false, otherwise admitted.

74. Defendants’ false statements refer to Plaintiffs’ trade, business and profession, contain false accusations of the commission of a crime by both Plaintiffs, and impute serious misconduct to Plaintiffs 3ABN and Danny Shelton and are therefore

defamatory per se.

Answer of Defendants : Plaintiffs are left to their proof that any allegation is in fact false. Defendants do not recall drawing a conclusion that any accusation constitutes a criminal offense, but to the degree that Plaintiffs believe it is inferred, Plaintiff is left to their proof that such an allegation constitutes a crime vs a civil action. As to the legal determination that such allegations are defamatory per se, denied.

75. Defendants' false statements were purposefully and maliciously designed and made to embarrass, discredit, and defame 3ABN and its President Danny Shelton and to vitiate, dishonor, and impair the reputation and goodwill of 3ABN and its President Danny Shelton.

Answer of Defendants : Plaintiffs are left to their proof that defendants statements were, in fact, false, that there were maliciously designed, and inasmuch as said statements were made Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

76. Defendants' false statements have tended to and have in fact harmed the reputation and goodwill of both 3ABN and its President Danny Shelton, and have served to lower 3ABN and President Danny Shelton in the estimation of the community.

Answer of Defendants : Plaintiffs are left to their proof that defendants statements were false. Defendants are without sufficient proof to know if the statements made have done

harm and therefore, plaintiff Danny Lee Shelton is left to his proof. Therefore denied.

77. As a direct and proximate result of the damage done to Plaintiffs' reputations by Defendants' defamatory and disparaging statements, viewers have ceased support of the ministry and donors have reduced or stopped donations to 3ABN.

Answer of Defendants : Denied. Defendant re-assert that it was the actions of the Plaintiff Danny Lee Shelton, either undisciplined, endorsed or allowed by affirmation of the Board of Directors of 3ABN that resulted in the possibility, either real or imaginary, that viewers have ceased support of the ministry and donors have reduced or stopped donations to 3ABN. Therefore denied.

**COUNT IV: Intentional Interference With Advantageous Economic Relations**

78. Plaintiffs restate and reallege Paragraphs 1 through 78 above, and hereby incorporate them by reference, as though fully set forth herein.

Answer of Defendants : : Plaintiff is left to its proof as to all allegations heretofore.

79. Defendants have made numerous false statements of fact with regard to both 3ABN and its President Danny Shelton.

Answer of Defendants : Plaintiff is left to its proof that any statement is false, but inasmuch as such a statement was made, Defendants are publishing an allegation that is a restatement of a protected source or sources. Plaintiffs have been unresponsive to the allegations or have been factually challenged. Therefore, defendants are without sufficient evidence upon which to state a fact based response and request the right to supplement their response upon completion of discovery. Therefore denied.

80. Defendants have published those statements in an effort to discredit 3ABN

and its President Danny Shelton and in order to cause present and prospective viewers and donors to the ministry to discontinue their financial support of the ministry.

Answer of Defendants : Denied. Defendant re-assert that it was the actions of the Plaintiff Danny Lee Shelton, either undisciplined, endorsed or allowed by affirmation of the Board of Directors of 3ABN that resulted in the possibility, either real or imaginary, that viewers have ceased support of the ministry and donors have reduced or stopped donations to 3ABN.

81. Defendants have intentionally interfered, tortiously and/or with improper motive or means, with 3ABN's present and prospective advantageous economic relationships with viewers and donors.

Answer of Defendants : Denied. Defendant re-assert that it was the actions of the Plaintiff Danny Lee Shelton, either undisciplined, endorsed or allowed by affirmation of the Board of Directors of 3ABN that resulted in the possibility, either real or imaginary, that viewers have ceased support of the ministry and donors have reduced or stopped donations to 3ABN.

82. As a direct and proximate result of Defendants actions, viewers and donors have discontinued their financial support of the ministry.

Answer of Defendants : Denied. Defendant re-assert that it was the actions of the Plaintiff Danny Lee Shelton, either undisciplined, endorsed or allowed by affirmation of the Board of Directors of 3ABN that resulted in the possibility, either real or imaginary, that viewers have ceased support of the ministry and donors have reduced or stopped donations to 3ABN.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury for all issues so triable.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs respectfully pray:

1. That judgment be entered in favor of Plaintiffs and against Defendants for all claims in Plaintiffs' Complaint on the grounds that Defendants have knowingly and willfully infringed upon and diluted Plaintiffs' trademarks, have willfully and maliciously defamed plaintiffs, and have willfully and intentionally interfered with Plaintiffs' advantageous economic relations.

Answer of Defendants to 1: Judgment be conferred in favor of defendants, that the honorable court find the Plaintiffs action is frivolous, without merit and a fraud upon the court, Plaintiffs are without a remedy at law and therefore not entitled to relief.

2. That a permanent injunction issue restraining Defendants, their agents, successors, assigns and all others in concert and privity with Defendants, from infringing on 3ABN's Marks and dilution of 3ABN's Marks.

Answer of Defendants : Pray the court find the Plaintiffs action is frivolous, without merit and a fraud upon the court, therefore, Plaintiffs are without a remedy at law and therefore not entitled to injunctive relief.

3. That a permanent injunction issue restraining Defendants, their agents, successors, assigns and all others in concert and privity with Defendants, from using the 3ABN Marks in any internet domain name, internet website name, or internet website metatags.

Answer of Defendants : Plaintiffs action is frivolous, without merit and a fraud upon the court, Plaintiffs are without a remedy at law and therefore not entitled to injunctive relief.

4. That a permanent injunction issue restraining Defendants, their agents, successors, assigns and all others in concert and privity with Defendants, from using the Infringing Domain, Directing Domain or the Infringing Website.

Answer of Defendants to 4: That the honorable court find the domain is not infringing and that the Plaintiffs action is frivolous, without merit and a fraud upon the court, Plaintiffs are without a remedy at law and therefore not entitled to injunctive relief.

5. That Defendant Joy be ordered to immediately surrender the Infringing Domain and transfer registration of the Infringing Domain and Directing website to Plaintiff 3ABN, completing all paperwork necessary to transfer and paying all fees and costs associated with transfer of the domain registration.

Answer of Defendants : Plaintiffs are not entitled to the relief requested, there is no "Infringing Domain" or "Directing Website" and Defendant has the right to engage in non-commercial speech even if it is contrary to the public image Plaintiffs seek to display.

6. That Defendants be ordered to immediately remove from all print and electronic publications the false statements of fact alleged herein and otherwise established at trial.

Answer of Defendants : Plaintiffs action is frivolous and without merit and their assertion that any false statements have been alleged will be proven both puffery and sadly untrue.

7. That Defendants be ordered to immediately publish a retraction of the

false statements of fact alleged herein and otherwise established at trial, and to publish that retraction in the same forms and forum and to the same general and specific audience as the false statements were originally made.

Answer of Defendants : Plaintiffs are not entitled to the requested relief and that they request this be ordered of the Defendants is inconsistent with their earlier prayers that the Defendants websites be transferred to them, leaving the Defendants without a soapbox from which to publish any retractions

8. That compensatory damages be awarded to Plaintiffs in an amount to be determined at trial, but in no event less than \$75,000 (exclusive of costs and interest).

Answer of Defendants : Plaintiffs have no claim for any damages but Defendants should be compensated for the need to defend this frivolous action which is without basis in fact or law.

9. That statutory damages be awarded Plaintiffs in an amount to be determined at trial.

Answer of Defendants : Plaintiffs request for statutory damages ignores the similar cases in which Plaintiffs were not entitled to relief, and Plaintiffs here have no entitlement to relief.

10. That Plaintiffs be awarded all costs and fees, including attorneys' fees, incurred in the prosecution of this action.

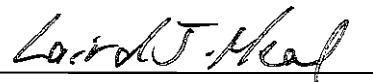
Answer of Defendants : Plaintiffs action is frivolous and without merit and as such Defendants should be granted their fair and reasonable attorney fees and costs as a sanction.



11. That Plaintiffs are awarded such other and further relief as this Honorable Court may deem just and equitable.

Answer of Defendants : Plaintiffs are entitled to no such relief but the Defendants are confident that this Honorable Court will fashion a fair and reasonable decree.

RESPECTFULLY SUBMITTED this 21st Day of May, 2007,  
for the defendants, Gailon Arthur Joy and Bob Pickle.



Laird J. Heal, BBO # 553901  
3 Clinton Road, PO Box 365  
Sterling, MA 01564  
(978) 422-0135

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No. 07-40098 FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**AFFIDAVIT OF MOLLIE STEENSON**

---

STATE OF ILLINOIS        )  
                                  )  
FRANKLIN, ss.            )

Mollie Steenson, being first duly sworn upon oath, deposes and states as follows:

1. I am the General Manager and the elected Secretary of the Corporation and of the Board of Directors of the non-profit corporation 3 Angels Broadcasting Network ("3ABN"), duly organized in the state of Illinois. I have worked in the employ of 3ABN since 1995. Through the duration of my tenure, I have worked as an assistant to Linda Shelton, an assistant to Danny Shelton and now have the position of General Manager. My duties as General Manager include monitoring and managing the day-to-day operations of 3ABN, acting as the human resources department, staying apprised of the general financial condition of 3ABN, acting as the corporate spokesperson and all of the duties as Secretary as described in the bylaws below.

2. The duties of the Secretary for the Corporation and for the Board of Directors, as defined in the revised bylaws signed on September 14, 1997, are:

Section 5.6. Duties of the Secretary. The secretary shall act as secretary of the corporation and the Board of Directors, shall send appropriate notices or waivers of notice regarding board meetings, shall prepare agendas and other materials for all meetings of the Board of Directors, shall act as official custodian of all records, reports and minutes of the corporation, the Board of Directors and committees, shall be responsible for the keeping and reporting of adequate records of all meetings of the Board of Directors, and shall perform such other duties as are customarily performed by or required of corporate secretaries including countersigning all papers, including promissory notes of the Corporation in writing that may require the same.

3. At Board Meetings, I review the financial statements prepared by Chief Financial Officer Larry Ewing. These financial statements contain an analysis of 3ABN's current financial status, including donations, other revenue and expenditures.

4. Based on correspondence from donors and from financial statements prepared by Larry Ewing, it is clear that donations to 3ABN have decreased substantially since June 2006, when the Internet commentary disparaging 3ABN and Danny Shelton erupted on various sites on the Internet. Contributions have continued their decline during the first quarter of 2007, coinciding with Defendant Joy's operation of his website devoted solely to defaming Plaintiffs at [www.save3ABN.com](http://www.save3ABN.com). In fact, Defendant Joy stated in a post at [www.maritime.com](http://www.maritime.com) sometime on or around November 20, 2006, that "[i]f [the attempt to resolve the matter before ASI, a religious tribunal] does not work out, then in January, 2007 we will launch a full scale and public effort to exonerate Linda, to indict Danny in the public eye and to put pressure on 3ABN . . . ." See <http://www.blacksda.com/forums/index.php?s=792dcc3c96a3269a06da5ef966fe4cb2&showtopic=11142&st=105&p=158721&#entry158721>.

5. I have received communications from past donors that state that those donors are no longer donating to 3ABN specifically because of the disparaging statements about 3ABN and Danny Shelton on the Internet. Based upon the rumors spread across the Internet on [www.save3ABN.com](http://www.save3ABN.com) and other sites, these donors have been led to believe that 3ABN is no longer a reputable institution and that Danny Shelton should be removed from his position at 3ABN. See Attachments A-F.

6. A letter published on Adventist Today<sup>1</sup> on May 1, 2007, directly cites to [www.savc3ABN.org](http://www.savc3ABN.org) (which directs the user to [www.save3ABN.com](http://www.save3ABN.com)) as its source for some information. This letter charges 3ABN with various alleged wrongdoings and concludes by making it known that the writer has stopped all financial support of 3ABN. According to the letter, many other donors also made this decision to stop financial support of 3ABN for the same reasons as the writer. See Attachment G.

7. The letter published on Adventist Today on May 1, 2007, also alleges that Danny Shelton has committed many possible wrongdoings, committed questionable acts, jeopardized the charitable standing of the ministry, used donations for personal benefit and possibly committed adultery. See Attachment G.

8. 3ABN received a copy of the letter published on May 1, 2007, on Adventist Today through one of its supporters. That supporter stated that in the future, she would be withholding donations from 3ABN because of the allegations that are being spread across the Internet, which had, in her opinion, placed 3ABN and Danny Shelton in a negative stance in the public eye. See Attachment H. I have received similar

---

<sup>1</sup> Adventist Today (ISSN 1079-5499) is a bimonthly magazine publication of the Adventist Today Foundation that "reports on contemporary issues of importance to Adventist church members." As a companion to its printed publication, Adventist Today operates an internet website at [www.atoday.com](http://www.atoday.com), and regularly publishes an electronic newsletter called "ATNewsbreak," which it distributes via e-mail.

correspondence from other supporters and donors that express this same belief that, as reported on [www.save3ABN.com](http://www.save3ABN.com) and other websites, 3ABN and Danny Shelton have done improper things. Because of these beliefs, these donors now withhold support and donations from 3ABN. See Attachments A-F.

9. The website [www.save3ABN.com](http://www.save3ABN.com) also has contributed to a loss of fundraising ability and 3ABN's ability to spread the Christian message in the South Pacific. The General Conference of the South Pacific Division of the Seventh-day Adventist Church has passed a moratorium that prohibits any interaction with 3ABN. In effect, this moratorium prevents 3ABN from sending speakers to churches located in Australia, New Zealand, and the South Pacific. It also prohibits any church employees in that region from creating programming for 3ABN. This moratorium acts as a general bar to any interaction between 3ABN and Seventh-day Adventist Churches in Australia, New Zealand and the South Pacific. Based on my knowledge and belief, the allegations posted on [www.save3ABN.com](http://www.save3ABN.com) and other websites are what prompted the South Pacific Conference to enact this moratorium against 3ABN. See Attachment J.

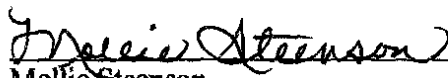
10. In January 2007, postcards advertising [www.save3ABN.com](http://www.save3ABN.com) were sent to Seventh-day Adventist Churches. From all indications, the postcards were mailed to Seventh-day Adventist Churches across the world. The postcards request recipients to view [www.save3ABN.com](http://www.save3ABN.com). The postcards also state, "It should be pointed out that 3ABN is not currently part of the Seventh-day Adventist Church, and never has been." The postcards do not contain any disclaimer to signify that 3ABN is not related with [www.save3ABN.com](http://www.save3ABN.com) in any way. In fact, the postcards imply that 3ABN is associated with [www.save3ABN.com](http://www.save3ABN.com). See Attachment K.

11. I have been forwarded correspondence from a 3ABN supporter who e-mailed www.save3ABN.com to verify whether the website was connected to 3ABN. See Attachment I.


12. The website www.save3ABN.com has previously posted letters and other correspondence on its website. However, many times only select portions of the documents are posted, misleading readers into believing the documents stand for propositions other than what the authors intended. Even when whole documents are posted, comments are inserted throughout effectively directing readers to draw inaccurate and defamatory conclusions from the documents. If Defendants are not prohibited from publishing the legal documents filed and/or served in this proceeding on www.save3ABN.com or otherwise, then the Defendants will undoubtedly publish them along with defamatory commentary and conclusions, thereby utilizing this litigation as a vehicle to further tarnish the reputations of 3ABN and Danny Shelton and to hinder 3ABN's ability to fundraise and conduct its ministry.

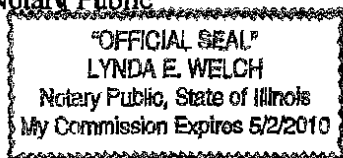
FURTHER YOUR AFFIANT SAYETH NOT.

Dated: May 9, 2007

  
Mollie Steenson,  
General Manager and Secretary for  
3ABN, Inc.

Subscribed and sworn to me  
this 9 day of May, 2007.

  
Notary Public



---

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No. 07-40098 FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**AFFIDAVIT OF LARRY EWING**

---

STATE OF ILLINOIS        )  
  )  
FRANKLIN, ss.                )

Larry Ewing, being first duly sworn upon oath, deposes and states as follows:

1. I am a Certified Public Accountant and the Chief Financial Officer and elected Treasurer for the non-profit corporation Three Angels Broadcasting Network ("3ABN"), duly organized in the state of Illinois. I have worked in the employ of 3ABN since January of 2002. Through the duration of my tenure, I have overseen the 3ABN Finance Department, prepared 990 Forms and other corporate registrations for 3ABN. For the fiscal years of 2001 through the present, I have always been involved in some manner with preparation of 3ABN financial statements, balance sheets and revenue statements to prepare for Board meetings, end-of-year budget planning, company audits,

and preliminary assessment and analysis of the Company's revenue and liabilities on annual and per-month bases.

2. To prepare 3ABN's 990 Forms, I review its general ledgers, balance sheets, revenue statements, and other internal accounting documentation, which collectively aid in reporting 3ABN's revenue from donations and, to a much lesser extent, product sales.

3. While I am not a member of the 3ABN Board, I do attend board meetings and work closely with 3ABN management. Through these interactions, I was made aware that certain Internet sites began chat-group discussions that contained damaging commentary about 3ABN and Danny Shelton, commencing on or around July of 2006. Management has continued to keep me aware of Internet activity of this type, including the creation of the website [www.save3abn.com](http://www.save3abn.com), which was created by Defendant Gailon Arthur Joy in January of 2007.

4. Every month, I chart the donations received by 3ABN in dollars to provide a comparison of donor activity to similar months of previous years and to estimate and track 3ABN's income on an ongoing basis. In general, review of this data has indicated a gradual increase in donations with each passing year. In contrast, and more narrowly, review of this data also indicates an overall pattern of significantly increased donations in dollars for the time period of January 2006 through May 2006, with a sharp decrease in donations from June 2006 onward. A more specific breakdown of this pattern is set forth by the following affidavit testimony.

5. From January 2006 through June 2006, 3ABN experienced an approximate 48.78% increase in the dollars received in donations, as compared to the



baseline levels of donations received by 3ABN for the same period of time for calendar year 2005. Specifically, I have noted the following approximate increases:

- +43.57 % in January 2006 (compared to January 2005)
- +6.53 % in February 2006 (compared to February 2005)
- +66.84 % in March 2006 (compared to March 2005)
- +127.58 % in April 2006 (compared to April 2005)
- +1.23 % in May 2006 (compared to May 2005)<sup>1</sup>
- +63.74 % in June 2006 (compared to June 2005).

6. Beginning around July of 2006 and continuing through December of 2006, 3ABN donations experienced an approximate overall -17.85 % decrease in the dollars received in donations. Specifically, I noted the following patterns:

- +2.74 % in July 2006 (compared to July 2005)
- 4.93% in August 2006 (compared to August 2005)
- +4.01 % in September 2006 (compared to September 2005)
- 40.48 % in October 2006 (compared to October 2005)
- 13.21 % in November 2006 (compared to November 2005)
- 30.74% in December 2006 (compared to December 2005).

7. In general, donations received during the month of December tend to present a statistical outlier of heightened donations in any given year. This typical year-end pattern is generally attributed to the occurrence of the Christmas holiday in December, inspiring a heightened sense of giving, in conjunction with a natural incentive

---

<sup>1</sup> The smaller increase in donations in May of 2006 was due to 3ABN's receipt of a sizeable land donation in May of 2005, which was difficult to exceed in 2006. Were it not for that particular May 2005 donation, the May 2006 donations would have likewise demonstrated a significant increase from May 2005.

to donate at year-end for tax-reporting purposes. However, December of 2006 did not yield the greatest per-month donations in dollars in comparison to the other months in 2006. In addition, December 2006 was down 30.74% from the donations 3ABN received in December 2005.

8. The downturn in contributions received by 3ABN beginning in July 2006 coincided with the commentary on various Internet sites that erupted around June of 2006 disparaging 3ABN and Danny Shelton, which has been compounded by the creation of [www.save3ABN.com](http://www.save3ABN.com) website.

9. 3ABN has continued to experience a decreased level of donations as reflected in 3ABN records tracking estimated total donations received during the first quarter of 2007. This sustained decrease in the level of donations received by 3ABN has been fueled in substantial part by Defendant Joy's continued posting of defamatory material on his [www.save3ABN.com](http://www.save3ABN.com) website.

10. If the Defendants are not prohibited from posting the legal documents filed and/or served in this proceeding on [www.save3ABN.com](http://www.save3ABN.com) or other Internet websites, or otherwise publishing these materials, then the Defendants will undoubtedly publish them along with defamatory commentary and conclusions, with the ultimate effect of propagating the damage already experienced by 3ABN.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting )  
Network, Inc., an Illinois )  
non-profit corporation, and )  
Danny Lee Shelton, )  
Plaintiffs, )

vs.

CA No. 07-40098

Gailon Arthur Joy and )  
Robert Pickle, )  
Defendants. )

BEFORE: The Honorable F. Dennis Saylor, IV

Motion Hearing

United States District Court  
Courtroom No. 2  
595 Main Street  
Worcester, Massachusetts  
May 10, 2007

Marianne Kusa-Ryll, RMR, CRR  
Official Court Reporter  
United States District Court  
595 Main Street, Room 514A  
Worcester, MA 01608-2093  
508-929-3399  
Mechanical Steno - Transcript by Computer

1 APPEARANCES:

2 Siegel, Brill, Greupner, Duffy & Foster, P.A.  
3 by Gerald Duffy, Esquire  
4 100 Washington Avenue South  
5 Suite 1300  
6 Minneapolis, Minnesota 55401  
7 for the Plaintiffs

8 Fierst, Pucci & Kane, LLP  
9 by John P. Pucci, Esquire  
10 64 Gothic Street  
11 Suite 4  
12 Northampton, Massachusetts 01060  
13 for the Plaintiffs

14 Law Offices of Howard Friedman  
15 by J. Lizette Richards, Esquire  
16 64 Gothic Street  
17 Northampton, Massachusetts 01060  
18 for the Plaintiffs

19 Laird J. Heal, Esquire  
20 3 Clinton Road, Post Office Box 1425  
21 Sterling, Massachusetts 01564  
22 for the Defendants.  
23  
24  
25

1 MR. PUCCI: They have, and I cite now to an affidavit.  
2 I cite now in support of our memorandum filed in this Court,  
3 which is filed in this Court, we filed a collection of postings  
4 from the website, and there is a posting, for instance, that  
5 talks about Mr. Shelton purloining book profits, a  
6 clear -- from -- from the Three ABN ministry, a clear  
7 declaration that Mr. Shelton, you know, is stealing -- stealing from  
8 the enterprise he has fiduciary obligations to. And that  
9 particular e-mail, or posting is under the posting captioned  
10 Danny Shelton's book deals. If the Court filters down to Danny  
11 appears to confirm the problem, you can see there the  
12 allegation that he has been stealing profits from book deals.  
13 It's defamation per se. It accuses him of a crime. Under  
14 Massachusetts law that's defamation per se, and it accuses  
15 his -- it injures his reputation and his business and  
16 profession, which again is -- is defamation per se in  
17 Massachusetts.

18 Towards the end of that filing, the last posting is  
19 captioned by Mr. Joy, Financial allegations against Danny  
20 Shelton, and it has a collection of bullet points, one, two,  
21 three and four. They're not numbered, but they're bullet  
22 points, and each of those bullet points alleges a crime by Mr.  
23 Shelton.

24 So, this is not a case, I submit, in which the Court  
25 needs to weigh the likelihood of how close to the line of

1 generally not defamation cases, and this case is a trademark  
2 and defamation case, defamation at the core of the issues  
3 before the Court in this impoundment proceeding. And under  
4 Massachusetts law -- it's a state tort. Under Massachusetts  
5 law, there are two types of defamation, which Mr. Joy has  
6 engaged in, which are defamation per se in which damages are  
7 presumed, and I would submit at the outset that -- and I  
8 cite -- I'm not sure if I can pronounce this -- it's 438 Mass.  
9 627. It's the Massachusetts case, which specifically holds  
10 that statements that charge a plaintiff with a crime amount to  
11 defamation per se in which the Court would be required to -- to  
12 instruct the jury that damages are assumed and not presumed.  
13 That case also holds that damages may be presumed where  
14 statements are made that prejudice to the plaintiff's  
15 profession or business, and certainly the allegations that Mr.  
16 Shelton has fleeced his flock by stealing book proceeds and the  
17 other allegations set forth under Mr. Joy's own postings about  
18 financial impropriety satisfy that test.

19 So there is the defamation per se damages, which is  
20 the law here, but more than that, your Honor, I have prepared,  
21 and I'm happy to provide the Court with affidavits from  
22 management members at Three ABN, which verify the financial  
23 impact that the postings have had on Three ABN and its  
24 ministry, and I have those affidavits here. I'm happy to  
25 provide them to the Court. I have not provided them to

1 opposing counsel. I wasn't sure if they would be necessary. I  
2 would seek the Court's guidance on that. If the Court is  
3 inclined to accept them at this time, I'm happy to provide  
4 them. If the Court would prefer it by way of a reply brief, I  
5 would be happy to provide them --

6 THE COURT: I think, and I may be jumping ahead of  
7 myself, but I think what I'm likely to do is take this under  
8 advisement, give you an opportunity to file a reply brief and  
9 additional affidavits, and Mr. -- I would like to keep this on  
10 a fairly fast track, and we can talk about that, but that would  
11 be my assumption is that I'll give you an opportunity to make  
12 another filing, as well as for Mr. Heal to respond to that, if  
13 necessary.

14 MR. PUCCI: Thank you, your Honor.

15 In conclusion, your Honor, this is -- while this is  
16 the very beginning of this litigation, it's a litigation that  
17 is likely to last for a substantial period of time regardless  
18 of how fast track the Court or the parties might wish it to be.  
19 And it's in that period before a jury gets to pass judgement on  
20 Mr. Joy and Mr. Pickle that my client and my client's  
21 reputation and its economics interests are most vulnerable.  
22 And I'm asking the Court on this record, which is extraordinary  
23 and unusual in its substantive -- in its substance as to the  
24 improprieties and the wrongfulness of the conduct that has gone  
25 so far as to its declared intent by Mr. Joy to indict my client

1 THE COURT: All right.

2 MR. HEAL: Now, as I said, there was a nonmutual  
3 restraining order that prevented Mrs. Shelton from disparaging  
4 her husband, but that was only nonmutual, and there was a  
5 cavalcade of, you know, accusations. They're reflected in the  
6 exhibits you have, and the exhibits I posted were just complete  
7 versions of what the other counsel had redacted, and you can  
8 have the gist of that, but Mr. Joy and Mr. Pickle are  
9 essentially saying the things that Linda Shelton couldn't say.

10 Mr. Pickle himself is, as he says, an apologist. He  
11 attempts to keep any matters of dispute in the church very  
12 quiet, very private, and completely out of the public eye, but  
13 he has told me that that couldn't be possible in this case.

14 Now, with respect to the cases that my brother has  
15 cited, they were not in the motion, and I didn't know that that  
16 was the basis that he was complaining that things should be  
17 impounded on, but when I looked at it, it seemed that the  
18 public has, as in case after case says, a very strong interest  
19 in knowing what's going on in the courts, and you don't want to  
20 have any intimation that there's a private, you know, Court  
21 that is secret from everybody, unless there is a very good  
22 reason.

23 My brother talks about evidence, and you know, if you  
24 are -- what can I say. You've got one person writing a letter  
25 and saying this is not for publication. There is a common law



1 copyright, and, well, Mr. Joy puts that up and says, look here,  
2 there is no common law copyright. It's over and over again  
3 just a, you know, an effort to squelch one side of the story  
4 while he continues to say his own.

5 I got information that he shared the existence of this  
6 lawsuit as early as the 6th of April with the Canadian  
7 Conference of Seventh Day Adventists, all the while trying to  
8 tell this Court that it should be kept private.

9 I can't -- your Honor, I can't understand why the, you  
10 know, the suggestion that there should be an impound master in  
11 this case. You know, the parties are liable for scandalous  
12 pleadings, but just to copy what's published somewhere else as  
13 an exhibit is -- this is not defamation. The harm that might  
14 be caused, well, it's as I said, the harm that's going to come  
15 out in a divorce where the parties can't get along, and they  
16 start calling each other the worse person on the earth, the  
17 other party has to defend themselves.

18 The personal e-mails that my brother referred to, they  
19 were gotten through, first, the, you know, Mrs. Shelton handed  
20 them to a good friend to go through, and he released them; and  
21 at that point she understood that, you know, she had as much of  
22 a tiger by the tail as, you know, the plaintiff here has,  
23 because by then she had not been able to work for several  
24 years. You know, she was branded an adulterous, which in  
25 Seventh Day Adventists' eyes is really a very bad thing. She

1 was not allowed to go behind any of the pulpits. Women in the  
2 Seventh Day Adventist Church can't be ministers, but they can  
3 preach, and she was watching the remainder of her savings as  
4 she was going through the divorce dwindling to nothing, and at  
5 that point she decided that, yes, it had to be done.

6 I want to note, too, that in the complaint, there are  
7 a couple of little liturgical kind of gaffs, and by, you know,  
8 having this material impounded, you know, yes, you're  
9 preventing the defendant from using the plaintiff's words  
10 against him. They say that Three ABN is a nondenominational  
11 institute, and they say it's ecumenical. And when the Seventh  
12 Day Adventists read that, they would howl. It's absolute  
13 sacrilege to them; and, you know, it's the kind of thing which  
14 looks innocent, but when it's read by somebody, who is schooled  
15 in the bible and who's determined that they're the only church  
16 that is schooled in the bible, will cause a firestorm. My  
17 brother has said that their defamatory comments that are  
18 hurting the plaintiffs, they've really hurt themselves; and you  
19 know, to have this matter impounded, well, I would say the  
20 public's interests, as I mentioned in my opposition, is really  
21 paramount. There is nothing that they brought up that  
22 hasn't -- it's been documented.

23 Mr. Joy has for the past 20 years run a newspaper in  
24 which he talks exclusively about Seventh Day -- excuse  
25 me -- exclusively about Seventh Day Adventists' affairs; and

1 when he does that, he checks his sources, and he states his  
2 opinion based on those sources. There is nothing in the  
3 exhibits before you, especially as supplemented, that will  
4 suggest otherwise. There really is a much stronger interest in  
5 preserving the freedom of speech than in impounding materials,  
6 and I can't see the benefit of having essentially an  
7 impoundment master to say whether any given items should be in  
8 the public eye.

9 Three ABN and Danny Shelton are public figures. They  
10 present a picture of themselves to the world, and there is no  
11 reason, if they don't live up to that picture, that it couldn't  
12 be the only picture shown that if they don't live up to that  
13 picture. The exhibits speak for themselves that, you know,  
14 can't -- that should be shown to them. That is what the public  
15 needs.

16 Thank you, your Honor.

17 THE COURT: All right. Mr. Pucci, any reply?

18 MR. PUCCI: Briefly, your Honor, if I may have a  
19 moment.

20 THE COURT: Yes.

21 MR. PUCCI: Very briefly, your Honor. To the extent  
22 that I can understand what Mr. Heal is arguing, I discern that  
23 his declared intent is somehow to use this litigation to  
24 publish materials that Linda Shelton, one of his other clients,  
25 is precluded from publishing under some Illinois -- in some

1 THE COURT: All right. Mr. Heal, anything further?

2 MR. HEAL: Thank you, your Honor. To respond to that  
3 last comment, I guess, that there is no such intent. You know,  
4 Mr. Joy and Mr. Pickle have indeed put up a website. They have  
5 a topic for their website, which is obvious, but what we have  
6 here is simply an attempt to quiet what's becoming a storm  
7 against one of the litigants in a divorce when he has raised  
8 the same storm against the other. It's not a matter of intent.  
9 It's a matter of nature.

10 Thank you very much, your Honor.

11 THE COURT: All right. What I'm going to do is take  
12 the matter under advisement. I want to keep it, as I  
13 indicated, on a fairly fast track.

14 Mr. Pucci, how long do you think you need to respond  
15 to the most recent filings?

16 MR. PUCCI: Two weeks, your Honor.

17 THE COURT: All right. And Mr. Heal, if I give him  
18 two weeks, how much time would you need to respond to that?

19 MR. HEAL: I'll try to keep it less than two weeks,  
20 but I would ask for two.

21 THE COURT: All right. I will order then that  
22 plaintiff shall file any reply by the close of business on  
23 Thursday, May the 24th; and defendants by close of business on  
24 June the 7th. I will advise you, for what it's worth, is that  
25 my instinct here is my preliminary order is overbroad; and Mr.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No.: 4:07-cv-40098 FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**PLAINTIFFS' RULE 26(f) CONFERENCE REPORT**

---

The counsel identified below participated in the meeting required by Fed.R.Civ.P. 26(f), on July 2, 2007, and prepared the following report. The pretrial conference in this matter is scheduled for 3:30 p.m. on July 23, 2007 before United States District Judge F. Dennis Saylor at the United States Courthouse, 595 Main Street, Worcester, Massachusetts 01608. The parties do not request that the pretrial be held by telephone.

Having been unable to secure agreement as to the contents and information for a Joint 26(f) Report, the parties are filing separate Rule 26(f) reports. This report is submitted on behalf of Plaintiffs 3ABN and Danny Shelton.

**(a) Description of Case**

**(1) Concise Factual Summary of Plaintiff's Claims;**

By their Complaint, Plaintiffs allege that Defendants Gailon Joy and Robert Pickle, acting individually and in consort, have engaged in an affirmative campaign of defamation, slander and libel directed against Three Angels Broadcasting Network, Inc. ("3ABN") and its Founder and President, Mr. Danny Shelton. Joy and Pickle have published false statements of fact and have made

grievous misrepresentations—directly and by omission and innuendo—regarding 3ABN’s operation, administration, and financial management and regarding Shelton’s personal and professional conduct. Joy and Pickle purposefully and deliberately made these false statements and misrepresentations in order to destroy Plaintiffs’ reputations and goodwill, undermine public confidence in the ministry and its president, and financially cripple Plaintiffs so Plaintiffs would acquiesce to Defendants’ designs for the company and its administration. Joy and Pickle made their defamatory statements knowing yet willfully disregarding the falsity of the statements, or made the statements in brazen, wanton and reckless disregard for the truth or falsity of their statements.

Joy and Pickle have disseminated their statements to third persons and to the public at large orally, in print, and on the internet. Moreover, with regard to their internet offensive, Defendants have usurped and infringed upon Plaintiff Three Angel’s federally registered trademark “3ABN,” using it to identify and advertise their own world wide web site, “Save3ABN.com,” in violation of the Lanham Act.

Joy and Pickle’s efforts have been the direct cause of reputation, financial, and other harm and damages to 3ABN and its President. Defendants’ have brought about a diminishment of Plaintiffs’ reputations and goodwill, a lowering of Plaintiffs in the eyes of the public and 3ABN viewers, donors and supporters, a reduction in financial contributions to the ministry, and a confusion or likely confusion of the public and internet community as to the source, sponsorship, affiliation and origination of the “Save3ABN.com” website.

Despite the filing of the instant action, Pickle and Joy’s campaign of orchestrated disparagement continues. Plaintiffs anticipate the instant case will require considerable discovery, as Pickle and Joy’s defamation and trademark infringement are ongoing, and that there will be numerous, contentious discovery disputes. Defendants have already stated their intention to refuse Plaintiffs original-source access to electronically stored information, they have already challenged Plaintiffs’ right to discoverable information based on an alleged “reporter’s privilege,” and they have already raised an allegation that Plaintiffs have engaged in the destruction of evidence, yet refused to provide Plaintiffs with supporting information that Plaintiffs would need to investigate the charge.

Additionally, Plaintiffs’ concerns about Defendants using the pleadings in this matter, both as a forum to disparage Plaintiffs and as a source of material Defendants will mischaracterize, editorialize, sensationalize and publish to misinform the public, have come to fruition since the lifting of the impoundment order. In fact, since the Court’s denial of Plaintiffs’ Motion for Impoundment, Defendants have directed visitors to the infringing “Save3ABN” website to the Court’s PACER system, clearly evidencing their intent to use this Court’s own document repository and the pleadings and submissions contained therein, as a platform to continue publishing defamatory and derogatory statements about the

Plaintiffs. Thus, Plaintiffs' also anticipate the case will require substantial attention to the protection of various discovery materials and case submissions.

**(2) Concise Factual Summary of Defendant's claims/defenses;**

The Court is directed to the Factual Summary of Defendants' claims contained in Defendants' Rule 26(f) Report.

**(3) Statement of Jurisdiction (including statutory citations);**

Original subject matter jurisdiction exists pursuant to 15 U.S.C. §1121 (an action arising under the Federal Trademark Act).

Original subject matter jurisdiction exists pursuant to 28 U.S.C. §1388 (an action arising under an Act of Congress related to copyright and trademark).

Diversity jurisdiction exists pursuant to 28 U.S.C. §1332 (an action where the matter in controversy is between citizens of different states and the amount in controversy exceeds \$75,000 (exclusive of costs and interest)).

**(4) Summary of Factual Stipulations or Agreements;**

The parties have not successfully stipulated to any facts nor executed any agreements related to discovery, trial, or case management.

**(5) Statement of whether jury trial has been timely demanded by any party.**

To date, neither Party has demanded a trial by jury.

**(b) Pleadings**

**(1) Statement of whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action;**

Defendants have been served with the Summons and Complaint. The Summons and Complaint have been filed. Defendants have both answered the Complaint. All motions pleadings to date have been filed. Defendant Joy has indicated he intends to move to amend the pleadings to include affirmative defenses and a counterclaim, but refuses to disclose the nature or basis of the proposed claim or defenses. Defendant Joy also intends to move to amend the pleadings to add additional parties as appropriate. Neither Defendant Pickle nor Plaintiffs currently plan to

move for amendment of the pleadings or for the addition of parties, but reserve their right to timely do so in the course of the litigation.

**(2) Proposed date by which all hearings on motions to amend and/or add parties to the action shall be heard:**

Plaintiffs' Proposed Date: August 15, 2007

Defendants' Proposed Date: August 15, 2008

**(c) Discovery Limitations**

**(1) The parties recommend that the Court limit the use and numbers of discovery procedures as follows:**

- |            |  |                                      |
|------------|--|--------------------------------------|
| <b>(A)</b> | All parties propose 25 for each party  | <b>interrogatories;</b>              |
| <b>(B)</b> | All parties propose No Limit   | <b>document requests;</b>            |
| <b>(C)</b> | Plaintiffs propose 20 for each party<br>Defendants propose No Limit  | <b>factual depositions;</b>          |
| <b>(D)</b> | All parties propose No Limit   | <b>requests for admissions;</b>      |
| <b>(E)</b> | N/A  | <b>Rule 35 medical examinations;</b> |
| <b>(F)</b> | Plaintiff proposes 2 expert depositions for each party;<br>Defendant proposes 6 expert depositions for each party. | <b>other.</b>                        |

Plaintiff proposes a Stipulated Protective Order (proposed Order attached hereto) to govern discovery

**(d) Discovery Schedule/Deadlines**

**(1) Plaintiffs recommend that the Court establish the following discovery deadlines:**

- (A) July 15, 2008 deadline for completion of non-expert discovery, including service and response to interrogatories, document requests, requests for admission and scheduling of factual depositions;**
- (B) N/A deadline for completion of all Rule 35 medical examinations;**
- (C) \_\_\_\_\_ other.**

**(e) Experts**



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Case No.: 4:07-cv-40098 FDS

Three Angels Broadcasting Network,  
Inc., an Illinois non-profit  
corporation, and

Danny Lee Shelton, individually,

Plaintiffs,

v.

Gailon Arthur Joy and

Robert Pickle,

Defendants.

**JOINT RULE 26(f) CONFERENCE REPORT (Submitted by Defendants)**

The counsel identified below participated in the meeting required by Fed.R.Civ.P. 26(f), on July 2, 2007, and prepared the following report. The pretrial conference in this matter is scheduled for 3:30 p.m. on July 23, 2007 before United States District Judge F. Dennis Saylor at the United States Courthouse, 595 Main Street, Worcester, Massachusetts 01608. The parties do not request that the pretrial be held by telephone.

A copy of the following was submitted to the Plaintiffs who requested that the Defendants submit a separate report because they could not agree to much of what the Defendants submitted. Items marked removed were taken from a facsimile copy and the better copy is the statement of the Plaintiffs.

**(a) Description of Case**

**(1) Concise Factual Summary of Plaintiff's Claims;**

[removed at request of counsel for Plaintiffs]

**(2) Concise Factual Summary of Defendant's claims/defenses;**

Defendants vehemently deny the Plaintiffs' allegations of defamation and in defense assert that Plaintiffs are participating in a conspiracy of misinformation, have issued factually challenged statements, and have failed to deliver any proof of their own defamatory and factually challenged claims against their victims and the Defendants, despite repeated requests from the Defendants, some victims, and others.

The Defendants further assert the record will demonstrate as a matter of fact, statute, and precedent that the allegations regarding Trademark Infringement, Copyright Violation, and Trademark dilution are willfully and wantonly frivolous claims, without merit, and consequently an abuse of process intended to silence the plaintiffs' critics and not to recover any purported damages. Indeed, the defamation *per se* that the plaintiffs have so repeatedly emphasized to this Court is characterized by its standing as a legal theory worthy of bringing to trial even in the absence of actual damages.

The Defendants took the notice contained in the Complaint that the repetition of the asserted trademarks of Three Angels Broadcasting Network, Inc., in the referrer tags contained in the web pages of save3ABN.com was asserted as an infringement and removed those references, which were never visible on the online display anyway and even were ignored by the search engines that many years ago relied on them. Thus, under applicable statutory and case law, there is no infringement, as "save3ABN" is not going to confuse any member of the public that the web site is a product or part of the business or even a competitor of Three Angels Broadcasting Network, Inc.

The defamation cause relates to Defendants' ecclesiastical investigation of allegations and charges relating to the personal and professional conduct of the self-appointed managing director and purported founder, other employees, past and present, and the members/ directors of Three Angels Broadcasting Network, Inc. Defendants have conducted hundreds of hours of interviews and collected a substantial record of documents and statements from dozens of witnesses, victims, and employees, past and present. Defendants have provided ecclesiastical reports accurately reflecting the historical record of events during the twenty years of 3ABN history.

The plaintiffs' personal, professional and corporate conduct is chimeral and duplicitous as they profess adherence to Seventh-day Adventist conservative theology while Three Angels Broadcasting Network, Inc., allows their self-appointed leader to conduct himself in such a way as to prove violative of the clear and rigorously enforced standards required of ministry leadership within the Seventh-day Adventist Faith just as they are expected of the churches' membership. They collusively have repeatedly violated the code of conduct expected of an institution that professes an absolute faith in, and teaches, the doctrines of the Seventh-day Adventist Church. Plaintiffs have in concert violated

the code of conduct required as a member of Adventist-laymen's Services and Industries, a Seventh-day Adventist, denominationally-affiliated businessmen's organization. Defendants intend to prove that the plaintiffs have colluded to underwrite and allow this self-appointed leader to stoop to a level best described as institutional and personal corruption unbecoming of a leader of a Seventh-day Adventist supporting ministry. Such a violation of the rules of their faith that the Seventh-day Adventist membership abides by is a regular topic of member discussion and the only difference the defendants brought to the discussion was to uncover the proof of the truth. In response, the plaintiffs are, in a familiar and oft-repeated scenario, seeking to silence them by bringing suit.

Plaintiffs have fraudulently relied upon the Seventh-day Adventist world-wide congregation for the funds to operate, claiming to proclaim the unique-to-Seventh-day Adventists Three Angels' Messages, while coming to this court and representing themselves as operating a non-denominational institution. Plaintiffs have colluded repeatedly to misinform or delude the various Seventh-day Adventist congregations in such a way as to fraudulently continue to collect donations, trusts, wills, tithes, bequests, and gifts both outright and in trust, and have willfully attempted to cover up conduct that was clearly violative of the rights of their victims. The actual record demonstrates a willfully deceptive effort to deceive victims and contributors to the clear benefit of Plaintiff Danny Lee Shelton and demonstrates that the very limited membership of 3ABN willfully and repeatedly ignored clear warnings of corruption and misuse of financial assets entrusted to 3ABN and its affiliates. The actual record demonstrates a willfully deceptive effort to deceive cast-aside victims of corruption and to deprive them of due process, to willfully set about to defame or undermine the character and personalities of its cast-aside victims, and to deprive them of their livelihood after the fact, all contrary to the standards expected of a Seventh-day Adventist supporting ministry and violative of the trust of more than 100,000 contributors to 3ABN. The actual record will demonstrate that the membership of 3ABN failed to show due diligence and to investigate the various warnings, wantonly electing to rely upon the factually challenged representations and statements of its self-appointed leader and purported founder, Danny Lee Shelton, to their ultimate detriment.

Defendants reassert their constitutional right pursuant to the US Constitution and the First Amendment thereto to continue to investigate and to report on the conduct of the Plaintiffs. Further, by their written statements the Plaintiffs and Plaintiffs' counsel clearly intended the filing of this action to result in the silence of the press and as such would be a misuse of process pursuant to the Defendants' right to freedom of the press, freedom of religion, and freedom of speech inherent in the US Constitution. Defendants further assert that the Plaintiffs' proposed STIPULATED PROTECTIVE ORDER GOVERNING CONFIDENTIALITY is a contempt of the Honorable Court and a veiled effort to impound discovery grossly violating the clear order of the court as the Plaintiffs

continue their efforts to sidestep local rule 7(a) in an effort to avoid full disclosure to the contributing public.

**(3) Statement of Jurisdiction (including statutory citations);**

Original subject matter jurisdiction under 15 U.S.C. § 1121 (action arising under the Federal Trademark Act).

Original subject matter jurisdiction under 28 U.S.C. § 1388 (action arising under an Act of Congress related to copyright and trademark).

Diversity jurisdiction under 28 U.S.C. § 1332 (action where the matter in controversy is between citizens of different states and the amount in controversy exceeds \$75,000 (exclusive of costs and interest)).

**(4) Summary of Factual Stipulations or Agreements;**

The parties have not successfully stipulated to any facts nor executed any agreements related to discovery, trial or case management other than jointly authored statements contained in this report.

**(5) Statement of whether jury trial has been timely demanded by any party.**

Jury request has been made by plaintiffs and defendants [inserted by Mr. Joy].

**(b) Pleadings**

**(1) Statement of whether all process has been served, all pleadings filed and any plan for any party to amend pleadings or add additional parties to the action;**

Defendants have been served with the Summons and Complaint. The Summons and Complaint have been filed. Defendants have both answered the Complaint. All motions pleadings to date have been filed. Defendant Joy has indicated he intends to move to amend the pleadings to include affirmative defenses and a counterclaim. Defendant Joy does intend to amend the pleadings and add additional parties as appropriate. The other parties have reserved the right to add parties.

**(2) Proposed date by which all hearings on motions to amend and/or add parties to the action shall be heard:**

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No.: 4:07-cv-40098 FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**PLAINTIFFS' LOCAL RULE 16.1(d)(3) CERTIFICATION**

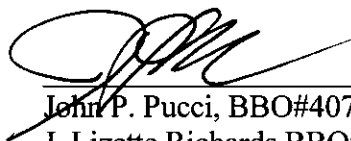
---

The undersigned counsel for Plaintiffs Danny Lee Shelton and Three Angels Broadcasting Network, Inc., and Plaintiff Danny Lee Shelton and Dr. Walter Thompson, an authorized representative of Plaintiff Three Angels Broadcasting Network, Inc., affirm that, prior to the initial scheduling conference in this action on July 23, 2007, counsel conferred with a view to establishing a budget for the costs of conducting the full course -- and various alternative courses -- of the litigation, and to consider the resolution of this litigation through the use of alternative dispute resolution programs such as those outlined in Local Rule 16.4.

Signed under the pains and penalties of perjury.

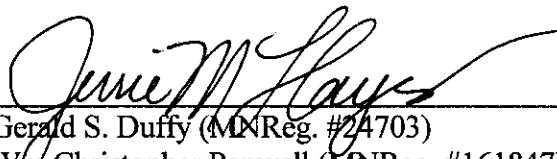
**Attorneys for Plaintiffs Three Angels  
Broadcasting Network, Inc. and Danny Shelton,**

Dated: ~~July~~ <sup>AUGUST</sup> 13, 2007



John P. Pucci, BBO#407560  
J. Lizette Richards BBO#649413  
Fierst, Pucci & Kane, LLP  
64 Gothic Street  
Northampton, MA 01060  
Tel: 413-584-8067  
Fax: 413-585-0787

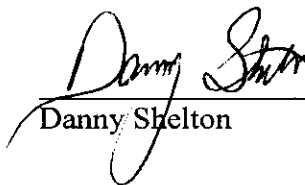
and



Gerald S. Duffy (MNReg. #24703)  
Wm Christopher Penwell (MNReg. #161847)  
Jerrie M. Hayes (MNReg. #282340)  
Kristin L. Kingsbury (MNReg. #346664)  
Siegel, Brill, Greupner, Duffy & Foster, P.A.  
100 Washington Avenue South  
Suite 1300  
Minneapolis, MN 55401  
Tel: (612) 337-6100  
Fax: (612) 339-6591

and

**Plaintiffs,**



Danny Shelton



Dr. Walter Thompson, Board Chair, on behalf of  
Three Angels Broadcasting Network, Inc.

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

THREE ANGELS BROADCASTING	)	
NETWORK, INC. and DANNY LEE SHELTON,	)	
Plaintiffs,	)	
	)	<b>CIVIL ACTION</b>
v.	)	<b>NO. 07-40098-FDS</b>
	)	
GAILON ARTHUR JOY and ROBERT PICKLE,	)	
Defendants	)	

**ORDER ON PLAINTIFF’S MOTION FOR A STATUS CONFERENCE**  
**November 2, 2007**

The Plaintiff’s motion is **granted**. A status conference shall be held on November 13, 2007, at 1:00 p.m. **in Courtroom 16, Fifth Floor, John Joseph Moakley United States Courthouse, 1 Courthouse Way, Boston, Massachusetts**. Counsel are reminded that they may appear via teleconference. If they so desire they are to contact my Courtroom Deputy, Lisa Roland at 617-748-4446 before Thursday, November 8, 2007.

Until that time the Defendant Joy shall, within 7 days of the date of this order:

Provide the Plaintiffs and court with a listing of all electronic equipment, owned by the Defendant, or under the Defendant’s care, custody, or control, whether listed in the defendant’s bankruptcy petition or not.

Make that equipment available to a forensic computer examiner who shall make a mirror image of any hard drives or storage devices. The imaging process shall, insofar as possible, take place at the Defendant’s premises, and the process may be witnessed by the defendants and/or their experts.

Until further order of this court those mirror images shall, immediately upon completion of the imaging process, be placed under seal. They are not to be viewed, searched, copied, tampered with, or otherwise accessed. The seal shall bear the date of sealing and the signature of any parties, or their representatives

who wish to witness the imaging and sealing process.

The cost of imaging shall, for now, be born by the Plaintiffs. The Defendant Joy may obtain a copy of the imaged devices at his own expense. The Defendant Pickle may also obtain a copy of the devices at his own expense only upon the express written authorization of the Defendant Joy.

/s/Timothy S. Hillman  
TIMOTHY S. HILLMAN  
U.S. MAGISTRATE JUDGE



---

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No.: 4:07-cv-40098 FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**PLAINTIFFS' EMERGENCY MOTION FOR A STATUS CONFERENCE**

---

NOW COME Plaintiffs Three Angels Broadcasting Network, Inc., and Danny Lee Shelton and request that this Honorable Court schedule a status conference in this matter as follows:

1. The Court held a Status Conference on November 13, 2007 solely to address issues of the preservation of electronic evidence.
2. At the Conference, the Court issued an order establishing a protocol to preserve this evidence.
3. On November 14, 2007, Attorney Heal filed a Complaint in the Bankruptcy Court alleging that the Motion for a Status Conference and the Court's production protocol violate the automatic stay in Joy's bankruptcy case. Attorney Heal's lawsuit is brought against both Plaintiffs in this action, as well as personally against Attorneys Pucci, Duffy and Hayes, and their law firms.

4. Rather than proceed with the protocol as ordered by the Court on Monday and Tuesday, November 19 and 20, 2007, which Attorney Heal and his client aver violates the automatic stay, undersigned counsel asks the Court to convene an emergency status conference by telephone, today if possible, to further address the stay issue.

**Attorney for Plaintiffs Three Angels  
Broadcasting Network, Inc. and Danny Shelton,**

Dated: November 16, 2007

/s/ John P. Pucci

---

John P. Pucci, BBO#407560  
Fierst, Pucci & Kane, LLP  
64 Gothic Street  
Northampton, MA 01060  
Tel: 413-584-8067  
Fax: 413-585-0787

Certificate of Service

I, John P. Pucci, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 24, 2007.

Dated: November 16, 2007

/s/ John P. Pucci

---

John P. Pucci

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

_____	)	
THREE ANGELS BROADCASTING	)	
NETWORK, INC. and DANNY LEE SHELTON,	)	
Plaintiffs,	)	
	)	<b>CIVIL ACTION</b>
v.	)	<b>NO. 07-40098-FDS</b>
	)	
GAILON ARTHUR JOY and ROBERT PCKLE,	)	
Defendants	)	
_____	)	

**FINDING AND ORDER**  
**November 16, 2007**

**HILLMAN, M.J.**

**I. Introduction**

By Order of Reference dated July 23, 2007, this matter was referred to me by Saylor, J., for a Hearing and Order on electronic discovery requirements. That referral was occasioned by disagreements that the parties voiced to Judge Saylor during their Rule 16 Conference relative to the form of production of electronically stored information, and how that information should be identified and produced. Also, on October 26, 2007, the plaintiff's Motion for Hearing Status Conference (sic) was also referred to me.

**II. Background**

The plaintiff's four count complaint seeks equitable relief and monetary damages

the parties 14 days to submit proposed orders for the production of electronically stored information. All parties submitted those proposed orders.

Thereafter, the plaintiffs learned that the defendant Joy had filed for bankruptcy protection and had listed electronic office equipment as a personal property asset. The plaintiffs sought authority to image Joy's computers' hard drives in anticipation of their sale by the bankruptcy trustee. On November 2, 2007, I issued an order authorizing the copying, and immediate sealing of any hard drives or electronic storage devices under the control of the defendant Joy in an effort to preserve any potentially discoverable electronic evidence.

### **III. The Parties' Respective Positions**

The essence of the disagreement between the parties is the process by which discoverable, electronically stored data shall be identified by the party responding to the respective discovery request ("producing party") and produced to the party requesting discovery ("requesting party").

The Plaintiffs propose that all of the responding party's electronically stored information be reproduced on a mirror image of the respective hard drives or storage devices by a trained, experienced computer forensic examiner ("examiner") hired by the requesting party. The parties would provide the examiner with a list of mutually agreeable terms to use to search the mirror imaged devices for the identification of privileged information, and of relevant, discoverable information. Thereafter, the examiner would conduct a search and prepare a log of all relevant documents together with those documents identifying information, i.e., file name, file extension, deletion status, date and time of creation, date of last access, date of last alteration, file size, and

hard drive location. The examiner would also prepare a second log of relevant e-mail pooled from the first log. That log would serve to identify the e-mail's sender, recipients, date and time of creation, subject line and the names of any attached files.

Both logs would be provided to all counsel of record and copies of documents listed in either of the two logs would be provided to the producing party for review as to relevance and privilege. Thereafter the producing party would serve upon the requesting party the responsive documents and a privilege log with respect to those documents for which a privilege was claimed. The plaintiff's proposed protocol also provides a 'claw back' provision for retrieval of inadvertently disclosed documents.

At the hearing on this matter the defendants adamantly resisted the plaintiff's suggestion of creating mirror images of hard drives and storage devices. They claimed that giving an expert for the plaintiff access to their information technology infrastructure would compromise the integrity of their system, violate confidences and privacy rights, and will allow a wide-ranging, fishing expedition into data and information that would never be discoverable. The defendants proposed orders filed after the hearing appear to modify that position somewhat.

The defendant Robert Pickle, ("Pickle") through counsel, proposed that the parties make their discovery requests for electronic information in the traditional manner.<sup>2</sup> Pickle proposes that any discoverable electronic data be copied onto a readable medium and produced to the requesting party. If the requesting party feels that the

---

<sup>2</sup> Pro se defendant Joy also submitted a proposed order which essentially tracks Pickle's proposed order with the exception that he continues to insist that The Sedona Principles have somehow supplanted the Rules of Civil Procedure. The Sedona Principles are a valuable tool for courts and practitioners but do not have the force of law. They are a best practices recommendation for dealing with electronic document production

response is incomplete, or otherwise non-responsive and that a complete response can only be made by access to the electronic device where the data resides, then the requesting party must specify “the data which are required to satisfy the discovery request” and “the electronic access which is contemplated.” Thereafter the responding party would be required to specify the location of the electronic information and whether there are privileges claimed. If the responding party claims that there is privileged data they would be required to submit an edited copy to the court with the privileged information removed. A summary of the information removed would be provided to the court for *in camera* review. Pickle’s proposed order also provides that “A party claiming privilege or a party desiring to resolve any other dispute may make application to the court to resolve the issue.”

Pickle’s proposal envisions a process somewhat similar to the plaintiff’s wherein the requesting party would hire an examiner to copy and search for electronic data. Pickle, however, proposes that any search of the responding party’s electronic devices be done only by agreement of the parties or pursuant to a court order. This position essentially makes the search of an electronic storage device optional at the responding party’s discretion. He further suggests that the examiner not be an expert for the requesting party for the interpretation of electronic data or an employee of the requesting party or their counsel.

### **Discussion**

The Plaintiff’s proposal, while thoughtful and comprehensive, fails to take into consideration one of the fundamental precepts of discovery under the Rules of Civil Procedure; that the responding party has the obligation to search his own records to

produce requested data. The discovery process is designed to be extrajudicial and in the absence of a strong showing that the responding party has somehow defaulted in this obligation the courts should not resort to extreme, expensive, or extraordinary means to achieve compliance. Diepenhourst v. City of Battle Creek, Case no. 1:05 cv 734, 2006 U.S. Dist. LEXIS 48551 (June 30, 2006).

In the absence of agreement between the parties, there is nothing in the record at this time that would cause me to order a responding party to make all of their electronically stored information available to the requesting party. Courts have traditionally been cautious in requiring the mirror imaging of computers where the request is extremely broad in nature and the connection between the computers and the claims in the lawsuit are unduly vague or unsubstantiated in nature. Balboa Threadworks, Inc. v. Stucky, 2006 U.S. Dist. LEXIS 29265, 2006 WL 763668, at 3. Without a particularized showing, a party may not inspect the physical hard drives of a computer merely because the party wants to search for additional documents responsive to the party's document request. See McCurdy Group v. Am. Biomedical Group, Inc., 9 Fed. Appx. 822, 831 (10<sup>th</sup> Cir. 2001); see also Ameriwood Industries, Inc. v. Lieberman, 2006 U.S. Dist. LEXIS 93380 (E.D. Mo. December 27, 2006).

However, discrepancies or inconsistencies in the responding party's discovery responses may justify a party's request to allow an expert to create and examine a mirror hard drive of an image. In cases where a defendant is alleged to have used the computer to commit the wrong that is the subject of the lawsuit, it is easier to establish a sufficient nexus between the plaintiff's claims and the needs to obtain a mirror image of the computer's hard drive. See Ameriwood Industries, *supra*.

Therefore, on the facts presently before me, I am not at this point in the litigation ordering that either party's electronically stored information be reproduced on a mirror image of their respective hard drives or storage devices. The parties are encouraged to continue their free exchange of information in addition to any formal requests that may be made under the appropriate discovery rules. If issues arise wherein either party feels that imaging of storage devices is appropriate they may make application to the court.

I am mindful that on November 2, 2007, I fashioned an order requiring the defendant Joy to provide the plaintiffs and the Court with a listing of all electronic equipment under his care, custody or control, and ordered a mirror image of the storage devices on that equipment to be reproduced and placed under seal. This Order is made in an abundance of caution to prevent the loss of any relevant information and is in no way intended to provide the plaintiffs with access to the defendant Joy's hard drive without a further showing to this Court consistent with the principles elucidated in this opinion.

/s/ Timothy S. Hillman  
TIMOTHY S. HILLMAN  
MAGISTRATE JUDGE





authored, or received by the Defendants, and thus would be what is not already in the possession of the Defendants.

2. Not one of the eleven categories referred to above is stated as pertaining in any way to Plaintiff Shelton, individually. See pages 4 and 5 of Exhibit A.

3. On August 7, 2007, Attorney Heal asked Attorney Pucci “to specify a time for the inspection and copying” of Rule 26(a)(1) materials. See Exhibit B. When Attorney Hayes replied on August 8, 2007, not only did she refuse to specify such a time, but she also asserted that the “Plaintiffs have no documents to produce for inspection or copying at this time,” even though she acknowledged that the Plaintiffs had “chosen” “to describe the documents in their possession by category and location” in their initial disclosures. See Exhibit C. Her blanket statement that there were no documents to produce at that time would seem to also apply to unredacted copies of the exhibits to the Affidavit of Mollie Steenson filed by the Plaintiffs on May 9, 2007.

4. On November 10, 2007, Attorney Heal filed my notice of appearance *pro se* with the Court. On November 14 I commenced negotiating with Plaintiffs’ counsel Attorney Hayes regarding the inspecting and copying of the Plaintiffs’ Rule 26(a)(1) materials. See Exhibit D. I reminded Attorney Hayes that both Defendants had provided copious quantities of Rule 26(a)(1) materials, and that the second edition of my materials consisted of a DVD containing more than 3 gigabytes of data, including a single file containing more than 4500 emails. I went on to ask whether I needed to plan on traveling to “Minneapolis and/or Massachusetts, and Illinois” to inspect and copy the Plaintiffs’ Rule 26(a)(1) materials, and if so, how much notice I needed to give before traveling to the required locations.

5. In a reply dated November 14 and 15, 2007, Attorney Hayes responded, stating that I could “personally inspect” the Plaintiffs’ Rule 26(a)(1) materials if I gave 3ABN “a

minimum two-week notice of inspection,” and “a minimum one-week notice of any inspection” at her law office. See Exhibit E. No mention was made of the Plaintiffs not allowing inspection or production, and her offer to send copies if I would agree to pay an unspecified and unknown cost suggests otherwise.

6. On November 19, 2007, I gave Attorney Hayes her requested one- and two-weeks’ notice, setting a date of December 7, 2007, to come by her law office, and dates of December 5, 6, 10, and/or 11 for coming by the offices of 3ABN. See Exhibit F. I also enquired as to the quantity and form of documents, and whether the documents at the law offices in Minnesota and Massachusetts were duplicates.

7. On November 20, Attorney Hayes responded that all Rule 26(a)(1) materials were in “hard-copy, paper form,” that all materials not publicly accessible on web sites consisted of less than 500 pages, and that these materials included “extremely sensitive and confidential business information” and would not presently be disclosed by the Plaintiffs. See Exhibit G. While Attorney Hayes in this reply also stated that all materials held at her law office were duplicates of what is held by Plaintiffs and the law office in Massachusetts, she failed to state that all materials held by Plaintiffs were duplicates of what is held by either or both law offices. Thus I am uncertain whether her statement contradicts the impression given by the Plaintiffs’ initial disclosures that five categories of auto-discovery materials are held only at “3ABN Offices.”

8. A second reply from Attorney Hayes on November 28, 2007, stated that the Plaintiffs will not currently “authorize either the inspection or production” of their Rule 26(a)(1) materials, and, that “There is no need ... to discuss any details concerning copying of materials, unless this matter has been resolved.” See Exhibit H. But in the four months since the initial disclosures were made, the Plaintiffs have failed to file any motions for protective orders covering

any specific documents.

9. The rescinding on November 20 and 28, 2007, of the previous arrangement of dated November 14 and 15 appears to be an ongoing pattern of behavior on the part of the Plaintiffs. I refer to the agreement of 3ABN personality John Lomacang, an agreement rescinded long before the instant case was filed. I referred to this situation in my letter of November 14, 2007, which for some reason prompted Attorney Hayes to threaten me. See Exhibits D–E.

Regarding that agreement and situation:

a. John Lomacang enthusiastically assured me by phone on September 1, 2006 (mistakenly said to be September 8 in my letter to Attorney Hayes), that if I came to 3ABN, they would show me phone card phone records, records he had personally seen, documenting hundreds of hours of phone calls by Linda Shelton to “her boyfriend” in Norway. He indicated that such an arrangement was not his decision. On September 8, 2006, I wrote him and told him I possibly could take him up on his offer on October 23, 2006, and between September 8 and October 17, sent him seven emails, to which I received only one reply on October 2. See Exhibit I for the entire dialog. His one reply said that I needed to write Mollie Steenson who would decide whether or not the trip would take place, a clear change from his previous position.

b. Accordingly, I wrote Mollie Steenson four times from October 3 through October 17, to which the only reply I ever received came on October 17, stating that I could not see the phone card phone records, a definite reversal of the original arrangement made by John Lomacang. See Exhibit J for the entire dialog.

c. Additionally, I later called AT&T, the identified brand of these phone cards, and was told that they do not give out written phone records without a subpoena or court

order. This legitimately raised the question in my mind of whether I had been lied to about the existence of these phone records, or whether these phone records, if they really did exist, had been illegally or improperly obtained.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 10th day of December, 2007.

/s/ Bob Pickle

Robert Pickle

---

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MASSACHUSETTS**

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No. 07-40098-FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**PROTECTIVE ORDER**

---

Because the discovery and trial of the above-captioned action will involve the production of documents, information and materials that the parties regard as confidential, proprietary or secret in nature, and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the following provisions shall govern confidentiality with respect to material produced by any party or third party during discovery in these proceedings:

1. This Order shall apply to all documents and other information produced in discovery by any of the above-named parties, or their present or former agents, employees, or representatives (hereinafter individually "Party" and collectively, "Parties") and by any third-party or their present or former agents, employees, or representatives (hereinafter individually "Third Party" and collectively, "Third Parties"), whether produced voluntarily or by subpoena, as to which any Party asserts a claim of trade secret ("Trade Secret Information") or confidentiality ("Confidential Information").

2. Trade Secret Information, which, until further order of this Court, consists of 3ABN's donation information, including but not limited to the donors' names, addresses, phone numbers, social security numbers or any other specific or general identifying information, the date(s) of donation, the amount(s) of donation, the means of donation, the donation designation(s) or the manner of the donations' expenditure, is hereby prohibited from discovery.

3. Confidential Information shall include all documents of a highly sensitive nature and all non-public, proprietary and commercially sensitive material, the disclosure of which will result in clearly defined and serious injury to the designating Party (the "Designating Party").

4. Confidential Information shall not consist of any information which at any time has been: (a) produced, disclosed or made available to the public or otherwise available for public access; and/or (b) disclosed in connection with any governmental public filing and which documents or information could not reasonably be assumed to be or have been intended to be kept confidential. Documents produced to the Federal Communications Commission in connection with the sale, purchase or licensing of radio or television transmission facilities or operations or documents produced to the Department of Justice in connection with any investigation or compliance matter are not documents disclosed in connection with a governmental public filing or otherwise deemed to have been made available to the public.

5. The provisions of this Order extend to all designated Confidential Information, regardless of the manner in which it is disclosed, including but not limited to responses to requests for production of documents and things, interrogatory answers, responses to requests for admissions, deposition transcripts, deposition exhibits, responses to subpoenas and any other discovery materials produced by a Party or a Third Party in response to or in connection with any

discovery conducted in this litigation, and any copies, notes, abstracts or summaries of the foregoing materials.

6. The Parties must initially designate documents or information as Confidential Information prior to the actual production of the document or information by the Designating Party by placing the notation "Confidential" on every page of each document so designated. Confidential Information so designated shall be treated as such by all non-designating parties to this action (collectively, the "Receiving Parties"), unless the Court shall rule otherwise. Designation of witness deposition testimony shall be accomplished by a statement to that effect during the deposition, or by a follow-up written designation, sent within twenty (20) days after receipt of the transcript of that deposition, identifying the specific portions of the deposition transcript and exhibits being designated as Confidential Information. Documents or deposition testimony not so designated are not subject to this Order.

7. If any Third Party produces any documents, information or materials as a result of a subpoena, the subpoenaing Party (the "Receiving Party") shall notify all opposing Parties immediately and prior to review of the documents, information or materials by the Receiving Party and prior to disclosure of the documents, information or materials to any co-parties (i.e. co-Plaintiffs or co-Defendants) (the "Co-Parties"). Within three (3) days of receipt of the Third Party documents, information or materials, the Receiving Party shall make the documents, information or materials available for inspection and designation as Confidential Information by the opposing Parties. Only after the Third Party documents, information or materials have been inspected by the opposing Parties and designated as Confidential Information shall the Receiving Party review the documents, information or materials or disclose the documents, information or materials to Co-Parties. If, after having been provided with notification and an opportunity to



18. No one who has access to Confidential Information pursuant to this Order shall distribute, disclose, divulge, publish or otherwise make available any Confidential Information, copies thereof or extracts or summaries therefrom, to any other person, except persons who are also authorized to view or have access to these materials pursuant to this Order, and except for the Court or employees thereof as necessary in the conduct of this particular litigation, unless such persons have first obtained leave of the Court or the written consent of the Designating Party to disclose such materials.

19. In the event any Party wishes to use Confidential Information at a deposition, all persons other than the deponent, court reporter and other authorized persons as set forth in paragraphs 11 through 13 shall be excused from the deposition during the time that the Confidential Information is being disclosed or discussed. At the time of the deposition or within twenty (20) days after receipt of the deposition transcript, the Designating Party may designate as Confidential Information certain portions of the transcript which contain or relate to Confidential Information, or that relate to matters which are deemed confidential. All portions of deposition transcripts shall be treated as Confidential Information until twenty (20) days after receipt of the deposition transcript by the Designating Party.

20. Within thirty (30) days after final termination of this action, including all appeals, any recipient of Confidential Information under paragraphs 11 through 13 of this Order shall deliver all Confidential Information, including all copies thereof and all documents incorporating or referring to such Confidential Information, in whole or in part, to the Designating Party. The Parties shall not retain any copies or reproductions of any documents produced in this case and, upon return of said documents, shall provide a signed, written statement confirming that all said documents have been returned and no copies have been retained.



trademark infringement and dilution in violation of the Lanham Act, 15 U.S.C. § 1114 and 15 U.S.C. § 1125(c).

3. Plaintiffs' Complaint also alleges that Defendants have, through these websites and other points of publication, engaged in a willful campaign of defamation designed and intended to damage Plaintiffs and to interfere with Plaintiffs advantageous economic relations with their donors and supporters.

4. The parties filed separate Rule 26(f) reports and Plaintiffs' initial case submissions included a proposed Protective Order to govern the production of documents and information in the case. The Court issued a Scheduling Order on July 24, 2007 that was silent as to a protective order governing pre-trial discovery.

5. Plaintiffs served interrogatories and requests for production on Defendants on August 20, 2007. Defendant Joy has not responded to those requests<sup>1</sup> and Defendant Pickle's responses are deficient. Plaintiffs are in the process of preparing a demand for supplementation to Pickle.

6. Defendant Pickle served written discovery (Requests for Production of Documents and Things) upon Plaintiff Three Angel Broadcasting by mail on November 29, 2007 and upon Defendant Danny Shelton by mail on December 7, 2007. A true and correct copy of Pickle's Discovery Requests are attached hereto as **Exhibits A and B**.

7. Defendant Pickle has caused four subpoenas to issue in this case. A true and correct copy of Pickle's subpoenas are attached hereto as **Exhibits C, D, E and F**.

---

<sup>1</sup> Defendant Joy's responses were stayed by his filing for Bankruptcy. However, the Bankruptcy Court lifted the stay with respect to the injunctive relief claimed in this litigation on November 21, 2007, making his responses due December 21, 2007.

8. Attached hereto as **Exhibit G** is a true and correct copy of a posting made by Defendant Robert Pickle to the internet website "www.BlackSDA.com" on November 9, 2007.
9. Attached hereto as **Exhibit H** is a true and correct copy of a posting made by Defendant Robert Pickle to the internet website "www.BlackSDA.com" on December 1, 2007.
10. As early as the parties Rule 26 conference, Plaintiffs proposed a reasonable protective order to govern disclosure in the instant case. Since the bulk of the defamatory statements at issue in the case revolve around the financial management and fiscal operations of the ministry, a protective order is warranted to prevent the publication and dissemination of potentially relevant but highly sensitive and confidential trade secrets and business, commercial and financial information. This was rejected by Defendants without discussion.
11. More recently, Defendant Pickle made informal requests for documents identified in Plaintiffs' Rule 26(a)(1) Initial Disclosures. Despite no obligation to provide those documents absent a formal discovery request, Plaintiffs agreed to provide such materials on the condition the parties executed a protective order to prevent third-party disclosure of the information. After exchanging at least six correspondence concerning the issue, Pickle still refused to stipulate to a confidentiality agreement or protective order governing the materials. Plaintiffs have been unable to obtain Defendants' agreement as to information confidentiality.

8. Defendants' conduct toward and statements about 3ABN have cast aspersions on 3ABN's operational and financial management sufficient to cause many donors to stop giving to the ministry and to cause many other donors to be concerned about future donations.

9. Although 3ABN is a non-profit corporation, operating a religious ministry with altruistic purpose, the organization still faces competition from other Seventh-Day Adventist and Christian ministries for finite, limited donor funding and for broadcast airtime on limited broadcast and satellite bandwidth. In my experience, competing ministries armed with 3ABN's donor information would try to capitalize on (albeit groundless) concerns raised by Defendants about 3ABN's to lure supporter donations and ministry patronage away from 3ABN, which would result in fewer donations and a damaging loss of income to the ministry.

10. 3ABN makes similar extensive efforts to maintain the secrecy, confidentiality and security of its financial, accounting and auditing information.

11. To protect and maintain the confidentiality of its financial, accounting and auditing information 3ABN utilizes a compartmentalized accounting and bookkeeping operation, physical lock-down of the accounting department within 3ABN headquarters, additional physical security on its records storage room and records cabinets at 3ABN's accounting office, password and other security measures on 3ABN's computer system to limit employee access and prohibit third party access to accounting, bookkeeping and financial information, the divided assignment of accounting duties and financial responsibility on a "need to know" basis, confidentiality and non-disclosure policies prohibiting employees from disclosing accounting, bookkeeping and financial

information, and company policies prohibiting the dissemination of auditing reports and financial statements outside the 3ABN Board of Directors and the Company's CFO.

12. If 3ABN's confidential commercial information, which includes information about its capital expenditures, negotiated satellite and airtime rental rates, donor and non-donor income sources, marketing budget, variable payroll and operating expenses, and broadcast and product production and distribution costs, were disclosed to its competitors, they would certainly undercut 3ABN's airtime rental rates, outbid 3ABN on the purchase of airtime and broadcast access, appropriate some or all of 3ABN's non-donor income sources, and solicit 3ABN donors to give their discretionary funds to the competing organization, ultimately eroding 3ABN's market share and usurping its donor base.

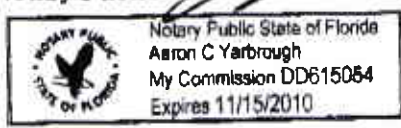
FURTHER YOUR AFFIANT SAYETH NOT.

Dated: 12/12/07

*Mollie Steenson*  
Mollie Steenson,  
General Manager and Secretary for  
3ABN, Inc.

Subscribed and sworn to me  
this 12<sup>th</sup> day of December, 2007.

*Aaron C. Yarbrough*  
Notary Public



---

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No. 07-40098 FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**AFFIDAVIT OF JERRIE M. HAYES**

---

STATE OF MINNESOTA    )  
                                  )  
COUNTY OF HENNEPIN    )    ss

Jerrie M. Hayes, being first duly sworn upon oath, deposes and states as follows:

1. I am an attorney licensed in the State of Minnesota and admitted *pro hoc vice* to the Federal District Court of the District of Massachusetts. I represent Plaintiffs Three Angels Broadcasting and Danny Shelton in the above-entitled matter and I make this affidavit based upon my knowledge and information.
2. On August 7, 2007, attorney Laird Heal wrote to Plaintiffs' Counsel suggesting that Plaintiffs were required to produce, simultaneous with the service of their 26(a)(1) disclosures, the documents and materials identified in Section 2 of those disclosures and to make them immediately available for Defendants' inspection and copying. A true and correct copy of Attorney Heal's letter is attached as Exhibit B to the December 10

Affidavit of Robert Pickle. After I wrote a responsive letter to attorney Heal, dated August 8, 2007, a true and correct copy of which is attached as Exhibit C to the December 10 Affidavit of Robert Pickle, attorney Heal made no further efforts to obtain the production of, or to arrange the inspection and copying of, documents described in Plaintiffs' Rule 26(a)(1) Initial Disclosures.

3. In November of 2007, Defendant Pickle, now represented *pro se*, attempted to informally obtain discovery in the case, including the informal scheduling of depositions and the informal inspection of documents described in Plaintiffs' 26(a)(1) Initial Disclosures. Understanding Pickle was represented *pro se*, Plaintiff and counsel on their behalf made every effort to reasonably accommodate Pickle's informal requests.

4. When Pickle insisted on learning the date of 3ABN's January Board meeting, for the purpose of scheduling Board member depositions at or near the time of that meeting, I informed Pickle that such a schedule would be logistically and procedurally inappropriate and I asked him to provide me with a list of deponents and proposed dates for their depositions. When Pickle insisted on obtaining the date of the January Board meeting, I ended efforts to informally schedule those depositions.

5. When Pickle insisted on informally inspecting, reviewing and copying Plaintiffs' highly sensitive trade secret, financial and business information, Plaintiffs refused to informally provide that information without a mutually negotiated Confidentiality Agreement in Place. Defendant Pickle refused to acknowledge the sensitive nature of the confidential information and refused outright to attempt to negotiate a mutually agreement Confidentiality Order.





time high, though the year ended with a deficit of \$2,996,016 due to a \$3,167,235 “cost of goods given away.” See Exhibit I at line 1 and statement 2.

3. I have examined the 2003 through 2005 audited financial statements of 3ABN in connection with 3ABN’s Form 990’s for those years. (The audited financial statements are readily obtained from the Illinois Attorney General’s website.) In 2003 3ABN reported the sales of inventory other than “satellites” as “Other sales” (part of “Gross sales of inventory” on the Form 990), with the cost of that inventory reported as “Cost of goods sold and given away – Other” (part of “Less: cost of goods sold” on the Form 990). See Exhibits K at page 4 and F at line 10. Beginning in 2004, 3ABN reported sales of such inventory as “Cost of goods given away - Other” (“Cost of goods given away” on the Form 990), with gross sales revenue being reported presumably as “contributions.” See Exhibits L, and G at statement 2. It is therefore impossible to determine after 2003 from 3ABN’s figures for gross contributions how much is attributable to donations and how much is attributable to gross sales revenue.

4. During the first half of 2006, 3ABN and Plaintiff Shelton conducted a massive promotional campaign for his book, *Ten Commandments Twice Removed*, in which people paid 25¢ apiece to cover the cost of shipping. See Exhibit M for a receipt from this campaign from an individual who claims he received 300 copies of this book. The receipt calls the buyer a “donor” and his payment a “contribution,” and acknowledges that 100% of the “contribution” paid for shipping. Reports of the number of books distributed start at 4.8 million, explaining the high “cost of goods given away” for 2006. Since the shipping charges for this large volume of books was reported as contributions, this would likely account for the rise in donations in early 2006 that Larry Ewing referred to in his Affidavit of May 9, 2007, filed in the instant case.

5. I have examined the Form 990’s filed by Remnant Publications, the publisher of Plaintiff Shelton’s book, *Ten Commandments Twice Removed*, spanning the years 1999 through

2006. A source has claimed that the bulk of royalties currently paid by Remnant Publications go to Plaintiff Shelton. Total reported royalty payments for 2006 were \$508,767, a figure 337% or \$392,211 higher than that of 2005. See Exhibits N–O at lines 43d and 93a. Because the *Ten Commandments Twice Removed* campaign reportedly distributed at least 4.3 million copies, and given the proportionately higher printing costs, postage and shipping costs, and sales of literature revenue also reported on the 2006 Form 990, one might easily conclude that the large increase in royalty payments in 2006 is largely attributable to Plaintiff Shelton’s book. But Plaintiff Shelton’s financial affidavit filed in July 2006 in his case with Linda Shelton does not report any income attributable to such royalties. See Exhibits I at statement 9 (for Plaintiff Shelton’s wages from 3ABN) and P.

6. Besides financial allegations, the Plaintiffs’ complaint refers to moral and ethical allegations, the question of whether or not Plaintiff Shelton had biblical grounds for divorce and remarriage, and the proposed fact-finding Adventist-laymen’s Services and Industries (ASI) tribunal that was expected by some church leaders to investigate, among other things, the allegations of child molestation against Tommy Shelton.

7. The only time that Plaintiffs’ counsel personally conferred with me regarding a need for a Protective Order was in correspondence with Attorney Hayes regarding the Plaintiffs’ Rule 26(a)(1) materials. Attorney Hayes claimed that these materials of less than 500 pages consisted of “extremely sensitive, confidential business and commercial information,” but did not elaborate further. Do these materials really substantiate the Plaintiffs’ non-commercial claims, the actual figures for donation losses, and that visitors to [Save3ABN.com](http://Save3ABN.com) are confused into thinking that 3ABN sponsors that website? Or is the designation of these materials as “extremely sensitive, confidential business and commercial information” simply wrong?

8. On February 15, 2007, Plaintiff Shelton made the claim on a globally televised

broadcast that regular donor funds were not going to pay for a pending lawsuit.

9. In June 2007 I obtained records from the Franklin County Courthouse documenting how Plaintiff Shelton bought a house from 3ABN on September 25, 1998, for \$6,139, and sold it one week later on October 2, 1998, for \$135,000. See Exhibits Q–R. 3ABN’s 1998 Form 990 denied that any section 4958 excess benefit transaction had taken place that year. See Exhibit A at line 89b.

10. The Defendants published an analysis of 3ABN’s 2003 through 2005 audited financial statements as they pertain to the percentage of annual revenue spent on corporate jets. 3ABN reported a figure of \$857,528.60 for “airplane operation” in 2003, which was about 7.5% of their total reported revenue. See Exhibit F at line 12, Exhibit K at page 12. After publishing this analysis, a source claiming to be a former employee alleged that the 2003 figure for jet travel did not include an additional \$500,000 spent to repair or replace a blown jet engine. This allegation coincided with other allegations that 3ABN’s expenses are not always properly reported.

11. Former 3ABN Board member Attorney Nicholas Miller informed me about mid-September 2007 that the IRS had contacted him regarding 3ABN, and that he had passed on the contact info of that agent to the 3ABN Board chairman a little before September 6. (The Defendants have been aware of this criminal investigation for over a year.) On September 6, 2007, Plaintiff Shelton stated the following in a 3ABN Today Live broadcast:

We did a program, people said, “Oh well, we hear the IRS is secretly checking you.” There’s no truth to that. IRS doesn’t go behind people’s back. They come right to your front door and say, “We’re checking you out.” I mean, some of these things are just ludicrous, but people that are enemies of the gospel. It doesn’t make any difference what name they call themselves or what church they say they belong to, or that they’re Christians, they’re enemies of the gospel.

In contrast, I have endeavored not to make unverifiable claims, but have instead tried to only make statements which I could back up with solid documentation.

12. The Plaintiffs and their allies through globally televised broadcasts, email, internet postings, and word of mouth have repeatedly accused their critics of lying and even crime. See Exhibits S–T. According to the relative of a 3ABN employee, after that employee had accused the Defendants of lying, his relative asked what lies we were telling, and that employee couldn't identify any.

13. The Defendants have been in possession of Plaintiff Shelton's 2001 through 2003 tax returns since the spring of 2007 and have not published them. These tax returns were prepared by 3ABN's independent auditor, Alan Lovejoy, who also prepared 3ABN's Form 990 for at least 1999 and 2000.

14. I corresponded with Melody Shelton Firestone, Plaintiff Shelton's daughter, in August 2006, and she confirmed that she was pregnant out of wedlock in the fall of 2005. I have not published this correspondence. I am also in possession of correspondence regarding the alleged moral improprieties of Tammy Shelton Chance, sister of Plaintiff Shelton, and have not published this correspondence.

15. I have tabulated by the month internet posts and forums critical of the Plaintiffs on ClubAdventist.com, BlackSDA.com, and Maritime-SDA-Online.org. See Exhibit U. Based on my tabulation, months in which combined, total posts surpassed 100 include July through November 2004 (attributable to discussion about Plaintiff Shelton's divorce and the Plaintiffs' handling of the matter), November 2005 (attributable to Linda Shelton's pending church discipline and her attempts to transfer her church membership), and February 2006 through almost the present (attributable to the *Ten Commandments Twice Removed* campaign, Plaintiff Shelton's remarriage, Linda Shelton's daughter issuing a signed statement alleging sexual assault by Plaintiff Shelton against her, evidence of the cover up of the child molestation allegations against Tommy Shelton, etc.).

16. I have no intention of indiscriminately publishing donor names. But I do intend to locate donors who ceased donating prior to Mr. Joy or myself becoming involved in August 2006. And I intend to secure affidavits from former donors who are willing to testify that it was the actions of Plaintiff Shelton, not the Defendants, that influenced them to cease donating.

17. Attorney Hayes has never conferred with me regarding any of my internet postings, and has never explained, except with one possible exception, how I misunderstood anything. Yet I do question the propriety of the justification of the Plaintiffs' proposed purchase of domain names from Defendant Joy in bankruptcy proceedings on the basis of mere, unproven allegations while this litigation is ongoing.

18. I have no intention of willfully aiding 3ABN's competition, but I do intend to aggressively defend myself against the outrageous and unconstitutional claims of this lawsuit.

FURTHER DEPONENT TESTIFIES NOT.

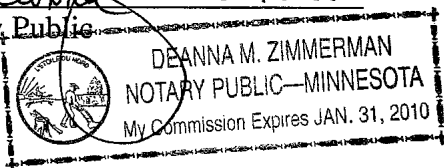
Signed and sealed this 28th day of December, 2007

Bob Pickle  
Bob Pickle

Subscribed and sworn to me  
this 28th day of December, 2007.

Deanna M. Zimmerman

Notary Public



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____ )	
Three Angels Broadcasting Network, Inc., )	
an Illinois non-profit corporation, and )	
Danny Lee Shelton, individually, )	Case No.: 07-40098-FDS
)	
) Plaintiffs, )	
v. )	
)	
Gailon Arthur Joy and Robert Pickle, )	
)	
) Defendants. )	
_____ )	

**AFFIDAVIT OF ROBERT PICKLE**

NOW COMES Robert Pickle of Halstad Township, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury:

1. The Plaintiffs served their responses to my Requests to Produce on January 9, 2008.
2. On February 6 or 7, 2008, Plaintiff Shelton filed a motion to quash my third-party subpoena *duces tecum* in U.S. District Court in the District of Minnesota. He simultaneously filed a motion to stay the enforcement of the subpoena until the Motion for a Protective Order could be heard in Massachusetts. I was unaware of these motions until February 11, and did not file my opposition to them until February 25, 2008.
3. In the status conference of December 14, 2007, the Honorable Judge Saylor explicitly stated that there would be no stay of discovery pending a hearing on a motion for a protective order.

---

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
Three Angels Broadcasting Network, Inc.,	)	
an Illinois non-profit corporation, and	)	
Danny Lee Shelton, individually,	)	Case No.: 07-40098-FDS
	)	
Plaintiffs,	)	
v.	)	
	)	
Gailon Arthur Joy and Robert Pickle,	)	
	)	
Defendants.	)	
_____	)	

---

**ORDER GOVERNING IDENTIFICATION AND DISCLOSURE OF PRIVILEGED  
AND/OR CONFIDENTIAL DOCUMENTS**

---

**1. PURPOSES, PRINCIPLES, AND LIMITATIONS**

Disclosure and discovery activity in this action is likely to involve production of confidential or privileged documents for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. The Court has a substantial interest in regulating pre-trial discovery to facilitate the search for truth, to promote justice, and to protect the legitimate privacy interests of the litigants and third parties. *Hickman v. Taylor*, 329 U.S. 495, 507 (1947); *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34-35 (1984). The Court's interest in truth and justice is best served by allowing liberal discovery of information in the possession of opposing parties or in the control of third parties that may be calculated to lead to admissible evidence. Privacy and privilege concerns must only be exercised upon a showing of good cause pursuant to Fed. R. Civ. P. 26(c). Since "the trial court is in the best position to weigh fairly the competing needs and interests of parties affected by discovery" (*Seattle Times Co. v.*



*Rhinehart*, 467 U.S. 20, 36), accordingly, the Honorable Court enters the following Protective Order.

The Court's Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it affords extends only to the limited information or items that are entitled to treatment as confidential under applicable legal principles. This Protective Order creates no entitlement to file confidential information under seal; Local Rule 7.2 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

Further, the Court's Order does not inhibit the First Amendment right of the Defendants or other journalists, reporters, or citizens to summarize redacted, confidential, or privileged information, documents, or data entered into the court record (*In re Providence Journal Co., Inc.*, 293 F.3d 1 (1st Cir. 2002)), unless it is specifically sealed pursuant to Local Rule 7.2. This Court further invokes the principles in *Seattle Times v. Rhinehart* which in part permit "a protective order [that] is entered on a showing of good cause . . . , is limited to the context of pretrial civil discovery, and does not restrict the dissemination of the information if gained from other sources." 467 U.S. 20, 37.

## **2. DEFINITIONS**

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, including without limitation testimony, transcripts, or tangible things, regardless of the medium or manner generated, stored, or maintained, that are produced or generated in disclosures or responses to discovery requests.

2.3 "Confidential" Information or Items: information (regardless of how

generated, stored or maintained) or tangible things that qualify for protection under standards developed under Fed. R. Civ. P. 26(c).

2.4 “Privileged” Information or Items: information or tangible things that qualify for privilege according to standards developed under Fed. R. Civ. P. and precedent established within the First Circuit or the U.S. Supreme Court.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.7 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Privileged,” or that withholds information otherwise discoverable by claiming that it is “Privileged.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Privileged.”

2.9 Confidentiality Designation: the designating of Disclosure or Discovery material as “Confidential” or as “Privileged.”

2.10 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action, or a Party *pro se*.

2.11 House Counsel: attorneys who are employees of a Party.

2.12 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.13 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its Counsel to serve as an expert

witness or as a consultant in this action, and who is not a past or a current employee of the retaining Party, and who, at the time of retention, is not anticipated to become an employee of the retaining Party. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.14 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.), and their employees and subcontractors.

### **3. SCOPE**

The protections conferred by this Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies and redacted or protected excerpts.

### **4. DURATION**

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect for all documents (or portions thereof) designated “Confidential” or “Privileged” that are not entered into the court record, unless a court order otherwise directs.

### **5. DESIGNATING PROTECTED MATERIAL**

5.1 The Court Orders Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party must take care to designate for protection only those parts of material, documents, items, or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Party or non-party must promptly notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "PRIVILEGED" at the top of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party must instead clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "PRIVILEGED").

(b) transcript pages containing Protected Material, that the court reporter must affix to the top of each such page the legend "CONFIDENTIAL" or "PRIVILEGED" as instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony. When only a portion or portions of the material on a page qualifies for protection, the court reporter must instead clearly identify the protected portion(s) (e.g., by making appropriate

markings in the margins), and must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL” or “PRIVILEGED”), as instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony. All pages containing Protected Material must be separately bound by the court reporter.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “PRIVILEGED.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as “CONFIDENTIAL” or as “PRIVILEGED.”

(d) for discoverable information withheld because of a claim of privilege by the Producing Party, a privilege log shall be produced to the Requesting Party which, without revealing information itself privileged or protected, contains the number assigned to the individual document or item for which privilege is claimed, and, wherever applicable, the date of the document or item, the title of the document or item, the type of document or item (letter, memo, report, handwritten note, etc.), the identity and position of the author(s) or creator(s) of the document or item, the identity and position of the recipient(s) of the document or item, the identity and position of individuals who received copies of the document or item, the present location of the document or item, and the type of privilege claimed. If only portions of the document or item contain privileged information, the document or item shall be produced, and, if the Producing Party redacts the privileged information, a corresponding entry in a privilege log shall be made in the manner described above for each portion so redacted.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “Confidential” or “Privileged” does not,

standing alone, waive the Designating Party's right to secure protection under this Order for such material. If material is appropriately designated as "Confidential" or "Privileged" after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party's Confidentiality Designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a Confidentiality Designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party's Confidentiality Designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialog or written communication) with counsel for the Designating Party. In conferring, the challenging Party must specifically define and explain the basis for its belief that the Confidentiality Designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Judicial Intervention. A Party that elects to press a challenge to a Confidentiality Designation after considering the justification offered by the Designating Party may file and serve a motion under Local Rule 7.1 that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a

competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph, and that sets forth with specificity the justification for the Confidentiality Designation that was given by the Designating Party in the meet and confer dialog.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.

In the case of information withheld because of a claim of privilege, the Designating Party shall have the burden of persuasion that the information requested is subject to the privilege specified in the privilege log it produced, and that that privilege has not been waived or excluded. The challenging Party shall then have the burden of persuasion to the contrary, or that discovery should otherwise be ordered.

## **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation, unless otherwise ordered. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of Section 10 below (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "Confidential" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may

disclose any information or items designated “Confidential” only to:

(a) the Receiving Party’s Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed an “Agreement to Be Bound by Protective Order”;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation.

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed an “Agreement to Be Bound by Protective Order”;

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors (as defined in this Order) to whom disclosure is reasonably necessary for this litigation;

(f) the author of the document or the original source of the information;

(g) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed an “Agreement to Be Bound by Protective Order.”

7.3 Disclosure of “Privileged” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or items designated “Privileged” only to:

(a) the Receiving Party’s Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have agreed to be bound by this Protective Order;

(b) the Court and its personnel, when challenging the designation of “Privileged” for the information or item in question.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**



If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “Confidential” or “Privileged,” the Receiving Party must so notify the Designating Party in writing immediately (by fax, if possible), and in no event more than five court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Protective Order promptly to the party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material — and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute an “Acknowledgment and Agreement to Be Bound by Protective Order.”

**10. FINAL DISPOSITION**

Unless otherwise ordered or agreed to in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party that affirms that the Receiving Party has not retained any copies, abstracts, compilations, or other forms of reproducing or capturing any of the Protected Material, unless entered into evidence within the court record.

Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION) above.

**11. RIGHT TO FURTHER RELIEF**

Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

So Ordered this \_\_\_\_\_ day of March, 2008

By: \_\_\_\_\_  
Timothy S. Hillman  
United States Magistrate Judge

Respectfully submitted,

Dated: March 20, 2008

/s/ Robert Pickle, *pro se*

Robert Pickle, *pro se*

Halstad, MN 56548

Tel: (218) 456-2568

Fax: (206) 203-3751

### **AFFIDAVIT OF SERVICE**

Under penalty of perjury, I, Bob Pickle, hereby certify that this document, with accompanying affidavit and exhibits, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and by email to Gailon Arthur Joy on March 20, 2008.

Dated: March 20, 2008

/s/ Bob Pickle

---

---

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MASSACHUSETTS**

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No. 07-40098-FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**PLAINTIFFS' PROPOSED CONFIDENTIALITY ORDER**

---

NOW COME Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Shelton pursuant to the March 10, 2008 Order of the Honorable Magistrate Judge Timothy S. Hillman and Fed. R. Civ. P. 26(c) and submit the attached proposed Confidentiality Order to govern the discovery and production of documents, information and materials by any person or entity in relation to this case that any Party feels are confidential.

Dated: March 20, 2008

**FIERST, PUCCI & KANE, LLC**

/s/ J. Lizette Richards

John P. Pucci, Esq., BBO #407560

J. Lizette Richards, BBO #649413

64 Gothic Street

Northampton, MA 01060

Telephone: 413-584-8067

and

**SIEGEL, BRILL, GREUPNER,  
DUFFY & FOSTER, P.A.**

Gerald S. Duffy (MNReg. #24703)  
Wm Christopher Penwell (MNReg. #161847)  
Jerrie M. Hayes (MNReg. #282340)  
Kristin L. Kingsbury (MNReg. #346664)

100 Washington Avenue South  
Suite 1300  
Minneapolis, MN 55401  
(612) 337-6100  
(612) 339-6591 – Facsimile

**Attorneys for Plaintiffs Three Angels  
Broadcasting Network, Inc. and  
Danny Shelton**

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non-registered participants March 20, 2008.

Dated: March 20, 2008

/s/ J. Lizette Richards

\_\_\_\_\_  
J. Lizette Richards

---

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MASSACHUSETTS**

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No. 07-40098-FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**CONFIDENTIALITY ORDER**

---

THE ABOVE ENTITLED MATTER came on for hearing before the Honorable Magistrate Judge Timothy Hillman on Friday, March 7, 2008 upon Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Lee Shelton's Motion for Protective Order. Attorneys Jerrie M. Hayes and J. Lizette Richards appeared on behalf of Plaintiffs, Defendant Robert Pickle appeared (telephonically) *pro se*, and Defendant Gailon Joy appeared *pro se*.

Based upon the pleadings, the written and oral submissions of the parties, the proceedings before the Court, and the file and record in this matter, this Court hereby ORDERS that, pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Following Protections, Directives and Procedures shall govern the discovery and production of documents, information and materials by any person or entity in relation to this case:

### SCOPE

A. This Order shall apply to all documents, and to other information produced during discovery by any of the above-named parties, or their present or former agents, employees, or representatives (hereinafter individually “Party” and collectively, “Parties”), and by any third-party, or their present or former agents, employees, or representatives (hereinafter individually “Third Party” and collectively, “Third Parties”), whether produced voluntarily or by subpoena, as to which any Party asserts a claim of confidentiality (“Confidential Information”) or trade secret (“Trade Secret Information”).

B. The provisions of this Order extend to all designated Highly Confidential, Confidential, and Trade Secret Information, regardless of the manner in which it is produced or disclosed, including but not limited to responses to requests for production of documents and things, interrogatory answers, responses to requests for admissions, deposition transcripts, deposition exhibits, responses to subpoenas, and any other discovery materials produced by a party in response to or in connection with any discovery conducted in this litigation, and to any copies, notes, abstracts or summaries of the foregoing materials.

### DEFINITIONS

C. As used herein, the term “**document**” shall have the meaning provided in Rule 34 of the Federal Rules of Civil Procedure and D. Mass. L. R. 26.5 and shall encompass any and all writings of any kind, including without limitation, letters, memoranda, notes, transcripts, computer tapes, discs, printouts, cartridges, recordings, keypunch cards, e-mail messages and attachments and all similar materials, whether electrically, mechanically, or manually readable. The term “document” as used herein is to be given the broadest definition and interpretation.

D. As used herein, the term “**Highly Confidential Information**” shall consist of any 3ABN donation information, including but not limited to the donors’ names, addresses, phone numbers, social security numbers or any other specific or general information, including the date(s) of donation, the amount of donation, the means of donation, the donation designation, or the manner of the donation’s expenditure, that would enable the donor to be individually identified.

E. As used herein, the term “**Confidential Information**” shall consist of all non-public financial, accounting, auditing, banking and bookkeeping documents related to the administration and operation of Three Angels Broadcasting Network, Inc. and all non-public financial, accounting, auditing, banking and bookkeeping documents related to the personal finances of Plaintiff Danny Shelton that are of a highly sensitive nature and the disclosure of which would result in a clearly defined injury, undue burden or embarrassment to the producing or designating party.

F. As used herein, the term “**Confidential Information**” shall not consist of any information which at any time has been: (a) produced, disclosed or made available by a Party or Third Party to the public or otherwise available for public access; and/or (b) disclosed by a Party or Third Party in connection with any governmental public filing and which documents or information could not reasonably be assumed to be or have been intended to be kept confidential. Documents produced by a Party or Third Party to the Federal Communications Commission in connection with the sale, purchase or licensing of radio or television transmission facilities or operations or documents produced by a Party or Third Party to the Department of Justice in connection with any investigation or compliance matter are not documents disclosed in



connection with a governmental public filing or otherwise deemed to have been made available to the public.

G. As used herein, the term “**Trade Secret Information**” shall consist of all non-public, proprietary, sensitive business operations and administrative information, whether or not formally protected by copyright or trademark, concerning a commercial plan, process, mechanism, tool or compound, the disclosure of which would result in a clearly defined injury or competitive disadvantage to the producing or designating party.

### **DESIGNATION**

H. The Parties must initially designate documents or information as Confidential Information or Trade Secret Information prior to the actual production of the document or information by a Party and must do so by placing the notation “Confidential” or “Trade Secret” on every page of each document so designated. Confidential Information or Trade Secret Information so designated shall be treated as such by all non-producing parties to this action (collectively, the “Receiving Parties”) unless the Court shall rule otherwise.

I. The Designation of witness deposition testimony as Confidential Information or Trade Secret Information shall be accomplished by a statement to that effect during the deposition, or by a follow-up written designation, sent within twenty (20) days after receipt of the transcript of that deposition, identifying the specific portions of the deposition transcript and exhibits being designated as Confidential Information or Trade Secret Information by placing the notation “Confidential” or “Trade Secret” on every page of the deposition transcript so designated. Documents or deposition testimony not so designated are not subject to this Order.

J. If any Third Party produces any documents, information or materials as a result of a third party subpoena, the subpoenaing Party (the “Requesting Party”) shall notify all opposing Parties (the “Notified Parties”) immediately and prior to review of the documents, information or materials by the Requesting Party and prior to disclosure of the documents, information or materials to any co-parties (i.e. co-Plaintiffs or co-Defendants)(the “co-Parties”). Within three (3) days of receipt of the Third Party documents, information or materials, and prior to review or disclosure of the documents, the Requesting Party shall make the documents, information or materials available for inspection by the Notified Parties and for designation as Confidential Information or Trade Secret Information by the Notified Parties. Only after the Third Party documents, information or materials have been inspected and designated as “Confidential” or “Trade Secret” by the Notified Parties shall the Requesting Party review the documents, information or materials or disclose the documents, information or materials to co-Parties. If, after having been provided with notification and an opportunity to inspect and designate the Third Party documents, information or materials, the Notified Parties have not completed inspection and designation of the Third party documents, information or materials within thirty (30) days of the date of notice, the Third Party documents shall be deemed neither Confidential Information nor Trade Secret Information and shall be available for review and disclosure by the Requesting Party.

K. The inadvertent failure to designate materials produced as Confidential Information or Trade Secret Information may be corrected at any time by written notice, which designation shall operate prospectively pursuant to the terms of this Order.

**PRODUCTION, USE AND DISSEMINATION**

L. Without limit or exception, or until ordered otherwise by this Court, the production, disclosure or dissemination of Highly Confidential Information shall be prohibited.

M. All materials produced in connection with this litigation, including but not limited to all materials designated as “Confidential” or “Trade Secret” shall be used for the purposes of this lawsuit only and for no other purpose, including, without limitation, any business or commercial purpose.

N. Subject to the requirements set forth below, Confidential Information or Trade Secret Information, including any copies, notes, abstracts or summaries thereof, shall be disclosed to and reviewed by only (a) the Producing Parties, (b) the Receiving Parties, (c) the Notified Parties, (d) if the Producing or Receiving Party is represented by counsel in this litigation, then the counsel of record for the Receiving and Notified Parties in this litigation, including that counsel’s legal assistants, secretaries and other staff, as well as outside photocopying or graphics production vendors; (e) the officers, directors, or employees of the Producing Party; (f) if a showing has been made by the Producing, Receiving, or Notified Party of the proposed reviewing person’s knowledge of the Confidential Information or Trade Secret Information, then the authors, addressees, or recipients of the Confidential Information or Trade Secret Information who have been shown to have such knowledge; (g) the Court, court employees, court reporters transcribing testimony herein, and notarizing officers, (e) any person whom all the Parties agree, in advance in writing, may receive such designated information; and (f) expert witnesses, unless a Party objects, pursuant to paragraph O, *infra*.

O. Confidential or Trade Secret Information may be disclosed to expert witnesses provided the Party seeking such use provides the expert witness with a copy of this Order,

obtains from the expert witness a signed Certificate in the form annexed hereto as Exhibit A (“Certification”), and provides to all Parties a copy of the Certification at least ten (10) days prior to the day the Party intends to disclose the material to the expert witness. Such material may not be quoted, copied, or otherwise disclosed by the expert witness in any report or opinion, written or oral, that the expert prepares or gives in connection with this action except in accordance with this Order and the expert must be notified of this prohibition, in writing, at the time the material is disclosed to him or her. Any Party may object to and make a motion prohibiting disclosure of Confidential or Trade Secret Information to any expert and no disclosure shall be made unless the motion is resolved in favor of the Party who retained the expert.

P. Confidential or Trade Secret Information may be disclosed to deposition witnesses only if the witness is provided with a copy of this Order and only if the witness signs a Certificate in the form annexed hereto as Exhibit A (“Certification”). All Parties shall be provided a copy of the Certification at least ten (10) days prior to the day the Party intends to disclose the materials to the deposition witness. Such material may not be quoted, copied or otherwise disclosed by the deposition witness in any fashion. Any party may object to and make a motion prohibiting disclosure of Confidential or Trade Secret Information to any deposition witness and no disclosure shall be made unless the motion is resolved in favor of the Party who intends to depose the witness.

Q. In the event any Party wishes to use Confidential or Trade Secret Information at a deposition, all persons other than the deponent, court reporter, and other authorized persons as set forth in Paragraphs N through P shall be excused from the deposition during the time that the Confidential or Trade Secret Information are being disclosed or discussed. At the time of the deposition or within twenty (20) days after receipt of the deposition transcript, the producing

party may designate as Confidential or Trade Secret Information certain portions of the transcript which contain or relate to Confidential or Trade Secret Information, or that relate to matters which are deemed confidential. All portions of deposition transcripts shall be treated as Confidential or Trade Secret Information until twenty (20) days after receipt of the deposition transcript by the Producing party.

R. The originals of all Certifications shall be maintained by counsel for the Receiving Party until the final resolution of this litigation. Such Certification shall not be subject to discovery except upon agreement of all the Parties or further order of the Court after application upon notice and good cause shown.

S. No one who has access to Confidential or Trade Secret Information pursuant to this Order shall distribute, disclose, divulge, publish, or otherwise make available any Confidential Information or Trade Secret Information, copies thereof, or extracts or summaries therefrom, to any other person, except persons who are also authorized to view or have access to these materials pursuant to this Order, and except for the Court or employees thereof as necessary in the conduct of this particular litigation, unless such persons have first obtained leave of the Court or the written consent of the Producing and Designating Party to disclose such materials.

### **CHALLENGE**

T. The designation given by the Parties to documents, information and materials shall apply unless a Party disputing the designation obtains a court order disallowing the designation.

U. Should any Party object to the designation by the Producing or Designating Party of any particular material as Confidential or Trade Secret Information, such Party at any time may notify the Producing or Designating Party in writing that he or she objects to the designation, specifying with particularity the material he or she believes has been classified improperly and the basis for his or her contention that said document should not be designated as Confidential Information or Trade Secret Information. Upon receipt by the Producing or Designating Party of such written objection, the Parties or counsel for the Parties shall negotiate in good faith to resolve the dispute as to the designation.

V. If the Parties or their counsel are unable to agree upon the handling of the disputed material, counsel for the Receiving party may file with the Court a motion regarding the designation of such material as Confidential or Trade Secret Information. During the pendency of any such objection, dispute or motion, the material in question shall be handled in accordance with the terms of this Order.

W. In any proceeding initiated by a non-producing Party challenging the propriety of the designation of any material as Confidential or Trade Secret Information, the Producing or Designating party shall bear the burden of establishing the propriety of the designation.

X. Nothing contained in this Order shall affect the right, if any, of any Party or witness to make any other type of objection, claim, or other response to discovery requests, including, without limitation, interrogatories, requests for admissions, requests for production of documents or questions at a deposition. If, during the course of discovery, any Party shall find a document in its possession that requires confidentiality protections in addition to those set forth in this Order, such Party may object to production of the document, and should attempt to negotiate in good faith the appropriate level of protection with the other Parties.

**FILING**

Y. In every submission or filing with the Court, every document (including motions, memoranda, deposition transcripts, or other items) containing Confidential Information or Trade Information shall be filed with the Clerk under seal in an envelope or container on the face of which shall be stamped:

**CONFIDENTIAL**

This envelope contains documents which are filed under seal in this case by [name of party] and, by Order of this Court, dated \_\_\_\_, 2008, shall not be opened nor the contents displayed or revealed except as provided in that Order or by further order of the Court.

Z. Submissions filed under seal shall not be available for inspection except by the Court and authorized persons as set forth in Paragraphs N through P, nor shall any unauthorized person be present in the courtroom during motion hearings when any Confidential or Trade Secret Information is discussed or disclosed.

**SUBSEQUENT ACTIVITY**

AA. Within thirty (30) days after final termination of this action, including all appeals, any recipient of protected information under paragraphs N through P of this Order shall deliver all protected information, including all copies thereof and all documents incorporating or referring to such information, in whole or in part, to counsel for the Party that disclosed the protected information to the Receiving or Notified Party. The Parties shall not retain any copies or reproductions of any Confidential or Trade Secret Information produced in this case and, upon return of said documents, shall provide a signed, written statement confirming that all said documents have been returned and no copies thereof have been retained.

BB. Neither the final resolution or termination of this lawsuit, nor the termination of employment of any person who has access to any Confidential Information or Trade Secret Information under the terms of the Order, shall relieve such person from the obligation of abiding by this Order.

CC. If any person receiving documents covered by this Order (the "Receiver") is subpoenaed or served with a document demand in another action or proceeding, and such subpoena or document demand requests Confidential Information or Trade Secret Information that were designated as such by a party other than the Receiver, the Receiver shall give notice by hand, overnight delivery, or facsimile transmission within five (5) business days of receipt of such subpoena or document demand to such designating party at the following addresses:

**For 3ABN or Danny Shelton:**

Gerald S. Duffy or Jerrie M. Hayes  
Siegel, Brill, Greupner, Duffy & Foster  
1300 Washington Square  
100 Washington Ave. So.  
Minneapolis, MN 55401  
(612) 337-6100

AND John P. Pucci or J. Lizette Richards  
Fierst, Pucci & Kane  
64 Gothic Street  
Northampton, MA 01060  
(413) 584-8067

**For Gailon A. Joy**

P.O. Box 1425  
Sterling, MA 01564

**For Robert Pickle**

1354 County Highway 21  
Halstad, MN 56548

AS IT IS HEREBY ORDERED, SO SHALL IT HEREAFTER BE DONE.

Dated: \_\_\_\_\_, 2008

\_\_\_\_\_  
Hon. Judge of Federal District Court



EXHIBIT A

---

---

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MASSACHUSETTS**

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No. 07-40098-FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**CERTIFICATION OF CONFIDENTIALITY**

---

AND NOW, this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ I hereby certify that I have read the Confidentiality Order issued by the Court in this action on \_\_\_\_\_, 2008, that I have been provided with a copy of same, that I understand all of its terms and provisions, and that I agree to be bound by it in all respects.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Address

---

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____ )	
Three Angels Broadcasting Network, Inc., )	
an Illinois non-profit corporation, and )	
Danny Lee Shelton, individually, )	Case No.: 07-40098-FDS
)	
) Plaintiffs, )	
v. )	
)	
Gailon Arthur Joy and Robert Pickle, )	
)	
) Defendants. )	
_____ )	

---

**DEFENDANT JOY'S PROPOSED ORDER GOVERNING IDENTIFICATION AND DISCLOSURE OF PRIVILEGED AND/OR CONFIDENTIAL DOCUMENTS**

---

**1. PURPOSES, PRINCIPLES, AND LIMITATIONS**

Disclosure and discovery activity in this action is likely to involve production of confidential or privileged documents for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. The Court has a substantial interest in regulating pre-trial discovery to facilitate the search for truth, to promote justice, and to protect the legitimate privacy interests of the litigants and third parties. *Hickman v. Taylor*, 329 U.S. 495, 507 (1947); *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34-35 (1984). The Court's interest in truth and justice is best served by allowing liberal discovery of information in the possession of opposing parties or in the control of third parties that may be calculated to lead to admissible evidence. Privacy and privilege concerns must only be exercised upon a showing of good cause pursuant to Fed. R. Civ. P. Rule 26(c). Since "the trial court is in

the best position to weigh fairly the competing needs and interests of parties affected by discovery” (*Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36), accordingly, the Honorable Court enters the following Protective Order.

The Court’s Order does not confer blanket protections on all disclosures or responses to discovery, and the protection it affords extends only to the limited information or items that are entitled to treatment as confidential under applicable legal principles. This Protective Order creates no entitlement to file confidential information under seal; Local Rule 7.2 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

Further, the Court’s Order does not inhibit the First Amendment right of the Defendants or other journalists, reporters, or citizens to summarize redacted, confidential, or privileged information, documents, or data entered into the court record (*In re: Providence Journal Co., Inc.*, 293 F.3d 1 (1st Cir. 2002)), unless it is specifically sealed pursuant to Local Rule 7.2. This Court further invokes the principles in *Seattle Times v. Rhinehart* which in part permits “a protective order [that] is entered on a showing of good cause . . . , is limited to the context of pretrial civil discovery, and does not restrict the dissemination of the information if gained from other sources.” 467 U.S. 20, 37.

## 2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, including without limitation testimony, transcripts, or tangible things, regardless of the medium or manner generated, stored, or maintained, that are produced or generated in disclosures or responses to

discovery requests.

2.3 “Confidential” Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under Fed. R. Civ. P. 26(c).

2.4 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.5 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

2.6 “Privileged” Information or Items: information or tangible things that qualify for privilege according to standards developed under Fed. R. Civ. P. and precedent established within the First Circuit or the U.S. Supreme Court.

2.7 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Privileged.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Privileged.”

2.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 House Counsel: attorneys who are employees of a Party, or a Party *pro se*.

2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its Counsel to serve as an expert

witness or as a consultant in this action, and who is not a past or a current employee of the retaining Party, and who, at the time of retention, is not anticipated to become an employee of the retaining Party. This definition includes a professional jury or trial consultant retained in connection with this litigation.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.), and their employees and subcontractors.

### 3. SCOPE

The protections conferred by this Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as well as all copies and redacted or protected excerpts.

### 4. DURATION

Even after the termination of this litigation, the confidentiality obligations imposed by this Order shall remain in effect for documents not entered into the court record unless a court order otherwise directs.

### 5. DESIGNATING PROTECTED MATERIAL

5.1 The Court Orders Exercise of Restraint and Care in Designating Material for Protection. Each Party or non-party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards. A Designating Party must take care to designate for protection only those parts of material, documents, items, or written communications that qualify — so that other portions of the material, documents, items, or communications for which protection is not

warranted are not swept unjustifiably within the ambit of this Order.

Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to unnecessarily encumber or retard the case development process, or to impose unnecessary expenses and burdens on other parties), expose the Designating Party to sanctions.

If it comes to a Party's or a non-party's attention that information or items that it designated for protection do not qualify for protection at all, or do not qualify for the level of protection initially asserted, that Party or non-party must promptly notify all other parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (apart from transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" or "PRIVILEGED" at the top of each page that contains protected material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either "CONFIDENTIAL" or "PRIVILEGED").

(b) transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend "CONFIDENTIAL" or "PRIVILEGED" as instructed by the Party or non-party offering or

sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “PRIVILEGED.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as “Confidential” or as “Privileged.”

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “Confidential” or “Privileged” does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. If material is appropriately designated as “Confidential” or “Privileged” after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

## 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s confidentiality designation must do so in good faith and must begin the process by conferring directly (in voice to voice dialogue or written communication) with

counsel for the Designating Party. In conferring, the challenging Party must specifically define and explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first.

6.3 Judicial Intervention. A Party that elects to press a challenge to a confidentiality designation after considering the justification offered by the Designating Party may file and serve a motion under Local Rule 7.1 that identifies the challenged material and sets forth in detail the basis for the challenge. Each such motion must be accompanied by a competent declaration that affirms that the movant has complied with the meet and confer requirements imposed in the preceding paragraph, and that sets forth with specificity the justification for the confidentiality designation that was given by the Designating Party in the meet and confer dialogue.

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Until the court rules on the challenge, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation.

## **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation, unless otherwise ordered. Such Protected Material may be disclosed only to the categories of persons and under the conditions



described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 11 below (FINAL DISPOSITION). Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “Confidential” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated Confidential only to:

(a) the Receiving Party’s Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed an “Agreement to Be Bound by Protective Order”;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this litigation.

(c) experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed an “Agreement to Be Bound by Protective Order”;

(d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed an “Agreement to Be Bound by Protective Order.”

Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of “Privileged” Information or Items. A Receiving Party may disclose any information or item designated “Privileged” only to the Receiving Party’s Outside Counsel in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have agreed to be bound by this Protective Order.

**8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION**

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in this action as “Confidential” or “Privileged,” the Receiving Party must so notify the Designating Party in writing immediately (by fax, if possible), and in no event more than five court days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order.

The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must deliver a copy of this Protective Order promptly to the Party in the other action that caused the subpoena or order to issue.

The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expenses of seeking protection in that court of its confidential material — and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

**9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute an "Acknowledgment and Agreement to Be Bound."

**10. FINAL DISPOSITION**

Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party that affirms that the Receiving Party has not retained any copies, abstracts, compilations, or other forms of reproducing or capturing any of the Protected Material, unless entered into evidence within the court record.

Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4

(DURATION) above.

**11. MISCELLANEOUS**

11.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

So Ordered this \_\_\_\_\_ day of March, 2008

By: \_\_\_\_\_  
Timothy S. Hillman  
United States Magistrate Judge

**AFFIDAVIT OF SERVICE**

Under penalty of perjury, I, Gailon Arthur Joy, do certify that I am over the age of 18 years of age and on this day I have caused service of this document to the Court and have served by first class mail, postage prepaid, a copy of this document and this Certificate of Service to Plaintiffs' counsel, Jerrie Hayes, at Siegel, Brill, Greupner, Duffy & Foster, and by email to Bob Pickle and a courtesy copy by e-mail to Jerrie Hayes, Counsel for the Plaintiffs.



---

Gailon Arthur Joy, Pro Se

Dated: March 20, 2008

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____ )	
Three Angels Broadcasting Network, Inc., )	
an Illinois non-profit corporation, and )	
Danny Lee Shelton, individually, )	Case No.: 07-40098-FDS
)	
) Plaintiffs, )	
v. )	
)	
Gailon Arthur Joy and Robert Pickle, )	
)	
) Defendants. )	
_____ )	

**AFFIDAVIT OF ROBERT PICKLE**

NOW COMES Robert Pickle of Halstad Township, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury:

1. Three Angels Broadcasting Network, Inc. is a non-profit, 501(c)3 corporation which routinely solicits donations from the public. 3ABN has identified itself as a supporting ministry of the Seventh-day Adventist Church.

2. Relevant posts by “Sister” from April 16 to about July 2, 2006, containing a multiplicity of allegations in threads entitled “An Unauthorized History of 3ABN” are attached hereto as **Exhibits A–J**.

3. The 2005 essay by Jorgen VanBraun entitled “The Televangelist,” also containing a multiplicity of allegations, is attached hereto as **Exhibit K**.

4. Sister’s quite pointed thread, “Who Is It?,” is attached hereto as **Exhibit L**.

5. A notarized copy of Alyssa Moore’s signed statement is attached hereto as

**Exhibit M.** By August 2006 this statement had become the topic of public conversation on the internet. This was in part due to Danny Shelton's globally televised broadcast of August 10, 2006. In that broadcast the participants claimed that they and Danny Shelton were being lied about and were being persecuted, but they weren't going to defend themselves. Amid that backdrop Danny Shelton allowed Shelley Quinn to talk about the daughter of the evil Herodias who asked for the head of John the Baptist in such a way that those familiar with Ms. Moore's statement thought that Mrs. Quinn was really talking about Ms. Moore, and was calling her a liar.

6. A release by Gailon Arthur Joy about the child molestation allegations against Tommy Shelton and how Danny Shelton covered up those allegations, which incorporated a statement by myself, is attached hereto as **Exhibit N.**

7. A statement by Pastor Glenn Dryden which announced new allegations in Virginia against Tommy Shelton, is attached hereto as **Exhibit O.**

8. Before the end of December 2006, Danny Shelton was threatening suit over the allegations against Tommy that were surfacing in Virginia.

9. Attorney Riva's letter of January 5, 2007, written on behalf of 3ABN and Tommy Shelton and threatening suit against each member of the board of trustees of the Community Church of God in Dunn Loring, Virginia, is attached hereto as **Exhibit P.**

10. Attorney Gerald Duffy's letter of January 30, 2007, written on behalf of 3ABN and Danny Shelton, and only citing as defamatory issues pertaining to the child molestation allegations against Tommy Shelton, is attached hereto as **Exhibit Q.**

11. Tommy Shelton's open letter to the Community Church of God of around early February 2007 is attached hereto as **Exhibit R.**

12. I served requests to produce documents and things on Three Angels Broadcasting Network, Inc. ("3ABN") on November 29, 2007, and on Danny Shelton on December 7, 2007.

These are attached hereto as **Exhibits S–T**.

13. Correspondence leading up to a discovery conference on January 10, 2008, is attached hereto as **Exhibits U–V**.

14. I was not served 3ABN and Danny Shelton's responses to my Requests to Produce until January 9, 2008, making 3ABN's responses 11 days late, and Danny Shelton's 3 days late. Their responses are attached hereto as **Exhibits W–X**.

15. Discovery conferences were held by phone with Plaintiffs' counsel Jerrie Hayes, Gailon Arthur Joy, and myself in attendance on January 10 and 22, 2008. The former lasted four hours and twenty minutes, and much of the time was spent discussing the relevancy of the various requests. Jerrie Hayes indicated in the conference of January 10 that she did not know about D & L Publishing and DLS Publishing, and I told her that if she did not know about these publishing companies of Danny Shelton, her clients had done her a great disservice.

16. Correspondence with Attorney Jerrie Hayes regarding one small part of the discovery dispute arising from my Requests to Produce is attached hereto as **Exhibit Y**, and demonstrates the great difficulty the Defendants have had negotiating even small portions of the disputed issues.

17. The memorandum filed by Attorney Jerrie Hayes with Plaintiff Shelton's motion to quash my subpoena in U.S. District Court in the District of Minnesota is attached hereto as **Exhibit Z**. My memorandum and affidavit in opposition to that motion, with accompanying exhibits, are attached hereto as **Exhibits AA–CC**. Danny Shelton's affidavit filed with his motion, in which he claimed that D & L Publishing was a sole proprietorship, is attached hereto as **Exhibit DD**.

18. Plaintiffs' counsel never scheduled a hearing for Plaintiffs' December 18, 2007, Motion for a Protective Order, so Gailon Arthur Joy requested that one be scheduled, and one



was promptly scheduled for March 7, 2008. During that hearing Attorney Hayes stated that there was no IRS criminal investigation going on, even though her own proposed protective order filed on December 18, 2007, referred to an investigation by the Department of Justice in ¶ 4.

19. I attempted to arrange a time with Attorney Hayes to inspect and copy the documents responsive to my Requests to Produce on April 9 and 18, 2008, and she responded on April 21, 2008. This correspondence is attached hereto as **Exhibit EE**. Attorney Hayes has never gotten back to me to arrange a time.

20. District of Minnesota Magistrate Judge Boylan's order ordering the production of third-party bank records is attached hereto as **Exhibit FF**.

21. Gregory Scott Thompson is the son of 3ABN Board chairman Walt Thompson, and he has posted on BlackSDA.com using the user name of "fallible humanbeing." He stated in a post on March 9, 2008, that the IRS investigator investigating 3ABN and Danny Shelton had recently had a baby. His post is attached hereto as **Exhibit GG**.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 15th day of May, 2008.

/s/ Bob Pickle

Bob Pickle  
Halstad, MN 56548  
Tel: (218) 456-2568

Subscribed and sworn to me  
this 15th day of May, 2008.

/s/ Deanna M. Zimmerman  
Notary Public—Minnesota

My Commission Expires Jan. 31, 2010

---

---

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MASSACHUSETTES**

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No. 07-40098-FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**AFFIDAVIT OF JERRIE M. HAYES**

---

STATE OF MINNESOTA    )  
                                  )        ss  
COUNTY OF HENNEPIN    )

Jerrie M. Hayes, being first duly sworn upon oath, deposes and states as follows:

1. I am an attorney licensed in the State of Minnesota and admitted *pro hac vice* to the United States District Court, District of Massachusetts, where I am one of the attorneys representing Plaintiffs Three Angels Broadcasting Network, Inc. (“3ABN”) and Danny Shelton (“Shelton”) in an action in the District of Massachusetts captioned *Three Angels Broadcasting Network, Inc. and Danny Lee Shelton v. Gailon Arthur Joy and Robert Pickle* (No. 07-40098-FDS (D. Mass.)). I make this affidavit based upon my knowledge and information.

2. On August 3, 2008, Plaintiffs served their Rule 26(a)(1) Initial Disclosures, identifying by category documents related to allegations in the Complaint and denials and defenses raised by Defendants in their Answer.

3. On December 4, 2007, Plaintiff 3ABN received written Requests for Production of Documents (“RPDs”) from Defendant Pickle. On December 12, 2007, Plaintiff Danny Shelton received written Requests for Production of Documents from Defendant Pickle. Only one certificate of service related thereto was notarized and the dates of service listed on the Requests were inconsistent with the typical delivery of mail between Halstad Township, MN and Minneapolis, MN. On December 20, 2007, I emailed Defendant Pickle concerning service of the Requests and indicated that Plaintiffs planned to serve their responses on January 4, 2008 and January 12, 2008, respectively. A true and correct copy of my email is attached hereto as **Exhibit A**. No objection was received from Mr. Pickle to Plaintiffs’ proposed service dates.

4. Also on December 20, 2007 I emailed Defendant Pickle concerning an extension of time to respond to Defendants Motion to Compel. A true and correct copy of my original email and Mr. Pickle’s response is attached hereto as **Exhibits B and C**.

5. Having received no objection to my email concerning the proposed service dates for the RPD’s and having received an extension of time to respond on the motion to compel, I left for my Christmas vacation with the understanding that Defendants had agreed to accept service of 3ABN’s responses on January 4, 2008, and Shelton’s responses on January 12, 2008.

6. Both Plaintiffs found all the Requests to Produce served upon them to be objectionable, either on the basis that they sought confidential, proprietary or trade secret

business and personal information, and/or on the basis that they sought information not relevant to the claims and defenses in the action, nor reasonably calculated to lead to the discovery of admissible evidence. In Plaintiffs' view, Defendants are attempting to use the discovery process as a fishing expedition to try and find any information—whether related to the actual claims or defenses at issue in the case or not—with which to disparage Plaintiffs and besmirch their reputation. Defendants have publicly acknowledged that their goal is nothing less than a “full scale and public effort to indict Danny [Shelton] in the public eye and to put pressure on 3ABN.” Defendants have further admitted that their strategy for carrying out this mission is to reach beyond the claims and defenses at dispute in the case to obtain information wholly irrelevant to the allegations of Plaintiffs' Complaint or the defenses raised by Pickle and Joy thereto, and to prejudice and poison the jury with inflammatory “evidence” unrelated to the case. I eventually communicated directly to Pickle and Joy that Defendants' consistent history of posting everything they learn about 3ABN and Danny Shelton on the internet, along with blatant mischaracterizations, rampant speculation and wild innuendo, made Plaintiffs' extremely concerned about Defendants' obtaining the identity, donation and contact information of 3ABN's donors.

7. I prepared written responses to the 3ABN and Shelton Requests, with all relevance and other objections thereto, and left the responses, along with instructions with my office that they be served January 4, 2008 and January 12, 2008, respectively, during my Holiday absence.

8. On January 4, 2007, Pickle sent correspondence to attorney J. Lizette Richards, Massachusetts local counsel for Plaintiffs, which Ms. Richards forwarded to me, seeking

23. On March 28, 2008, Plaintiffs produced approximately 12,575 pages of documents that they had identified in their Rule 26(a)(1) Disclosures that they did not deem confidential or privileged. A true and correct copy of the letter serving these documents is attached hereto as **Exhibit W**.

24. On April 17, 2008 Magistrate Judge Hillman issued a Protective Order governing the production of confidential, proprietary and trade secret information in the case, yet Defendants still did not serve revised RPDs and there were no discussions among the parties concerning the Plaintiffs' outstanding scope and relevancy objections.

25. On April 25, 2008, Plaintiffs produced approximately 2500 additional pages of discovery information related to Defendants alleged internet activities. A true and correct copy of the letter serving these documents is attached hereto as **Exhibit X**.

26. On May 7, 2008, a status conference in the case was held before Judge Saylor. When Defendants raised the issue of Plaintiffs' Responses to Requests for Production, I informed the Court that Plaintiffs had objected to the majority of the Requests on relevance grounds and that, having reached neither agreement or impasse on the Plaintiffs' relevancy objections, and not having discussed the matter for over three months, the parties' good faith effort to resolve that dispute had not completed. I also informed the Court that, while good faith dialogue concerning the relevance objections would be pursued by Plaintiffs, they were not optimistic about resolving the dispute. Rather, I explained, Plaintiffs anticipated the filing of a Motion for a Protective Order to limit the scope of discovery, though Plaintiffs did not believe the filing of such a motion to be so certain as to require a change in the Court's scheduling order. Defendants, who were both in attendance, made no objection to these characterizations of the situation and

did not claim they had satisfied the good faith requirements of the discovery rules concerning the relevance objections.

27. In the days immediately following the status conference, I worked to prepare a document production in conformance with Magistrate Hillman's Protective Order that would provide information and materials to Defendants that Plaintiffs agreed were relevant but confidential.

28. On May 14, 2008 Plaintiffs produced, in accordance with the protocol of Magistrate Judge Hillman's Confidentiality and Protective Order, approximately 200 pages of documents identified in Plaintiffs 26(a)(1) Disclosures which contained confidential, proprietary or trade secret information. A true and correct copy of the letter serving these additional documents is attached hereto as **Exhibit Y**.

29. Since receipt of the Confidentiality Order, Plaintiffs have been working diligently to assemble relevant requested documents, to determine whether the documents contain sensitive information and to appropriately redact sensitive data while leaving enough information to satisfy any legitimate need Defendants might have for it—all while conducting the myriad of other pending discovery activities, including reviewing and appropriately challenging third party subpoenas Pickle has caused to issue in Minnesota, Michigan, California and Virginia. In light of the broad, rambling language of the requests (and the lengthy, fact-assumptive, and sometimes indecipherable definitions incorporated therein), none of which had been narrowed or clarified by Defendants' service of Amended Requests for Production, discerning and preparing the relevant, non-privileged documents has been an onerous and time-consuming process.

30. Just a week after the status conference before Judge Saylor, without any further dialogue concerning Plaintiffs' relevancy objections, Defendant Pickle served the instant Motion to Compel.

31. Following receipt of the instant Motion, I provided Pickle with a proposed schedule for production of relevant, responsive documents pursuant to the Confidentiality and Protective Order. Pickle has not yet responded to the proposal, but the production contemplated therein may moot some or all of the present motion. A true and correct copy of the proposal letter is attached hereto as **Exhibit Z**.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: May 29, 2008

/s/ Jerrie M. Hayes

---

Jerrie M. Hayes, Esq.

Subscribed and sworn to me  
this 29<sup>th</sup> day of May, 2008.

/s/ Gabrielle K. Helmbrecht

---

Notary Public

My Commission Expires Jan 31, 2010





4. Plaintiffs' counsel promised that confidential Rule 26(a)(1) materials would be produced by May 4, 2008, and after a bit of badgering, they were belatedly served on May 14 and received on May 16. These materials consisted of 207 pages, of which at least 74 pages were easily downloadable from the internet, 12 pages were made a part of public record in 2002 by 3ABN, and 134 pages were already in the Defendants' possession. The communication promising to serve the materials by May 4 is attached hereto as **Exhibit A**.

5. I served extensive Requests to Produce on the Plaintiffs on November 29 and December 7, 2007, and have yet to receive a single document responsive to these requests. The Plaintiffs took the position that every requested document was irrelevant, confidential, or privileged. The confidentiality order issued by this Court on April 17, 2008, resolved, to a great extent, the issues of confidentiality and privilege.

6. On April 9 and 18, 2008, I wrote Ms. Hayes seeking to schedule the inspection and copying of responsive documents to my Requests to Produce, and she declined in her reply of April 21 to give a date when that could be done. *See Exhibit A*.

7. In the status conference of May 7, 2008, Judge Saylor extended the deadline for service of interrogatories, requests to produce, and requests to admit to June 11, 2008. I expressed my concern in that conference that we needed to first receive responsive documents before being able to intelligently request additional documents.

8. Also in that same status conference, Ms. Hayes made it clear that the Plaintiffs now intended to challenge scope and relevancy of discovery. Further discovery would have to be subject to an agreement or there would be a battle brewing over these issues.

9. Judge Saylor told the parties that they could file motions seeking relief.

10. On May 9, 2008, I wrote Ms. Hayes asking for clarification as to what requested documents were considered relevant by the Plaintiffs, so that I could then more narrowly tailor a

motion to compel. She replied that she could provide such in writing by May 20, which seemed too close to June 11 to be acceptable. These communications are attached hereto as **Exhibit B**.

11. I filed a motion to compel on May 15, 2008, which is still pending. The Plaintiffs served upon me a proposed production schedule on May 27, two days before they filed their opposition to my motion on May 29. The production schedule is attached hereto as **Exhibit C**. The proposed production schedule leaves entirely open the question of relevancy, and gives no hint as to what the Plaintiffs will eventually, voluntarily produce. What that schedule proposes is that no documents would be produced until June 13, 2008, two days after the looming deadline is past, and does not allow the Defendants to fully know what the Plaintiffs believe to be relevant and privileged until July 11, 2008.

12. The Plaintiffs therefore have opted for a long, drawn-out battle over discovery in a deliberate attempt to handicap the Defendants' defense, and it has become totally impossible for the Defendants to complete their requests for discovery from the Plaintiffs by the present deadline.

13. On June 6, 2008, Plaintiffs' counsel informed me by phone that the Plaintiffs intended to further obstruct Defendants' third-party discovery efforts over the issue of scope and relevancy by interpleading motions.

14. The Defendants conferred with Plaintiffs' counsel on June 4 and 5, 2008, and Plaintiffs' counsel agreed that a 90-day extension of all discovery deadlines was both reasonable and acceptable. The plan was that the parties would stipulate to such an extension, in exchange for Defendant Pickle's agreement to table his Motion to Compel.

15. Plaintiffs' counsel offering to draft the stipulation, but the Defendants have not yet received that draft, though it was promised on June 5 that it would be faxed on June 6.

16. Given the Plaintiffs' perpetual effort to obstruct discovery as demonstrated by Ms.

Hayes' Affidavit in response to the pending Motion to Compel, which states in part, "Both Plaintiffs found ALL the Requests to Produce served upon them to be objectionable" (emphasis added); given that such obstructionism is a *modus operandi* of the Plaintiffs as demonstrated in such controversies as a) the complaint filed with the California Department of Fair Employment and Housing and the EEOC, b) *Shelton v. Shelton*, and c) the action brought by 3ABN against the Department of Revenue of the State of Illinois, which found 3ABN to be a Shelton family business largely because of 3ABN's failure to produce documents, the Defendants recognize that it will take time and resources to compel discovery from these very reluctant Plaintiffs.

17. The Defendants felt compelled to file an appropriate Motion to Extend Discovery to give adequate time to complete the various controversies, and to preserve the Defendants' right to an adequately discovered and documented defense of the allegations at bar.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 10th day of June, 2008.

/s/ Bob Pickle

Bob Pickle

Subscribed and sworn to me  
this 10th day of June, 2008.

/s/ Deanna M. Zimmerman

Notary Public—Minnesota

My Commission Expires Jan. 31, 2010



10. A true and correct copy of Plaintiff Danny Shelton's Notice of Motions and Motions by Plaintiff Danny Shelton to Quash Subpoena *Duces Tecum* or, in the Alternative, for Protective Order, and to Stay and Remit Enforcement of Subpoena *Duces Tecum* or, in the Alternative, to Appoint a Special Master, filed on February 6, 2008 (to which amendments were filed on February 12, 2008), is attached hereto as **Exhibit 9**.

11. A true and correct copy of the Order issued by the Honorable Magistrate Judge Arthur Boylan of the District of Minnesota, Court File 08-mc-00007, relating to the above-referenced motion is attached hereto as **Exhibit 10**.

12. Defendant Robert Pickle filed a Motion to Amend Order on or around June 2, 2008. A true and correct copy of Defendant Robert Pickle's Memorandum in Support of His Motion to Amend Order is attached hereto as **Exhibit 11**.

13. Plaintiff Danny Shelton filed a Memorandum in Opposition to Defendant's Motion to Amend Order on June 18, 2008, a true and correct copy of which is attached hereto as **Exhibit 12**.

14. A true and correct copy of non-party Remnant Publications's Motion Responding to Defendant Robert Pickle's Motion to Compel Production of Documents, dated May 19, 2008, is attached hereto as **Exhibit 13**.

15. Non-party Gray Hunter Stenn, LLP filed a Motion to Quash subpoena on or around June 16, 2008. A true and correct copy of Gray Hunter Stenn, LLP's Memorandum of Law in Support of Motion to Quash, Modify or

Stay Subpoena Duces Tecum with a supporting Affidavit of M. Gregory Simpson, counsel for Plaintiffs (exhibits omitted), is attached hereto as **Exhibit 14**.

16. A true and correct copy of the Order to Show Cause issued on June 18, 2008 by the Honorable Judge J. Phil Gilbert of the Southern District of Illinois, Court File 08-MC-16, attached hereto as **Exhibit 15**.

17. A true and correct copy the Order issued by the Honorable Judge Ellen S. Carmody of the Western District Court of Michigan, Court File 1:-08-mc-0003 is attached hereto as **Exhibit 16**.

18. Plaintiffs will seek a Motion to Reconsider Order in the Western District Court of Michigan, Court File No. Court File 1:-08-mc-0003, following the present Motion, and intend to send a copy of this Motion and its supporting documents to counsel for Remnant Publications.

19. Counsel for Plaintiffs believe that documents produced by Kathi Bottomley and Glenn Dryden were already delivered to Defendant(s), although Plaintiffs have not seen these productions and do not know whether they contained Confidential Information.

20. Attached as **Exhibits 17 and 18**, are true and correct copies of Plaintiffs' responses to Defendants' Requests for Production of Documents and Things to Plaintiff Three Angels Broadcasting Network, Inc. (First Set) and Danny Lee Shelton (First Set), respectively.

21. Attached as **Exhibit 19**, is a true and correct copy of Plaintiffs' exhaustive summarization of each Document Request and Subpoena that Plaintiffs

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting )  
Network, Inc., an Illinois )  
non-profit corporation, and )  
Danny Lee Shelton, )  
Plaintiffs, )

vs. )

CA No. 07-40098

Gailon Arthur Joy and )  
Robert Pickle, )  
Defendants. )

BEFORE: The Honorable F. Dennis Saylor, IV

Status Conference

United States District Court  
Courtroom No. 2  
595 Main Street  
Worcester, Massachusetts  
May 7, 2008

Marianne Kusa-Ryll, RDR, CRR  
Official Court Reporter  
United States District Court  
595 Main Street, Room 514A  
Worcester, MA 01608-2093  
508-929-3399  
Mechanical Steno - Transcript by Computer

1 TELEPHONIC APPEARANCES:

2 Siegel, Brill, Greupner, Duffy & Foster, P.A.  
3 by Jerrie M. Hayes, Esquire  
4 100 Washington Avenue South  
5 Suite 1300  
6 Minneapolis, Minnesota 55401  
7 for the Plaintiffs

8 Fierst, Pucci & Kane, LLP  
9 by J. Lizette Richards, Esquire  
10 64 Gothic Street  
11 Suite 4  
12 Northampton, Massachusetts 01060  
13 for the Plaintiffs

14 Gailon Arthur Joy  
15 P.O. Box 1425  
16 Sterling, Massachusetts  
17 Pro se

18 Robert Pickle  
19 1354 County Highway 21  
20 Halstad, Minnesota 56548  
21 Pro se

22

23

24

25



1 Pickle go -- are grossly overbroad, almost indecipherably  
2 overbroad, and that they go to issues not relevant to the very  
3 narrow claims of financial and administrative impropriety that  
4 were -- that are at issue in the underlying defamation case.

5           So we believe that further discussion and actual  
6 negotiations concerning that dispute will probably take place  
7 over the next week or two. Given the difficulty of  
8 negotiations in this case with the pro se litigants on other  
9 issues, I don't foresee that those disputes will be resolved;  
10 however, much to my apparent chagrin, I remain Pollyanna, and  
11 will give it our best try, but at least from our perspective, I  
12 want to be candid with the Court that what we anticipate are  
13 two discovery motions probably coming up within the next month:  
14 One, a motion for a protective order not relating to  
15 confidentiality, but instead relating to the scope of discovery  
16 and what we believe are irrelevant and ancillary and  
17 undiscoverable issues; and then a second motion, a motion to  
18 compel for information identifying the person or persons who  
19 provided Mr. Pickle and/or Mr. Joy with the statement that they  
20 now allege they did not make up on their own accord, but simply  
21 republished. They were defamatory, now claiming in defense  
22 that those were statements made by others. They have to date  
23 refused to disclose those persons. We have engaged in some  
24 negotiation concerning that. I don't believe we've reached an  
25 absolute impasse. I think there's still some room to talk on

1 those issues, but if it does turn out that the quote/unquote  
2 confidential informant defense that Mr. Pickle and Mr. Joy are  
3 continuing to put forth does not get resolved then we would  
4 likely be making a motion to compel on that ground.

5 At this point, the discovery schedule from plaintiffs'  
6 perspective is still very workable. We don't have expert  
7 disclosures until following the July 30th fact discovery  
8 deadline, and I don't foresee making requests at least at this  
9 time for just a blanket extension of the discovery schedule or  
10 the case schedule. What I would probably be doing on behalf of  
11 the plaintiffs is submitting, and at the same time resubmit one  
12 or both of these motions, a request for an extension of the  
13 case calendar to go only as long as it takes to get a decision  
14 from the Court on those pending motions.

15 I don't want to put the Court in a position of giving  
16 us a five-month extension when it's something that's going to  
17 be resolved in six to eight weeks. On the other hand, I want  
18 to make sure to have enough time for the Court to take a look  
19 at those motions and give us a decision. So, from a discovery  
20 perspective, that's sort of how I see things going, and the  
21 schedule seems fine with me.

22 THE COURT: Okay. All right. Mr. Joy, do you have  
23 anything you wish to say in that regard?

24 MR. JOY: Yes, your Honor. Let me point out at the  
25 discussion that we had on December 14th, the Court had made it

1 very clear that they did not want the confidentiality issue to  
2 end up in stopping this process; and, in fact, at every turn we  
3 found that as we proceeded, particularly with third-party  
4 discoveries, we ran into this confidentiality issue that each  
5 of the respondents maintained came from the people defending  
6 Three ABM, or representing Three ABM. So it effectively did  
7 indeed bring the discovery process to a halt until we can work  
8 out this confidentiality agreement.

9           The second thing I would like to point out, your  
10 Honor, is that you had made it very clear to these people that  
11 they needed to come up with a narrowly-defined confidentiality  
12 agreement; and, in fact, we got this ridiculously overbroad  
13 agreement that practically put the entire case under seal  
14 again. And, of course, the issue finally went forward to the  
15 magistrate, at which point both sides produced proposals. The  
16 magistrate came up with what I felt was a reasonable  
17 confidentiality agreement. He didn't cover some things, but on  
18 the other hand, it certainly -- from our standpoint, it's  
19 certainly workable.

20           The other thing I would like to point out is the issue  
21 of obstruction in this case is becoming a serious one. These  
22 people repeatedly claim that we're the ones that are  
23 uncooperative. Your Honor, we have produced everything under  
24 the sun to them. We have produced thousands of e-mails. We  
25 have produced about everything you could possibly ask for, and

1 if it's -- if the answers to their questions are not in those  
2 things then they're probably not readily available.

3 THE COURT: Well --

4 MR. JOY: The amazing --

5 THE COURT: -- I don't mean to cut you off, but two  
6 points. In terms of what has happened in terms of the  
7 protective order, that issue has been resolved, as I understand  
8 it. Again, I'm sorry it took so long, but as the -- I think  
9 it's Vince Gill has a song that goes, "there ain't no future in  
10 the past." Let's not rehash things that have already been  
11 discussed.

12 On a going-forward basis, I can't decide anything in  
13 the abstract. I'm not going to try to work through any issues.  
14 It's both parties, all three parties, have responsibility  
15 to -- to confer and to see if you can either work it out or  
16 narrow the field of disputes; and things that can't be resolved  
17 are going to be brought to the attention of the Court, and you  
18 know, beyond that, there's not really much I can say.

19 MR. JOY: Well, your Honor, the -- the representation  
20 has been made that we have been unwilling to work with them on  
21 those conference calls. One date, and frankly, I arranged the  
22 conference call from my own phone lines, so I assume they have  
23 documentation of it. We took several hours to go over these  
24 issues related to relevancy and privilege and all the other  
25 things that they allege, and we specifically answered case

1 after case after case why they were relevant, why they were not  
2 privileged, and on and on and on. The problem is that these  
3 people filed a lawsuit, your Honor. They allege specifics in  
4 that lawsuit; and when we go to attempt to produce evidence  
5 that supports the defense of this claim, they suddenly  
6 determine that it's not relevant. Now, we need that  
7 information in order to defend ourselves, and what we're  
8 finding is that these people are constantly being obstructive.  
9 They haven't produced a thing that's worth ten cents in terms  
10 of their disclosures they were supposed to -- well, that they  
11 were compelled to disclose.

12 In addition to that, the confidentiality agreement has  
13 now been completed for what, almost three weeks. And your  
14 Honor, we haven't seen document one covered even by  
15 confidentiality that they took that they have claimed. We have  
16 got a serious problem of obstruction here is what we really  
17 have, and I think the Court needs to address that and issue  
18 that --

19 THE COURT: Let me -- here's the way this works. If  
20 you can't work it out with the other side -- and you have an  
21 obligation to confer in good faith -- you should file a motion,  
22 some sort of motion to compel discovery, a motion for  
23 sanctions, if you think they engaged in improper behavior.  
24 We'll take it up. But, again, I'm not going to decide any  
25 issue in the abstract.

1 MR. JOY: I understand that, your Honor, and we'll do  
2 that. The thing is we did file a motion to compel, and now  
3 they're rearguing the motion to compel is what we're dealing  
4 with here.

5 Let's see. We are in the process of finally  
6 proceeding on, but again as I pointed out, what has happened  
7 here is that particular third party parties, who  
8 are -- third-party subpoenas that we have actually requested  
9 the information from have also decided to be obstructive, and  
10 so that is taking the process of us having to go and file  
11 appropriate motions to compel in the appropriate state courts.  
12 That -- the point of that is, your Honor, that is going to take  
13 a substantial period of time to resolve those one at a time and  
14 will obviously require additional time for discovery, because  
15 at this point we are still trying to discover documents. We're  
16 trying to get production of documents here, not to mention any  
17 depositions that would have to be had after the fact to clarify  
18 whatever needs to be clarified.

19 THE COURT: If I am convinced that the parties are  
20 attempting to move forward in good faith and notwithstanding  
21 whatever disputes you have and the deadlines are not workable,  
22 because, you know, the work simply can't be done in the time  
23 allowed given all the circumstances, I'm willing to entertain a  
24 motion for a reasonable extension of time, but that's -- right  
25 now, the discovery deadline is July 30th. That's still a

1 better part of three months away. Let's see how this goes; and  
2 if we need to file a motion, I'll hear you.

3 MR. JOY: Thank you, your Honor.

4 THE COURT: All right. Mr. Pickle.

5 MR. PICKLE: Yes, your Honor, I believe the deadline  
6 for requests to produce such is the end of this month, and I  
7 think at this point that is not going to be workable. So,  
8 that's one point I would like to make.

9 THE COURT: Hold on. Let me pull my scheduling order  
10 here.

11 MS. HAYES: Your Honor, if I may speak to it.

12 THE COURT: Yes.

13 MS. HAYES: The scheduling order states that RFA's and  
14 RPD's need to be served by May the 28th.

15 THE COURT: May 28th, all right, as amended.

16 MS. HAYES: Correct, under the amended scheduling  
17 order, and both parties have served -- well, I take that back.  
18 Plaintiffs have served their requests for production of  
19 documents on both defendants. Mr. Pickle has served RFA's or  
20 RPD's on the plaintiffs. We have received no written discovery  
21 independently from Defendant Joy, but again, that's a deadline  
22 for service only, and I don't think, at least from the  
23 plaintiffs' perspective, it won't be an issue with that  
24 deadline.

25 THE COURT: Mr. Pickle, this is simply a request.

1 It's not necessarily a response.

2 What is the reason you can't get your request on file  
3 by May 28th?

4 MR. PICKLE: Well, for one thing, your Honor, I  
5 haven't had any response. I haven't had any responsive  
6 documents served upon me yet from these requests to produce  
7 that I served at the end of November and early December.

8 In order to know what to ask further, we really need  
9 to have responsive documents from each.

10 THE COURT: All right. Ms. Hayes, what's your  
11 response to that?

12 MS. HAYES: Your Honor, my response to that is that  
13 the RPD's were served on the plaintiffs in December, and Mr.  
14 Pickle has made no effort whatsoever to move forward with any  
15 kind of -- the good faith effort to resolve the dispute broke  
16 down. There has been no follow-up on that from Mr. Pickle  
17 maybe for four or five months.

18 THE COURT: Well, surely, if he has asked for  
19 documents from the plaintiff, even if those requests are  
20 overbroad, it seems to me that clearly there must be a core of  
21 documents you think are relevant that could be produced to get  
22 the process rolling. In other words, if he asks for A through  
23 Z, and you believe that only A through G are relevant, I don't  
24 know why you couldn't produce A through G and preserve your  
25 rights about H through Z and fight about that.



1 production of the nonconfidential information. We would expect  
2 that that would be done by the end of the month. I don't have  
3 any issue moving that deadline back by another two weeks or a  
4 month, if that's -- if Mr. Pickle feels that's necessary.  
5 I -- I don't know that that would be an issue in any event, as  
6 again these discovery motions are likely to be filed.

7 THE COURT: Here's what I'm going to do in that  
8 regard. Just to allow a little more breathing room here, I'm  
9 going to extend the deadline for service or request for  
10 production of documents, requests for admissions, by two weeks  
11 to June the 11th, but I do expect that this matter, one way or  
12 another, needs -- will get resolved shortly, that is, either a  
13 motion to compel or a motion for a protective order or some  
14 formalized way of bringing this issue to closure. It can't  
15 simply dangle forever. This has got to be resolved, and --

16 MR. PICKLE: Your Honor, I have a question.

17 THE COURT: Yes.

18 MR. PICKLE: As far as the discovery deadlines go and  
19 third-party subpoenas, would that be, you know, as part of the  
20 schedule would that fall within the May 28th deadline or the  
21 July deadline?

22 THE COURT: The July deadline. That is a third-party  
23 subpoena for -- it's either going to be a deposition or a  
24 subpoena duces tecum that requires the parties to produce  
25 records, but that's -- I would deem that to be within the

1 July 30th deadline.

2 MR. PICKLE: Another matter I have. I guess once I  
3 get -- finally get the material that, you know, the rest of the  
4 initial disclosures, I guess I'll be able to see how  
5 substantial those are and whether they indeed have given us all  
6 their initial disclosures. I'll look forward to receiving  
7 that.

8 What we did get, she mentioned that 12,000 pages on  
9 two CDs, and there really wasn't much in there, but a matter  
10 that is important, of importance to us. We served a subpoena  
11 on Mid Country Bank, a third-party subpoena duces tecum in  
12 mid-January, and the bank was going to comply with that, and  
13 the plaintiff or plaintiff Shelton opened up a miscellaneous  
14 case in the District of Minnesota to quash that subpoena on  
15 February 6th and 7th. And in part, part of the rationale for  
16 halting this is that subpoena was because there was this  
17 pending motion for a protective order. Okay. So the -- the  
18 magistrate in Minnesota issued an order enforcing the subpoena.  
19 He did that prior to Magistrate Hillman issuing the  
20 confidentiality order, and so what the terms of his order were  
21 that upon payment to the bank of nearly \$3,700 they would  
22 produce the bank statements. That wouldn't include any checks  
23 or deposit slips. He gets the bank statements, which is  
24 all that subpoena asks for. Upon payment by us through the  
25 bank, the bank would produce those bank statements under seal

1 to Magistrate Hillman.

2 Well, now we have the confidentiality order, and we  
3 would like to see -- we would like to have those -- those bank  
4 statements produced directly to us. It wouldn't make much  
5 sense to me to spend \$3,700 to get bank statements if I don't  
6 know I can even see them. The bank has had no problem  
7 producing these documents to us.

8 THE COURT: Is this -- I can't modify an order entered  
9 by a judge in Minnesota, if that's the question.

10 MR. PICKLE: Okay.

11 THE COURT: You can go maybe back in front of that  
12 judge and seek modification there, but I don't have any  
13 authority over that judge.

14 MR. PICKLE: Okay.

15 THE COURT: And again, this is -- that sounds to me  
16 like a -- like a -- an issue which in the normal course, the  
17 parties would confer and agree on whatever makes the most sense  
18 in terms of logistics and economics; and again, I would expect  
19 all the parties to confer in good faith on any issue of that  
20 sort. The magistrate judge is much more likely to be receptive  
21 to a joint request for a modification than one that's  
22 unilateral or disputed. So, why don't you see if you can't  
23 come to some common ground there.

24 MR. PICKLE: Okay. We'll see what we can do on that.  
25 Given the track record thus far, I don't know, but we'll give

1 it a try.

2 THE COURT: All right. Anything further we ought to  
3 talk about?

4 Ms. Hayes?

5 MS. HAYES: No, I don't believe so, your Honor.

6 THE COURT: Mr. Joy.

7 MR. JOY: I think that will do it, your Honor.

8 THE COURT: Mr. Pickle.

9 MR. PICKLE: I can't think of anything, your Honor.

10 THE COURT: All right. When -- what is the next event  
11 that we have scheduled? Do I have another status conference?  
12 Why don't I set it for a status conference the end of July,  
13 beginning of August. The week of July 28th.

14 July the 31st at two o'clock, does that work for  
15 everyone?

16 MS. HAYES: Yes, your Honor.

17 THE COURT: All right. July the 31st at two o'clock  
18 for a further status conference.

19 In the event that the -- if we wind up moving that  
20 July 30th discovery deadline, for example, suppose that were to  
21 be pushed back 30 or 60 days, it might make sense to push that  
22 status conference back as well, but we can talk about that if  
23 and when the time comes. Okay.

24 All right. Thank you. We'll stand in recess.

25 (At 4:19 p.m., Court was adjourned.)

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc., an Illinois non-profit corporation, and Danny Lee Shelton, individually,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
Gailon Arthur Joy and Robert Pickle,	)	
	)	
Defendants.	)	
	)	

Case No.: 07-40098-FDS

**AFFIDAVIT OF ROBERT PICKLE**

NOW COMES Robert Pickle of Halstad Township, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury:

1. The Defendants turned over thousands of documents to the Plaintiffs Three Angels Broadcasting Network, Inc. (hereafter “3ABN”) and Danny Lee Shelton (hereafter “Shelton”) as part of their Rule 26(a)(1) initial disclosures, making no claims of confidentiality. I turned over more than 5500 emails in the updated version of these disclosures which were served around September 2006.

2. The Plaintiffs provided their non-confidential Rule 26(a)(1) materials in three, unindexed PDF files, each on a separate CD. These three files contained 11,422 (332 documents), 1,153 (225 documents), and 250 pages (26 documents) respectively, and the third was served on April 8, 2008. I went through these files and analyzed and cataloged the 583 documents, using visual examination, PHP, MySQL, and a spreadsheet. The results of my

analysis are found below.

3. The 11,422 pages on CD #1, with the exception of six pages of material Plaintiffs' counsel agreed were improperly disclosed, consisted entirely of printouts from BlackSDA.com, six pages being blank since they were scanned backwards. 1312 pages (11.5%) of the total consisted of second copies of 23 documents already included in the 11,422 pages. 5345 pages (46.8%) were of documents that did not appear to contain any postings by the Defendants.

4. The 1153 pages on CD #2 included 850 pages (172 documents) of printouts from Save3ABN.com, and 55 pages (24 documents) used by the Plaintiffs as exhibits in what appear to be Docket entries 1-4, 3-2, and 10-4. Another 168 pages (10 documents) consisted of publicly available IRS Form 990's and audited financial statements, 136 pages of which can be easily downloaded off the internet and were included in the Defendants' Rule 26(a)(1) disclosures. At least 11 of the remaining 19 documents are publicly available, more than 33 pages of which are easily downloadable from the internet. At least 22 documents containing 73 pages were duplicates of documents already on the CD, not including the duplicative documents used by the Plaintiffs as exhibits.

5. Table 1 gives a breakdown of the Plaintiffs' Rule 26(a)(1) materials, and demonstrates that the vast majority was of documents readily available to any member of the public, and which the Defendants already had.

**TABLE 1: Analysis of Plaintiffs' Rule 26(a)(1) Materials**

CD #	Description	# of Docs	# of Pages	Duplicative		Publicly Avail. and/or Already Had
				Docs	Pages	
CD #1	<u>BlackSDA.com</u> Threads/Listings	329	11,410	23	1312	Publicly Avail., Already Had
CD #1	Blank (scanned backwards)	1	6			?
CD #1	Extraneous (returned)	2	6			No

CD #2	<u>Save-3ABN.com</u> web pages	172	850	20	64	Publicly Avail., Already Had
CD #2	Linda Shelton's Separation Agreement	1	3			Publicly Avail., Already Had
CD #2	2001-2005 Form 990's & Financial Statements	10	168			Publicly Avail., Already Had
CD #2	Exhibits Already Used by the Plaintiffs	24	55			Publicly Avail., Already Had
CD #2	Articles of Incorporation	2	10	1	5	Publicly Avail., Already Had
CD #2	Copyright Reg. of Tribute to Tommy Broadcast	1	2			
CD #2	<i>Adventist Today</i> Tommy Article Posted on Yahoo	1	12			Publicly Avail., Already Had
CD #2	Other <i>Adventist</i> <i>Today</i> Articles	5	22			Publicly Avail. / Already Had
CD #2	Spectrum Blog Postings	2	8	1	4	Publicly Avail.
CD #2	Misc. Stuff of Questionable Value	7	23			Varies
CD #3	Maritime Forum Postings	26	250			Publicly Avail., Already Had
<b>Totals</b>		<b>583</b>	<b>12,825</b>	<b>45</b>	<b>1385</b>	

6. In her affidavit of May 29, 2008, Ms. Hayes falsely stated that I was served an additional 2500 pages of discovery information on April 25, 2008 (Doc. 68 ¶ 25), when the unindexed PDF file I received on CD #3 contained only 250 pages and was served on April 8.

7. Table 2 gives a summary of the documents on CD #3, which were taken in their entirety from Maritime-SDA-Online.org. Table 1 demonstrates that of the 26 threads, 15 threads representing 69 pages of the 250 contain no posts written by the Defendants in this action.

**TABLE 2: Contents of Plaintiffs' Rule 26(a)(1) Materials, CD #3**

<b>Doc. #</b>	<b>Topics Covered or Content</b>	<b>Pages</b>	<b>Defts' Posts</b>
4	Link to <a href="#">Save3ABN.com</a>	5	0
5	Daryl Fawcett's welcome	1	0
6	Timeline by Daryl Fawcett	2	0
7	Does Danny Shelton control Walt Thompson?	5	0
8	The title of Linda's car	22	5
9	Link to a page on Linda Shelton's website	1	0
10	Phone card phone records that the Plaintiffs claimed prove that Linda Shelton had an affair	12	13
11	Linda Shelton's demand that the evidence against her be made public	10	0
12	About 3ABN rallies, particularly one just after new allegations against Tommy Shelton were announced in Virginia	8	3
13	Letter by JW	1	1
14	Link to Duane Clem's account of wrongful termination	2	0
15	Documents pertaining to the Tommy Shelton child molestation allegations	33	29
16	Correspondence inquiring about the Tommy Shelton child molestation allegations, Linda Shelton's car title, illegal recording of conversations, and phone card phone records	44	18
17	Story of Linda Shelton by Johann Thorvaldsson	3	0
18	Letter by Barbara Kerr	13	0
19	Letter by Walt Thompson	5	0
20	Letter by Dr. Arild Abrahamsen	7	0
21	Correspondence with Walt Thompson regarding what Danny told him about the child molestation allegations	30	38
22	Letter by Mable Dunbar	2	0
23	2nd letter by Mable Dunbar	4	0
24	ASI Mediation	8	1
25	Correspondence with Hal Steenson about his threat, Melody Shelton's unwed pregnancy, and a suggestion that Danny Shelton stop telling people that his new wife had been chasing him for 17 years	6	12
26	Correspondence with Danny Shelton about his royalties	15	19
27	Kay Kuzma's response to the story of Linda Shelton	5	0
28	The Aug. 10, 2006, broadcast in which Danny Shelton was likened to Moses and John the Baptist, it was indicated that it	2	3



	was wrong to disagree with Danny, and his step-daughter's allegations of sexual assault against her by him were trashed through innuendo		
29	Open letter by Walt Thompson	4	0
<b>Totals</b>		250	142

8. Table 3 demonstrates that the Exhibits A–L (Doc. 63-2–63-13) filed with the pending motion to compel are documents found in the Plaintiffs' Rule 26(a)(1) materials. The material in Exhibits M and O–R (Doc. 63-14, 63-16–63-19) are also found amidst these documents. The sizable percentage of the Plaintiffs' disclosures containing the material used as exhibits with the pending motion to compel suggests the degree of relevance the Plaintiffs have already assigned this material.

**TABLE 3: Pickle's Exhibits vs. Plaintiffs' Rule 26(a)(1) Materials**

Exhibits	Materials		
	CD #	Page # on CD	Total Pages
Ex. A: "Unauthorized History" (ch. 1)	1	5975	8
Ex. B: "Unauthorized History" (ch. 2)	1	6437	7
Ex. C: "Unauthorized History" (ch. 3)	1	6369	18
Ex. D: "Unauthorized History" (ch. 4)	1	1	53
Ex. E: "Unauthorized History" (ch. 5)	1	5645	75
Ex. F: "Unauthorized History" (ch. 6)	1	3712	78
Ex. G: "Unauthorized History" (ch. 7)	1	3567	90
Ex. H: "Unauthorized History" (ch. 8)	1	6289	80
Ex. I: "Unauthorized History" (ch. 9)	1	6246	43
Ex. J: "Unauthorized History" (ch. 10)	1	6040	78
Ex. K: "The Televangelist"	1	2711	45
	1	8103	43
Ex. L: "Who Is It?"	1	5584	55
Ex. M: Alyssa Moore's Allegations	1	2607	63
	1	8525	59
Ex. O: New Allegations in Virginia	2	128	2

	3	70	33
Ex. P: Riva Letter to Dunn Loring	2	144	3
Ex. Q: Letter by Gerald Duffy	1	9318	65
	1	10,437	69
	2	750	11
Ex. R: Tommy Open Letter	1	1302	174
<b>Total Pages in Plaintiffs' Rule 26(a)(1) Mtrls</b>			<b>1152</b>

9. My Exhibit N (Doc. 63-15) for the pending motion to compel consisted of a summary of the evidence that Shelton covered up the child molestation allegations against Tommy Shelton, and the implications that that cover up held for liability against both 3ABN and the Illinois Conference of Seventh-day Adventists. Exhibit N also contained links to the same threads as documents 15, 16, and 21 on CD #3 and in Table 2. Those three documents amounted to 107 pages containing 85 posts made by the Defendants, a sizable chunk of the Plaintiffs' Rule 26(a)(1) materials on CD #3. These three documents are attached hereto as **Exhibits A–C**.

10. The 329 BlackSDA.com threads and listings contained in the Plaintiffs' Rule 26(a)(1) materials cover a wide variety of topics, such as, *inter alia*, Barbara Kerr's interaction with Plaintiff Shelton and 3ABN, the Tommy Shelton child molestation allegations, Plaintiff Shelton's claims of spiritual adultery, Ronnie Shelton's claims that Linda Shelton now lives in a mansion with a huge pool, and the pregnancy test kit that Plaintiff Shelton found in May 2004.

11. My requests to produce cover a wide variety of topics, and it is readily apparent that these topics are also found amidst the Plaintiffs' Rule 26(a)(1) materials. Of the 172 documents (850 pages) from Save3ABN.com on CD #2, one might argue that the Tommy Shelton child molestation allegations are dealt with more than any other topic. Other topics include, *inter alia*, an avid defender of Shelton suggesting that maybe the minor was consenting, the inappropriate behavior of Leonard Westphal, the use of attorneys by the Plaintiffs to silence those with legitimate concerns, Attorney Gerald Duffy's invocation of common law copyright,

Duane Clem's allegations of wrongful termination, the Plaintiffs' use of the airwaves to malign their critics and those who allege sexual assault, Shelton's deciding to divorce his wife after she hid his gun, Shelton's lucrative book deals and his company DLS Publishing, both missing from his July 13, 2006, financial affidavit, whether Shelton's name is on the title of Linda's car, whether Shelton paid off Linda Shelton or Alyssa Moore's cars, the surreptitious recording of a conversation that Hal Steenson, Harold Lance, and Shelton all claimed exists, and the phone card phone records that Shelton and John Lomacang claimed as evidence that Linda Shelton was having an affair.

12. I contacted Ms. Hayes on April 9, 2008, to arrange for the inspection and copying of non-confidential and non-privileged documents responsive to my requests to produce. Not having heard a reply, I repeated my request on April 18, adding to my request the inspection and copying of the Plaintiffs' remaining Rule 26(a)(1) materials. Ms. Hayes replied on April 21, 2008, that the remaining Rule 26(a)(1) materials would be produced on or before May 4, 2008, but she said she could not yet provide a date for the production of documents responsive to my requests to produce. (Doc. 71-2).

13. Ms. Hayes fails to state in ¶ 27 of her May 29, 2008, affidavit that she had given a date of May 4 for production, though in ¶ 28 she admits that she did not serve the remaining Rule 26(a)(1) materials until May 14. (Doc. 68 ¶¶ 27-28). Prior to receiving the documents on May 16, I inquired on May 11, 13, 14, and 15 as to why there was a delay, and never received an answer.

14. Ms. Hayes falsely claims in ¶ 28 of her affidavit that she served approximately 200 pages containing confidential, proprietary, and trade secret information pursuant to the Confidentiality Order (Doc. 68 ¶ 28), when much of it was nothing of the sort. Table 4 demonstrates the patent falsity of her statement:

**TABLE 4: Contents of Final Production of Plaintiffs' Rule 26(a)(1) Materials**

<b>Description of Document</b>	<b>Pages</b>	<b>Designation Discrepancies</b>
2006 Issue of <i>Catch the Vision</i>	72	freely available from 3ABN's website
7th Amended Bylaws	12	part of public record of 3ABN's property tax case (filed by 3ABN)
6th Amended Bylaws	11	
5th Amended Bylaws	10	part of Defendants' Rule 26(a)(1) materials
4th Amended Bylaws	10	
3rd Amended Bylaws	10	
2nd Amended Bylaws	10	
Corporate Bylaws	11	
2005 Employee Handbook	39	already partly used by Defendants as an exhibit
Communications by Walt Thompson	3	2 pages were published on <a href="http://Save-3ABN.com">Save-3ABN.com</a> long ago
Investigative Report to the Board	6	
Investigative Report to the Board	5	1 page stamped "confidential" is entirely blank
Letter by Board Member	2	
2003 and 2004 Donation Trend Charts	2	
Organizational Chart	1	
Letter by Walt Thompson	3	
<b>Total Pages</b>	<b>207</b>	

Why it took so long to overzealously stamp 207 pages as "Confidential" has not been explained.

15. After perusing the Plaintiffs' Rule 26(a)(1) materials, a total of 13,032 pages contained in around 600 documents, I can find absolutely nothing that demonstrates that [Save3ABN.com](http://Save3ABN.com) was used for commercial purposes or confused visitors as to the source of goods. Neither can I find anything that demonstrates that the Defendants recklessly or maliciously told lies. Neither can I find any documents proving that donations have declined at all since the Defendants became involved in August 2006.

16. Attached hereto as **Exhibits D–F** are the cover letters that accompanied the Plaintiffs’ belated production of documents allegedly responsive to my requests to produce. No claim is made that any documents have been produced that are responsive to Requests Nos. 4, 7, 11, 13, 14, 15, 16, 17, 18, 19, 21, 23, 24, 25, 27, 28, 29, 30, 31, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44. Thus no claim is made that any documents have been produced in response to 30 out of the 44 requests. However, a significant number of documents do not appear to be responsive at all, a significant number are illegible, and some documents are duplicated three, four, or five times.

17. Of the six non-parties subpoenaed by the Defendants, only Remnant Publications, Inc. (hereafter “Remnant”) refused to comply, necessitating the filing of a motion to compel. Remnant’s counsel had taken the unusual position that not even documents pertaining to royalty payments to Shelton were relevant. Attached hereto as **Exhibits G–K** are documents filed by the Defendants in connection with that motion to compel.

18. Gray Hunter Stenn LLP (hereafter “GHS”) decided to comply with the Defendants’ subpoena rather than face a motion to compel. On June 16, 2008, the Plaintiffs filed a motion to quash in the Southern District of Illinois, though they would have had to have filed their motion by April 17, 2008, in order to be timely under Fed. R. Civ. P. 45(c)(3)(A). The documents I filed in response to this motion are attached hereto as **Exhibits L–O**.

19. I am certain that I have never considered the Plaintiffs’ responses to my requests to produce to be timely.

20. I have at least 3719 emails dated in the month of December 2007, at least 2379 of which are in my “Trash” folder. I have no SPAM or message filters that would delete emails without my knowledge or consent. I have searched through all my emails and, while I can find Jerrie Hayes’ request for a delay in responding to my motion to compel of December 14, I cannot

find an email from Jerrie Hayes dated December 20 in which she asked for a different date for responding to my Requests to Produce. This explains why she never got a reply from me regarding that request.

21. In the conference of June 4–5, 2008, with Mr. Simpson and Ms. Hayes, I repeatedly raised the issue of Ms. Hayes’ false claim that an additional 2500 pages of discovery information was produced on April 25, 2008. (Doc. 68 ¶ 25). Nevertheless, Mr. Simpson repeated this claim in his filing of June 24, 2008 (Doc. 72 p. 3), and used the faulty, uncorrected affidavit in his opposition to my motion to amend order in the District of Minnesota, which he filed on June 18, 2008.

22. The number of pages produced was by no means the only false statement in Ms. Hayes’ affidavit, dated May 29, 2008. ¶ 31 claimed that I had not responded to her proposed schedule for production. She faxed this schedule to me on May 27, 2008, and requested a response by May 30. I responded on May 28, the day before she said that I had not yet responded. My response and fax journal, which documents that I faxed my response to both law offices, are attached hereto as **Exhibits P–Q**.

23. Three subpoenas issued by the Plaintiffs are attached hereto as **Exhibits R–T**.

24. The typical website access log consists of the IP address of the user, the date and time a URL is accessed, the URL being accessed, and other data. In the case of the URLs of BlackSDA.com, there is nothing in the URL itself that identifies the particular category a thread falls under.

25. Sources told the Defendants in the spring of 2007 that Shelton’s royalties from Remnant were being kept in a cash account at Century Bank and Trust.

26. The cover letter to the subpoena served upon GHS is attached hereto as **Exhibit U**.

27. Relevant pages of a table associating the earliest system timestamp for files on Save-3ABN.com are attached hereto as **Exhibit V**. The earliest system timestamp gives an idea of when a file was created on the server, but doesn't tell when that file could be found and viewed by the public. The table thus gives an idea of approximately when the content of Save-3ABN.com covered certain topics.

28. Attached hereto as **Exhibit W** is an early email written by Shelton claiming to have phone records that prove that Linda Shelton was having an affair.

29. I was eating lunch at the ASI Convention in Grapevine, Texas, on Saturday, August 5, 2006. Pastor Kevin Paulson came over to my table after visiting with Shelton and his new wife Brandy at Shelton's table. Pastor Kevin Paulson told me that Shelton had just told him that Brandy had been chasing him for seventeen years and that he had finally given in and married her.

30. Attached hereto as **Exhibits X–Y** are two emails from the negotiations with Adventist Services and Industries (hereafter "ASI"). These emails help document ASI's Harold Lance's refusal to investigate the child molestation allegations against Tommy Shelton. Attached hereto as **Exhibits Z–AA** are two emails that document church leadership's understanding that those allegations as well as others would be investigated.

31. Attached hereto as **Exhibit BB** is one 3ABN supporter's reaction to Shelton's handling of the child molestation allegations against Tommy Shelton.

32. Attached hereto as **Exhibit CC** is an email by Walt Thompson indicating that the Defendants have threatened the lives of Shelton and his family.

33. Attached hereto as **Exhibit DD** is an article describing why I decided to get involved researching this whole scandal.

34. Attached hereto as **Exhibit EE** is a letter describing an occasion of alleged sexual

harassment allegedly perpetrated by Leonard Westphal.

35. James Gilley told me on September 16, 2007, that he would not look into the past, that he had told the 3ABN Board that he would not look into the past, and that if looking into the past was required, he would not have taken the job.

36. Attached hereto as **Exhibits FF–GG** are two contradictory emails by Hal Steenson pertaining to John Lomacang’s presentation about the seven trumpets.

37. Attached hereto as **Exhibit HH** are the first two pages of one of the actual documents in the Plaintiffs’ Rule 26(a)(1) materials pertaining to Hal Steenson’s first email.

38. Attached hereto as **Exhibit II** is an email by 3ABN Board chairman Walt Thompson regarding church leaders.

39. Attached hereto as **Exhibit JJ** is alleged victim Roger Clem’s letter to Tommy Shelton, written around late 2003.

40. Attached hereto as **Exhibit KK** are the answers to questions written by an alleged victim of Tommy Shelton in Virginia. This is the alleged victim referred to by Glenn Dryden in his statement found at Doc. 63-16.

41. Attached hereto as **Exhibit LL** are quotes from 3ABN’s December 31, 2006, tribute to alleged pedophile Tommy Shelton, which referred to his alleged health problems a number of times.

42. I have personally heard references to Shelton’s alleged health problems on a 3ABN broadcast, and have read public announcements about his alleged condition. Given the allegations that his brother Tommy Shelton mysteriously has health problems when allegations surface against him, I wonder if these problems are really genuine, or whether they are a sympathy getting device.

43. I will seek by motion to file under seal as **Exhibit MM**, a 3ABN Board document



that the Plaintiffs have declared to be confidential. This document raises questions as to whether foreign immigration laws have been fully complied with, among other things.

44. Attached hereto as **Exhibits NN–TT** are emails written by Shelton, Tommy Shelton, and 3ABN Board chairman Walt Thompson pertaining to the pregnancy test and its receipt, and audio and video recordings, all purported evidence of Linda Shelton’s guilt.

45. On October 23, 2006, 3ABN Board member and Illinois Conference President Kenneth Denslow told me that he had seen video footage that purportedly was evidence of Linda Shelton’s guilt. I believe it was on January 24, 2007, that Attorney Harold Lance told me that Shelton had used a voice-operated tape recorder to record one of Linda Shelton’s telephone conversations.

46. Attached hereto as **Exhibit UU** is my June 25, 2008, letter to Attorney Gregory Simpson, which I faxed to both law offices at 6:16 and 6:18 am Central Time that morning.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 9th day of July, 2008.

/s/ Bob Pickle  
Bob Pickle  
Halstad, MN 56548  
Tel: (218) 456-2568

Subscribed and sworn to me  
this 9th day of July, 2008.

/s/ Melanie Dee Nelson  
Notary Public—Minnesota

My Commission Expires Jan. 31, 2011

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

THREE ANGELS BROADCASTING . CIVIL ACTION NO. 07-40098-FDS  
Plaintiff .  
 .  
V. . BOSTON, MASSACHUSETTS  
 . MARCH 7, 2008  
GAILON ARTHUR JOY, et al .  
Defendants .  
. . . . .

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE TIMOTHY S. HILLMAN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the plaintiff: J. Lizette Richards, Esquire  
Fierst, Pucci & Kane LLP  
64 Gothic Street  
Northampton, MA 01060-3042  
richards@fierstpucci.com

Jerrie M. Hayes, Esquire  
Siegel, Brill, Greupner, Duffy &  
Foster, P.A.  
100 Washington Avenue South  
Suite 1300  
Minneapolis, MN 55401  
jerriehayes@sbgdf.com

For Gailon Arthur Joy: Gailon Arthur Joy, pro se  
PO Box 1425  
Sterling, MA 01564

For Robert Pickle: Robert Pickle, pro se  
1354 County Highway 21  
Halstad, MN 56548  
218-456-2568  
bob@pickle-publishing..com

Court Reporter:

Proceedings recorded by digital sound recording,  
transcript produced by transcription service.

MARYANN V. YOUNG  
Certified Court Transcriber  
Wrentham, MA 02093  
(508) 384-2003

1 THE COURT: Good. We're having a little trouble  
2 getting you, hearing you clearly, although I can hear you so if  
3 I ask you to speak up it's because of that reason. I'm going  
4 to start with, Mr. Pickle, I'm going to start with your motion  
5 to compel plaintiffs to produce Rule 26(a)(1) documents and for  
6 sanctions. And then when you finish your pitch I'm going to  
7 hear from either Ms. Hayes or Ms. Richards with their  
8 opposition to that. So why don't you go ahead please.

9 MR. PICKLE: Well initial disclosures were made on  
10 August 3<sup>rd</sup> and Attorney Heal made an attempt to secure the  
11 documents and was not able to. And then in November after I  
12 made my appearance, I negotiated with Attorney Hayes about how  
13 much notice they needed before I could inspect and copy those  
14 documents. And I was told one week would be adequate for  
15 coming by the, her law office and two weeks for coming by 3ABN.  
16 And so then I did give her notice and then was told that I  
17 could not see those documents without entering into a  
18 confidentiality agreement. And it just doesn't make any sense  
19 to me to say that every last document in those initial  
20 disclosures is confidential.

21 THE COURT: Well with respect to, and I have no idea  
22 exactly what documents are being referred to but assuming for  
23 the moment there may be some documents that have a confidential  
24 quality to them, what is the situation with respect to a -  
25 what's your position with respect to a confidentiality

1 agreement to those documents?

2 MR. PICKLE: I had since negotiated with Attorney  
3 Hayes regarding, Judge Saylor had indicated that  
4 confidentiality agreement or protective order need to be  
5 narrowly tailored and so I did negotiate with Attorney Hayes  
6 regarding the collection of donor, donor information,  
7 information that could identify a particular donor which could  
8 potentially raise privacy concerns. And so I suggested to her  
9 that the donor information that we need, the donation  
10 information that we need could have the donor names, the  
11 identifying information that would identify the particular  
12 donor redacted out with an accompanying confidential list and  
13 that would tie the codes, the donor codes with the donor  
14 information. And that would enable us to verify their claims  
15 regarding the decline of donations and the reasons why the  
16 donations have declined. And then the donor information, the  
17 donor identity, you know, would not be disclosed unless the  
18 donors themselves didn't mind that. And I feel that's a  
19 reasonable proposal but plaintiff's counsel did not, and  
20 plaintiffs I assume, did not want to do that.

21 So I'm willing to consider the possibility that some  
22 things should not be out there for public consumption and I  
23 think I'm willing to be reasonable about it.

24 THE COURT: All right. Let me hear from  
25 Ms. Hayes - is it Ms. Hayes, are you the one that's going to--

1 was an exhaustive three week period where Mr. Pickle, Mr. Joy  
2 and myself exchanged emails, participated in telephone  
3 conversations, tried to resolve the issue of the motion for the  
4 protective order. The reason that that didn't get resolved was  
5 because after the plaintiffs produced not only one but then a  
6 second version of a proposed protective order, neither of which  
7 met with Mr. Pickle or Mr. Joy's approval, we then said we  
8 can't go any further. We don't know what you want. We need to  
9 see something that you would agree to.

10 THE COURT: What was the protective - what documents  
11 or classes of documents was the protective order addressing?

12 MS. HAYES: The protective order, Your Honor, again,  
13 and I'll get to more detail later if you'd like, but the  
14 protective order, the motion for a protective order is designed  
15 basically narrowly tailored to address a specific kind of  
16 document, that being the proprietary trade secret, confidential  
17 financial information of 3ABN as a company and Mr. Danny  
18 Shelton's personal and private financial information.

19 The vast bulk of our allegations in the complaint,  
20 and if you review the pinpoint allegations of the complaint  
21 concerning the specific statements of defamation that we have  
22 alleged, those individual statements primarily deal with  
23 various specific financial transactions that Mr. Pickle or Mr.  
24 Joy or both on the various websites have stated were improper  
25 for whatever reason. It took money from the donors or we

1 MS. HAYES: Sure.

2 THE COURT: --at the moment. I might sometime but  
3 what other categories of documents are you claiming the  
4 confidentiality agreement would pertain to?

5 MS. HAYES: Again, we're talking about bookkeeping--

6 THE COURT: Yep.

7 MS. HAYES: --accounting and auditing records. The  
8 only exception to that would be those materials that have to be  
9 open to the public.

10 THE COURT: So financial records and donor--

11 MS. HAYES: Yeah.

12 THE COURT: And donor.

13 MS. HAYES: Financial records, both commercial for  
14 3ABN and also private ones for Danny Shelton.

15 One of the matters, and I've been asked specifically  
16 by the magistrate judge in the District of Minnesota to raise  
17 this to the Court's attention, but Mr. Pickle caused to issue a  
18 subpoena in the District of Minnesota seeking bank records,  
19 personal bank records for Danny Shelton. We objected to that  
20 subpoena on the grounds that it sought information that was not  
21 relevant to the claims in this litigation. We also made a  
22 motion simultaneous with the motion to quash enforcement of  
23 that subpoena asking that the court in the District of  
24 Minnesota, that that Honorable magistrate judge stay the  
25 enforcement and remit the matter to this Honorable Court for

1 consideration, this Court which has had jurisdiction over a  
2 number of discovery related disputes in this matter and who is  
3 certainly more familiar with the case. That Honorable  
4 magistrate judge is waiting to hear what happens with the  
5 motion for a protective order and the motion to compel.

6 THE COURT: What's the magistrate judge's name?

7 MS. HAYES: The magistrate judge is Judge Arthur  
8 Boylan, Your Honor. And Magistrate Boylan as I said has taken  
9 that matter under advisement, sort of staying the stay, if you  
10 will, in order to sort of see what happens here because the  
11 arguments that we've made in the motion to quash, again, are  
12 very relevant to the issues of the confidentiality, the donor  
13 information, the financial information that needs to be, we  
14 believe, kept confidential.

15 The motion to compel, Your Honor, we--

16 THE COURT: No, I'm not there yet.

17 MS. HAYES: Oh, I'm sorry.

18 THE COURT: I want to do these one at a time.

19 MS. HAYES: Absolutely. The motion to compel--

20 THE COURT: No, I'm not ready yet.

21 MS. HAYES: Okay.

22 THE COURT: Thank you.

23 MS. HAYES: Not the motion for the protective order.  
24 The motion to compel.

25 THE COURT: Oh, I'm sorry. I am on the motion to--

1 MS. HAYES: Okay. I just don't want to - I  
2 apologize if I misspoke.

3 THE COURT: I apologize.

4 MS. HAYES: We, contrary to the briefing that  
5 Mr. Pickle has submitted to this Court, we never agreed to  
6 produced the 26(a)(1) disclosures at any point without a  
7 protective order being in place, either a mutually agreed upon  
8 one or at least having had the opportunity to come to this  
9 Court and seek a protective order governing those financial  
10 documents.

11 As to the, I'll quickly go into my own little issues  
12 here. As to the motion for sanctions, we have already  
13 indicated that we will produce whatever documents are relevant  
14 and subject to production without cost to Mr. Pickle and  
15 Mr. Joy as far as the 26(a)(1) disclosures are concerned. Any  
16 other costs, Your Honor, we would believe to be punitive and  
17 unwarranted under the facts of this. Again, we're not making a  
18 purposeful delay here. We genuinely want to show that 3ABN is  
19 an upright, financially proper ministry, but we don't want to  
20 turn those documents over that are proprietary, confidential,  
21 trade secret. And Mr. Pickle hasn't challenged that those  
22 documents are proprietary and trade secret materials. And I'll  
23 talk about that a little more on the issue of the motion for a  
24 protective order.

25 THE COURT: Do you have a copy of the latest proposed



1 MR. JOY: Absolutely.

2 THE COURT: --that's what I need to flush through  
3 before we go too much farther.

4 MR. JOY: I am named as an individual and in fact  
5 while I'm named as an individual I was a party to the subpoena.  
6 I have participated as she already stated in much of the  
7 discussion relating to the protective order. I didn't feel it  
8 was necessary for us to duplicate our efforts. We worked  
9 together on all of the information that Mr. Pickle has put in,  
10 did much of the research together. Frankly, he has ECF, it was  
11 much easier for him to file everything therefore it was easier  
12 to do it under his name.

13 The frank fact is that, you know, you come down the  
14 question of who's representing who on the other side? Who's  
15 representing 3BN? Who's representing Shelton? The subpoenas  
16 in Minnesota, for example, okay, they're only representing Mr.  
17 Shelton. They haven't represented his private corporation.  
18 That was brought up in the discussion. They're clearly not  
19 representing 3ABN, okay. And yet they issued a blanket motion  
20 to quash those subpoenas. So I don't believe that we have a  
21 problem with the issue of standing here. I believe--

22 THE COURT: Well, we do. But let me just cut to the  
23 chase. What you need to do in the future, and I'm going to  
24 listen very briefly to what you have to say cause it's  
25 duplicitous of what your partner's, Mr. Pickle's saying, but

1 what you all need to do in the future when you file a pleading  
2 you should put both names on it so that--

3 MR. JOY: Yes, Your Honor.

4 THE COURT: --we don't have this issue.

5 MR. JOY: Okay. Yes, Your Honor.

6 THE COURT: Now--

7 MR. JOY: It's my error.

8 THE COURT: --what I'm going to do, one of the rules  
9 that we have is that we party gets to speak on behalf of  
10 everybody. So even though Mr. Pickle has already kind of  
11 crystallized your position, I will hear a few minutes from you  
12 but I want to keep moving as well. So if you wanted to go to  
13 the merits of this, why wouldn't, and I'm going to ask Mr.  
14 Pickle the same question, why wouldn't their financial  
15 situation be subject to a confidentiality agreement?

16 MR. JOY: The key reason that the financial  
17 information shouldn't be subject to their blanket protective  
18 order, and that's the problem with this particular case, three  
19 times now they have tried the blanket approach to trying to  
20 get, number one, get the case impounded. Number two, they  
21 approached the issue of a protective during the course of the  
22 26(f) hearing that we had before Judge Saylor. And then number  
23 three, once again the issue came up before Judge Saylor in the  
24 status conference on December the 14<sup>th</sup> before, three days before  
25 they filed their motion.

1 Judge Saylor made it very clear in every single one  
2 of those cases that these people were to provide a narrowly  
3 tailored order. Furthermore, this Court has already spoken on  
4 the issue of some of the financial documents they're talking  
5 about. For example, accounting records, there is a case that  
6 went from this court under Judge Saylor to the First District  
7 Court of Appeals and was upheld that very clearly says that the  
8 accounting records are not privilege. And we--

9 THE COURT: Well, I'm going to, we're to get to that  
10 in a minute. What about their donor list?

11 MR. JOY: Well, Your Honor, if there are donors in  
12 there who have clearly said they're not interested in donating  
13 anymore for whatever purpose, and so far we've only seen one,  
14 okay, which by the way that donor contacted us directly all  
15 right, and told us what the real story was. We can't see where  
16 anybody who has said they're not going to contribute to these  
17 people would ever be confidential. They clearly have a  
18 position. There would be no reason why they would be  
19 confidential. We have the right to examine those people under  
20 the rules and it's critical to our case of defamation per se.  
21 And the fact is that a big part of this issue is the whole  
22 question of did we or did we not make allegations that were in  
23 fact, that would in fact carry the test of whether or not there  
24 was defamation per se. In other words were the accounting  
25 processes that occurred and were the transfer of real estates

1 that actually occurred, did they pass the smell test? Were  
2 they acceptable under the generally acceptable accounting  
3 principles?

4 THE COURT: Well the point is that that--

5 MR. JOY: And the fact is we're prepared to prove  
6 that they're not.

7 THE COURT: That may, you may be - that stuff, not  
8 may, probably is subject to discovery, however don't the  
9 plaintiffs have an interest in it not being disseminated to the  
10 world at large without a further court order? What they're  
11 saying is you get to look at it subject to a confidentiality  
12 agreement that, you know, you can negotiate and then if you  
13 wanted to apply to the Court for an order that it would be  
14 further divulged upon a showing of good cause, that's usually  
15 the way those things work.

16 MR. JOY: But you see, Your Honor, the problem with  
17 that premise is that it violates the premise that this Court  
18 has laid out in Rule 7.2(e). It should not be on us to prove  
19 that these documents are not privileged or not confidential.  
20 It should be on them to prove that those documents are  
21 confidential and privileged.

22 THE COURT: I agree with that.

23 MR. JOY: Okay.

24 THE COURT: And we're going to get to that. Okay.  
25 Thank you. That helps. All right, now here's what we're going

1 to do. I'm going to go to the plaintiff's motion for a  
2 protective order and, Mr. Joy and/or Mr. Pickle, I'm going to  
3 let one of you respond. So you guys can think about who's  
4 going to do that. And Ms. Hayes is this you or is it Ms.  
5 Richards?

6 MS. HAYES: This is mine, Your Honor.

7 THE COURT: I'll hear you.

8 MS. HAYES: Thank you. Your Honor, let me begin by  
9 talking about Local Rule 7.2(e). The rule governs the issues  
10 of filed documents and whether or not the court case as a whole  
11 and the filed pleadings in that case are going to be subject to  
12 impoundment, meaning that the filed materials are not going to  
13 be disclosed to the public and are going to be instead kept  
14 under seal. 7.2 does not address the issue of discovery, what  
15 is or isn't kept confidential as part of discovery, and we  
16 would argue that aside from this being a very common custom and  
17 practice, when issues of confidential or sensitive material is  
18 involved having the parties come together with a mutually  
19 agreeable protective order. Since we were unable to do that  
20 the motion for a protective order had to be brought to this  
21 Court and there are strong rationale in favor of having one  
22 here. We made the motion specifically seeking to protect from  
23 disclosure or dissemination the trade secret donor and  
24 confidential commercial and private financial information.  
25 That was made in specific response to requests for production

1 of documents that were served on us by Mr. Pickle, both on  
2 3ABN and on Mr. Shelton. It was also served in response to  
3 informal, to the informal request for the 26(a)(1) disclosures  
4 that Mr. Pickle had made and it was also made in response to  
5 these four subpoenas that Mr. Pickle, not Pickle and Joy,  
6 caused issue from various courts.

7           The only subpoena of those four that has survived,  
8 Your Honor, is one which was issued from the District of  
9 Minnesota as I've discussed earlier, that it was where a motion  
10 to quash was heard before the Honorable Magistrate Judge Boylan  
11 where that subpoena was issued from the proper jurisdiction,  
12 had the proper scope and had a proper amount of time. The  
13 other subpoenas have all been objected to by the third party  
14 recipients and the issue of whether or not first of all that  
15 provides standing to Mr. Joy is another matter. But second of  
16 all, the motion for a protective order was never brought to  
17 this Court as this blanket request that everything in the case  
18 be either impounded or subject to seal. Instead it was brought  
19 in specific response to very particular discovery requests that  
20 had been made of us for material we felt we could not in good  
21 conscious allow to be distributed to the public or to third  
22 parties.

23           Second of all, the idea is to seek a proactive  
24 solution. The reason that we have included the entire category  
25 of financial and business records is because we believe that if

1 we don't have at least that category, now we're not talking  
2 about other information. We're not talking about employment  
3 related information, ministry related information, theological  
4 information. We're simply talking about this very narrow  
5 window of financial bookkeeping and accounting and auditing  
6 documents. And the reason that we're talking about that  
7 category instead of individual documents is because we'd be  
8 here 700 times before the trial. It makes more sense to have a  
9 single protective order that the parties can work with, having  
10 a living document that governs the entire scope of discovery  
11 rather than being back on this court step five, 10, 15, 20  
12 times every time a new request for production of document, a  
13 new deposition is taken or there's some additional discovery  
14 request that is made that would get to these exact same kinds  
15 of materials.

16 In perfect--

17 THE COURT: What is the protocol that the, and I  
18 apologize, I read this material on it and I missed it. What is  
19 the protocol that your proposed protective order employs for  
20 the identification of confidential documents as opposed to non?

21 MS. HAYES: Your Honor, we have followed the  
22 federally sanctioned IBM Microsoft protocol for the  
23 confidentiality of materials. What will happen is if the  
24 document is a, it is part of that category of financial  
25 auditing, accounting or bookkeeping documents it is not subject

1 to one of the exceptions we've already carved out for them in  
2 the protective order but it falls within this narrow range of  
3 documents, we would then ascribe each document as being  
4 confidential prior to production. That's if the document comes  
5 from us. Once the document is received by the defendants, if  
6 they take umbrage with our classification as confidential  
7 they're entitled to come to the court and seek relief as they  
8 would be with any protective order even one that was mutually  
9 agreed upon by the parties.

10 THE COURT: And what are their, what uses can they  
11 make of the document and to whom can they share it?

12 MS. HAYES: Absolutely again, per IBM--

13 THE COURT: With whom can they share it?

14 MS. HAYES: I understand. Per IBM Microsoft  
15 protocol, Your Honor, they are allowed to share the document.  
16 As long as the recipient has signed a similar confidentiality  
17 agreement, they are allowed to share it with expert witnesses,  
18 with deposition witnesses and with other consultants that they  
19 use in order to prepare for trial. That's all set out in the  
20 protective order and we again have carved that out for their  
21 use.

22 Now in alignment with the purposes we did narrowly  
23 re-tailor the request. And there are voluminous fields of  
24 documents that we didn't address. It is only related to these  
25 varied, pardon the pun, sacrosanct business and commercial



1 financial records that are at issue. It only contains one  
2 outright prohibition on disclosure, that being related to the  
3 donor identifying information. If donors want to walk up to  
4 Mr. Joy's house, knock on the door and say I donated to 3ABN  
5 and I don't want to do it anymore, that's their prerogative.  
6 But it's not coming from 3ABN. We believe very strongly that  
7 our donors give to our ministry with the assumption of  
8 confidentiality.

9 THE COURT: And so are you proposing a redaction on  
10 those or what's the proposal on donors?

11 MS. HAYES: Yes, Your Honor. As - in the reply brief  
12 that was filed, Mr. Pickle claims - there are three claims,  
13 three defenses that they want to be able to prove with the  
14 donor information. The first, these are the only three  
15 justifications mind you that Mr. Pickle provides this Court  
16 with why a protective order shouldn't be imposed here. The  
17 first one being that they want to be able to segregate income  
18 that 3ABN received from donors first as income 3ABN received  
19 from product sales and speaking engagements and that sort of  
20 thing. That can readily be done without having to disclose the  
21 individual financial donor information.

22 The second issue that Mr. Pickle claims that they  
23 need to be able to prove and so have to have this specific  
24 donor identifying information is that they have to identify the  
25 reasons that the donors have stopped donating. Again, this

1 we take umbrage with is the publication of this material  
2 particularly given the history of these defendants, their  
3 posting of publications, information, affidavits and court  
4 documents on the internet, the publication of information which  
5 could not have come from any source other than either a former  
6 counsel of 3ABN, which is a problem in and of itself, or Linda  
7 Shelton who is subject to an agreement that she won't disclose  
8 information about the company.

9           Mr. Pickle argues we have lots of information that's  
10 sensitive that we haven't disclosed. We have good judgment and  
11 we're not going to release that stuff. Your Honor, the only  
12 reason that they haven't released that information is, again,  
13 because if they show that they have that in possession it's  
14 going to put a couple of people in trouble. The issue of the  
15 motion for the protective order breaks down in a couple of  
16 other ways as well. Mr. Pickle argues that without intent to  
17 publish or disseminate the information there's no reason that  
18 we have to preclude its disclosure. Whether or not Mr. Pickle  
19 and Joy in this instance intend to publish all this information  
20 is not relevant. They may easily change their mind as has been  
21 shown on their conduct in the various websites which has now  
22 been expanded after the bankruptcy matter to include at least  
23 seven other save 3ABN based websites where they are posting  
24 this exact same information.

25           Now, Mr. Pickle claims that counsel didn't confer in

1 good faith before bringing the motion. That's patently  
2 untrue. The history that Mr. Pickle attaches to his own  
3 affidavit shows that we had email and telephone exchanges about  
4 this very thing. Second of all, Mr. Pickle claims this is a  
5 blanket order in violation of 7.2(e). It patently is not.  
6 First of all, it doesn't speak to the issue of the filings that  
7 have to be made with the Court. And the plaintiffs understand  
8 that if a matter is attached to a summary judgment motion or to  
9 some dispositive motion in the future we will make a motion for  
10 protective order or motion to seal in terms of the filing of  
11 those materials. But a protective order governing discovery is  
12 separate, it's distinct and it's a very relevant and very  
13 common practice in civil litigation.

14           Mr. Pickle claims that state and federal law mandate  
15 the disclosure of the information at issue. Untrue. The only  
16 information that law requires us to file, and it doesn't mean  
17 that we have to publish it all over the internet, it simply  
18 means we have to have it available or send it to a government  
19 agency is our 990's and our annual financial statement. And  
20 that's an Illinois charitable contributions law. That  
21 information is in our view confidential, although it does have  
22 to be published and filed, that's fine. Interestingly enough,  
23 however, as far as the Rule 26(a)(1) disclosures are concerned  
24 those documents were not part of the documents that we wanted  
25 subject to the protective order. So it's really, the issue of

1 those mandatory public documents is not really relevant here.  
2 Mr. Pickle claims that disclosure is in the public interest.  
3 Now there is no longer authority for this proposition.  
4 Frankly, no legal authority throughout Mr. Pickle's briefing or  
5 any legal analysis as to why this information is not subject to  
6 the protection that has been granted in other cases that we  
7 cite in our briefing. His claim that the information that is  
8 filed with authorities is incorrect. If the documents, the  
9 990's, the financial statements that we file with public  
10 authorities contains an error, mathematical or otherwise, then  
11 the public is entitled to access all the source documents that  
12 made up that public filing. Again, aside from the fact that  
13 there's no legal authority for this proposition whatsoever even  
14 if the reasoning held true, there's absolutely no reason to  
15 believe the information is false.

16           The only "evidentiary" example that Mr. Pickle brings  
17 forward is this lot 6 land sale. Mr. Pickle's affidavit is  
18 full of hearsay evidence. I would ask the Court that it be  
19 disregarded pursuant to our motion to strike but also because  
20 of the nature of the evidence. But second of all, the only  
21 documentary evidence that has been offered to this Court  
22 related to lot 6 is a warranty deed. And if the Court looks at  
23 the one page warranty deed it will find that all Mr. Shelton  
24 was purchasing from 3ABN was a remainder interest in the  
25 property. He already had a life estate to the property and was

1 only buying out the remainder of 3ABN, the company's interest  
2 in the land.

3           There is absolutely no reason to believe that this  
4 transaction was incorrect or improperly reported to the IRS.  
5 There's been no finding by the IRS. There's been no criminal  
6 investigation, no complaint. There's been absolutely no  
7 finding by any determinative body from the Illinois Attorney  
8 General to the Department of Revenue that any of these  
9 documents contain any errors of fact whatsoever. If anybody  
10 could walk up and make broad allegations that it might be the  
11 case that they probably possibly committed a factual error,  
12 everyone's books would be turned inside out upon the whim of  
13 individuals eager to have a look at the inside books of various  
14 companies.

15           Related to this Mr. Pickle claims that broadly, again  
16 without any authority, the public has a right to know how the  
17 donations at 3ABN are being used. But this is not a publicly  
18 traded corporation, Your Honor. This is not a company with  
19 shareholder investors who are waiting for their money back plus  
20 a gain. These are people who have made a gift. If donors are  
21 concerned about what their money is used for they are entitled  
22 to earmark their donations and under Illinois charitable law we  
23 are required to adhere to that request. If donors are further  
24 concerned about the use of their donations, they can stop  
25 donating and as this lawsuit alleges they have indeed done so.

1 THE COURT: I did.

2 MR. PICKLE: Okay. I would ask leave of the Court  
3 to, I think I can be briefer than Ms. Hayes, I'd like to add  
4 because we can't exchange notes back and forth obviously, Mr.  
5 Joy and myself, I'd like to ask leave of the Court if I am not  
6 too long if he could speak as well?

7 THE COURT: No, I'm going to let one of you speak  
8 because that's the rule.

9 MR. PICKLE: Okay.

10 THE COURT: And, frankly, I shouldn't let Mr. Joy  
11 speak but I appreciate that your pleading was intended to be on  
12 behalf of both even though legally it is not. So I'll let you  
13 speak or Mr. Joy, and in the future if either of you wants to  
14 speak you're going to have to both be on the pleading.

15 MR. PICKLE: Okay. Well, I'll see if I can go down  
16 from my notes here. The plaintiff's complaint covers a lot  
17 more issues than - it does cover issues other than just  
18 financial. It covered any board to be married. It covered, it  
19 referred to moral, ethical and financial allegations. And  
20 that's a pretty broad sweep. It's a 501(c)3 organization  
21 that's listing donations from the public and so the public -  
22 that's why the government, the IRS requires organizations such  
23 as 3ABN to file 990's is that it can be subject a certain  
24 degree of public scrutiny.

25 I--

1 THE COURT: But public scrutiny doesn't necessarily  
2 mean that their financial information is available to the  
3 public. It's available to the IRS and whatever appropriate  
4 Illinois tax authority looks at their status.

5 MR. PICKLE: Well, I understand that not every single  
6 thing needs to be available. You've got the 990's. Then you  
7 have the audited financial statements which Illinois statute  
8 requires be open to public inspection. Oregon does as well.  
9 I've got a printout that I received from the Oregon Department  
10 of Justice with documents that 3ABN has been sending its  
11 financial, audited financial statements to the Department of  
12 Justice there in Oregon from '96 onward, 1996 onward and  
13 they're required to be open to public inspection.

14 Now in discussions I've had with Attorney Hayes, I  
15 have, you know, the source documents I had acknowledged that  
16 the public doesn't necessarily need to have access to the  
17 source document. But, you know, what you're going to have in  
18 this broad briefing protective order, proposed protective order  
19 is that even the conclusions that - okay like what is the true  
20 donation that came in in a particular year? Since 2004 sales  
21 revenue has been lumped in with donations. So what were really  
22 the donations for 2004, 2005, 2006? If the IRS, if the  
23 legislature had determined that the public has a right to know  
24 how much donations have come in, then I don't see why that  
25 figure, what the figure ought to have been can't be disclosed.

**MARYANN V. YOUNG**  
Certified Court Transcriber  
(508) 384-2003

[37] JA0259

1 THE COURT: Well, they're not saying--

2 MR. PICKLE: But the underlying source documents I  
3 don't have--

4 THE COURT: They're not, Mr. Pickle, they're not  
5 saying that it can't be disclosed to you. They agree that it  
6 should be disclosed to you. They just don't want you turning  
7 around and making it public without a court order.

8 MR. PICKLE: If the public has a right to know how  
9 much donations, the gross figure of donations that a ministry  
10 brought in and their gross sales revenue minus cost of goods  
11 sold, those are figures on the 990, then the public has a right  
12 to know those figures is my position.

13 Now as far as this lot 6 goes, on the 1998 990 3ABN  
14 reported the sale of that house to the IRS at a loss. And so  
15 it wasn't just like Attorney Hayes is trying to say that it  
16 wasn't just the purchasing of a remainder of interest in a life  
17 estate. There was an actual transfer of an asset from 3ABN to  
18 plaintiff Shelton that he did not pay full consideration for.  
19 And the publicly available documents bear that out.

20 Attorney Hayes said that there's no IRS criminal  
21 investigation going on. That's simply not true. There's been  
22 an IRS criminal investigation going on for more than a year.  
23 Attorney Nick Miller I guess is the - back in September, around  
24 mid-September, he was a board member for ABN at one time and he  
25 told me personally that the IRS had contacted him. Now when we



1 bring up Attorney Nick Miller's name, former board member, he  
2 became concerned beginning of January 2005 with some of the  
3 things that were going on at 3ABN, and so he's tried to bring,  
4 put into place some reforms that would provide some  
5 accountability for plaintiff Shelton. And he worked with a few  
6 other board members to that end and plaintiff Shelton ended up  
7 threatening him, figured out who was behind it, ended up  
8 threatening him and said we're going, if you don't back off I'm  
9 going to investigate your, the legal representation will be  
10 investigated. And Attorney Miller said, well he's not that  
11 kind of an attorney. He didn't back off. And what Attorney  
12 Miller said is that his, that plaintiff Shelton's first wife,  
13 which would be his wife before Linda that passed away, first  
14 wife's brother altered Nick Miller's billing records without  
15 his knowledge and then sent those billing records out to all  
16 the board members and made him look kind of shady. And the end  
17 result was that he was forced to resign from his position in  
18 the board.

19 Well, that's not the only allegation we have of  
20 document fraud. And so whatever documents 3ABN does produce,  
21 that plaintiff Shelton does produce for us we need to be able  
22 to adequately challenge those documents that they are genuine.  
23 And for any, and that I guess would go for any information. So  
24 if they tell us that, well they had these donors and they quit  
25 for this reason or that reason, we really do need to verify

1 that that really was the case.

2           This protective order, proposed protective order, I  
3 believe Ms. Hayes said that it was not a blanket protective  
4 order. My understanding is that by definition a blanket  
5 protective order is one in which the counsel for the parties  
6 can determine themselves what's going to be confidential or  
7 not. And this protective order does do that. It allows either  
8 the parties, their counsel to declare anything they want, not  
9 just financial information, but anything that they want to be  
10 trade secret, they consider trade secret confidential, and then  
11 it is immediately under seal and requires a court order to  
12 reverse that designation. If it was - Judge Saylor said on  
13 December 14<sup>th</sup> that any protective order would have to be  
14 narrowly tailored. And I don't think we would have such a big  
15 issue if this thing was really narrowly tailored, was confined  
16 to specific documents, specific types of documents but it  
17 allows them - even things that we received from third parties  
18 prior to the filing of this suit that we've turned over to them  
19 thousands and thousands and thousands of documents. Mr. Joy  
20 feels that the conglomerate of documents between the two of us  
21 is around 7,000, and I think that's a realistic figure. Even  
22 those documents could be declared to be confidential by the  
23 plaintiff and we'd have to turn them over to them upon the  
24 completion of this case even though, you know, people freely  
25 gave these things before this suit was even filed.

1 I have seen some cases where it's given me the  
2 impression that the plaintiff should provide a privilege log,  
3 you know, describing in detail the documents that they want to  
4 have declared confidential or under seal. And I think that's  
5 something, if that is the case, if something like that is  
6 necessary or advisable that's something that we don't have in  
7 this situation.

8 I would beg to differ with Ms. Hayes saying that we  
9 never agreed. I asked her, as far as the producing the initial  
10 disclosures, I asked her how much notice she needs and she said  
11 seven days. She did not say in that letter that there needed  
12 to be a confidentiality agreement. That didn't come up until I  
13 gave her the notice of, the seven days notice.

14 Another issue, Judge Saylor explicitly said in our  
15 December 14<sup>th</sup> status conference that there would be no stay of  
16 discovery until this motion for a protective order was heard.  
17 Attorney Hayes had asked for a stay of discovery and he  
18 explicitly denied that request. And so I think it highly  
19 inappropriate that plaintiff Shelton and his counsel asked the  
20 District of Minnesota to stay their subpoena until this motion  
21 that we're considering right now was heard, especially since  
22 the plaintiff never requested a hearing for this. Defendant  
23 Joy had to ask for the hearing in order for this hearing to be  
24 scheduled, and it didn't take so long to get it scheduled. It  
25 was immediately scheduled.

1 Let's see.

2 PAUSE

3 MR. PICKLE: But I do believe that I can be  
4 reasonable about this and there are certain things that, yeah,  
5 shouldn't be out there for public consumption and I'm willing  
6 to consider that, but I do believe that we need to prepare an  
7 adequate defense and that involves identifying donors that have  
8 actually quit donating. And there are cases out there where we  
9 could have one individual writing under multiple aliases and  
10 complaining to 3ABN about what's going on and saying they quit  
11 giving. But we actually need to identify the person. Is that  
12 person, you know, each email is that coming from a distinct  
13 individual? We need to verify the identity.

14 I think maybe that covers the gist of my concern.

15 THE COURT: Great. All right, thank you everybody.  
16 Under advisement.

17 MS. HAYES: Thank you, Your Honor.

18 //

19 //

20 //

21 //

22 //

23 //

24 //

25 //

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____ )	
Three Angels Broadcasting Network, Inc., )	
an Illinois non-profit corporation, and )	
Danny Lee Shelton, individually, )	Case No.: 07-40098-FDS
)	
) Plaintiffs, )	
v. )	
)	
Gailon Arthur Joy and Robert Pickle, )	
)	
) Defendants. )	
_____ )	

**AFFIDAVIT OF ROBERT PICKLE**

NOW COMES Robert Pickle of Halstad Township, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury:

1. Between February and June 2004, the marriage of Danny Lee Shelton (hereafter “Shelton”) and Linda Shelton disintegrated, and Linda Shelton found herself terminated from employment at Three Angels Broadcasting network, Inc. (hereafter “3ABN”).

2. On April 16, 2004, Linda Shelton replied to an email from Johann and Irmgard Thorvaldsson. That reply contained Linda Shelton’s account of the saga to that point in time, and included her account of a planned trip to Florida over spring break with Brenda Walsh (hereafter “Walsh”) at a time when Dr. Arild Abrahamsen (hereafter “Abrahamsen”) would be there, a trip which she claims was later canceled. That reply is attached hereto as **Exhibit A**. Linda Shelton’s reply also asserts that the saga began in September 2003, after which Abrahamsen decided to visit 3ABN, and that during that visit she met Abrahamsen.

three times the summer and fall of 2004 to vacation with Linda Shelton. This email is attached hereto as **Exhibit F**.

8. An inquirer called Walsh around the spring of 2008 to ask her about Linda Shelton. The inquirer sent a recorded copy of that telephone conversation to the Defendants. In that conversation Walsh stated:

I said ..., "I'm not going, I said, if if Danny, if ... doesn't approve of this." ... "I'm not doing this." But I refused to go. And she did buy my ticket, and I refused to go. And I still have a copy of my ticket because it's still unused. But her ticket is used.

9. On September 24, 2004, Linda Shelton wrote Shelton, theorizing that Shelton had jumped to conclusions and overreacted, and now could not swallow his pride and admit that he was wrong. Shelton's reply gave a list of Linda Shelton's failures, which included the planned trip to Florida over spring break with Walsh. This exchange is attached hereto as **Exhibit G**. Shelton specifically accused Linda Shelton of "Buying tickets behind my back and planning on going on vacation to Florida with him behind my back." Thus, according to Shelton, 3ABN must have lacked adequate internal controls to avoid purchasing airline tickets for personal vacations.

10. Attached hereto as **Exhibit H** is a notarized statement by Mrs. Ida Smith attesting to a March 8, 2006, phone conversation that she had with Walsh in which Walsh claimed that Linda Shelton had gone to Florida after all to stay at Abrahamsen's house with Abrahamsen, and in which Walsh claimed that private investigators had conducted surveillance of Linda Shelton, even recording her conversations.

11. About March 19, 2004, Shelton wrote an email to Abrahamsen, referring to a planned meeting in Florida in April between Abrahamsen and Linda Shelton that apparently was not going to take place after all. That email is attached hereto as **Exhibit I**.

12. On September 15, 2004, Shelton wrote an inquirer and asserted that Linda Shelton and Abrahamsen had taken vacations together while Shelton was still married to Linda Shelton,

and that “This is what ultimately caused the divorce.” This email is attached hereto as **Exhibit J**.

13. On July 7, 2004, Shelton wrote Linda Shelton and referred to allegedly contemplated vacations in Florida, Las Vegas, New York, and Norway, as well as an alleged four-day vacation with Abrahamsen that Linda Shelton had just returned from. This email is attached hereto as **Exhibit K**.

14. About September 1, 2004, Shelton wrote Linda Shelton, again referring to the planned vacation to Florida to stay at Abrahamsen’s condominium. Shelton also refers to multiple trips by Abrahamsen to the United States to be with Linda Shelton after Shelton’s June 25, 2004, divorce from Linda Shelton. This email is attached hereto as **Exhibit L**.

15. On May 16, 2004, Shelton and Linda Shelton exchanged emails in which Shelton refers to alleged “planned vacations” between Abrahamsen and Linda Shelton “in several different locations” while Shelton and Linda Shelton were still married. At one point Linda Shelton contends that Shelton’s account is 75% error. This email exchange is attached hereto as **Exhibit M**. In this exchange Shelton also refers to the finding of a pregnancy test kit on May 7, 2004, as confirmation that Linda Shelton had committed adultery.

16. Regarding the the finding of the pregnancy test kit, Shelton’s vasectomy, and the implications, Walsh claimed in the telephone conversation referred to above at ¶ 8:

And he looked through the packages and there was a pregnancy test in there. And so he confronted her with it. ... “I was just doing it for a joke. I was just playing a joke ....” And he said, “Linda, when you’re in a serious situation like we are, you don’t play a joke like this. Are you thinking you’re pregnant ...?” She wouldn’t tell him. Well, Danny called me then after that just almost in tears, and and told me about it. And I said, I said, “Well Danny,” I said, “you know, maybe this, maybe this is a a good thing, you know.” And he’s like, “No, Brenda. What do you mean it’s a good thing?” And so, “Well, have you considered a moment that it could be your baby?” He said, “No.” He said, “I had a vasectomy eight years ago.” See, I’d never known that. I wouldn’t have never had any way of knowing that. That’s not something you tell, and Linda never shared that with me. And I said, “Danny, you couldn’t have had a

vasectomy eight years ago, because two years ago Linda thought she was pregnant with your baby.”

17. On May 6, 2004, Linda Shelton wrote to Abrahamsen from her daughter’s email account warning him about possible rumors arising from her pregnancy test kit joke that she was going to play on Shelton the very next day. This email is attached hereto as **Exhibit N**.

18. Attached hereto as **Exhibit O** is the investigative report found on [Save-3ABN.com](http://Save-3ABN.com) which covers the finding of the pregnancy test kit on May 7, 2004. This report highlights the critical importance of determining if and when Linda Shelton met Abrahamsen in Florida or anywhere else between February 6 and May 7, 2004. Without a meeting of the two between those dates, the pregnancy test kit, if not a poor choice of a joke as Linda Shelton claimed, was evidence that either Linda Shelton thought she might be 15 weeks pregnant but couldn’t tell for sure, or that she had gotten pregnant by talking too long on the telephone.

19. Attached hereto as **Exhibit P** is an email exchange with 3ABN Board chairman Walt Thompson in which Walt Thompson claims that the pregnancy test was found in mid-May, that a trip to Florida by Linda Shelton to meet with Abrahamsen did take place five or six weeks earlier in April, that he has no physical proof that such a trip really took place, that he has “made no effort to determine exact dates,” and that he is “reporting only what I believe I was told.”

20. The Seventh-day Adventist Church believes that Matthew 5:32 and 19:9 should be followed today among its membership, and that these verses teach that the only biblical grounds for divorce among believers is fornication.

21. On April 7, 2004, Shelton wrote Abrahamsen and stated that Linda Shelton had admitted certain things to him just the day before regarding the planned trip to Florida. This email is attached hereto as **Exhibit Q**. Linda Shelton being around to allegedly admit to Shelton certain things on April 6, 2004 affirms the claims of Exhibits A (p. 3), F (p. 2), and K that the trip of April 4 to April 9, 2004, never took place.



UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc., an Illinois non-profit corporation, and Danny Lee Shelton, individually,	)	
	)	
Plaintiffs,	)	
v.	)	
	)	
Gailon Arthur Joy and Robert Pickle,	)	
	)	
Defendants.	)	
	)	

Case No.: 07-40098-FDS

**AFFIDAVIT OF ROBERT PICKLE**

NOW COMES Robert Pickle of Halstad Township, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury:

1. The parties made their initial disclosures around August 3, 2007. Gailon Arthur Joy suggested to me that I produce every document I had pertaining to Danny Shelton (hereafter “Shelton”) or Three Angels Broadcasting Network, Inc. (hereafter “3ABN”), so I did. My records indicate that just one file contained 5500 emails in a form as readily usable by the Plaintiffs as by myself. Producing all these documents left little or nothing more to produce in response to the Plaintiffs’ Requests to Produce.

2. The Plaintiffs belatedly produced 3,585 pages of documents allegedly responsive to my Requests to produce on June 13, 20, and 27, 2008. These documents were produced in PDF format on CD’s without any index whatsoever.

3. After analyzing these productions, it appears to me that the Plaintiffs picked

several categories of documents they felt were relatively safe, and produced those to the neglect of others. For example, out of the 3,585 pages, 287 pertained to the purchase of printing services, office supplies like pens and sticky notes, and office furniture. Another 680 to 989 pages pertained to inventory. Another 367 pages pertained to fixed assets. Another 342 pages pertained to the four whistleblowers fired from 3ABN's Trust Services Department. 691 pages of the total were duplicative; for example, five copies of 3ABN's letter of termination to Pastor Ervin Thomsen were produced by the Plaintiffs.

4. The Plaintiffs in their Motion for a Protective order to Limit the Scope of Discovery contend that they will produce documents pertaining to specific transactions outside the 2001 to 2006 time period. Yet if this was truly so, they should have produced documents pertaining to very specific events referenced in my Requests to Produce.

5. As I have looked over the 3,585 pages belatedly produced by the Plaintiffs, I believe that the following list of deficiencies are accurate. The Plaintiffs' belated productions in response to my Requests to Produce contain:

a. No documents pertaining to the 1993 real estate transactions between Charles E. Lane and the Plaintiffs.

b. No documents pertaining to Shelton's purchase of a house from 3ABN for \$6,139, the calculation of that sales price, Shelton's sale of that house one week later for \$135,000, or the earlier granting of a life estate in that property by 3ABN to Shelton.

c. No documents pertaining to the purported gift of 40 or more acres by 3ABN to Shelton that occurred around September 2007. (The Plaintiffs assert that the board minutes that would presumably contain reference to this purported gift are privileged since discussion of the instant case also took place at that board meeting. The privilege log which makes that assertion is attached hereto as **Exhibit A.**)

d. No documents pertaining to Tammy Shelton Chance's purchase of 3ABN-owned items from 3ABN via eBay, or any other such purchases made by 3ABN personnel from 3ABN via eBay.

e. No documents pertaining to antique furniture owned by 3ABN that was purchased by Shelley Quinn.

f. No documents pertaining to personal, private legal services for Shelton or Tommy Shelton paid for by 3ABN (except that referred to in passing in Doc. 93 at pp. 33–35), including without limitation certain specified cease and desist letters, Shelton's divorce, Linda Shelton's separation agreement, and this lawsuit.

g. No documents pertaining to personal travel expenses paid for by 3ABN, including without limitation the plane tickets for Brenda Walsh and Linda Shelton's planned trip to Florida from April 4 through 9, 2004.

h. No documents pertaining to the change of accounting in 2004 whereby sales of books, videos, and CD's became items given away in exchange for donations.

i. No documents explicitly pertaining to allegations of embezzlement against Pete Crotser, Emma Lou Shelton, or others.

j. No documents pertaining to the failure of Shelton or others to document their expenditures with receipts, or pertaining to the failure to put non-documented expenditures on those individuals' W-2's.

k. No invoices pertaining to Nicholas Miller's allegation against Shelton of fraudulently altered billing records, or pertaining to 3ABN's allegations against Nicholas Miller of improper billing.

l. No documents pertaining to direct or indirect payments to Brandy Elswick Murray, who Shelton later married.

m. No documents pertaining to sexual misconduct by Tommy Shelton against Derrell Mundall or against others at 3ABN, or pertaining to any investigations into the child molestation allegations against Tommy Shelton, or pertaining to the employment or independent contractor history of Tommy Shelton, Herb Grimm, or Bill Cochran.

n. No documents pertaining to allegations of sexual misconduct against Tammy Shelton Chance, Tammy Larson, Melody Shelton Firestone, Kenny Shelton, or Plaintiff Shelton, or that corroborate Shelton's claim that Brandy Elswick Murray had been chasing him for 17 years.

o. No documents pertaining to instructions to 3ABN personnel on how to answer questions about certain allegations, including without limitation the allegation that Melody Shelton Firestone was pregnant out of wedlock.

p. No documents pertaining to the payment or hiring of surveillance of Linda Shelton from January 1, 2004, onward.

q. No audio recordings, video recording, phone card phone records, pictures of a watch, or pregnancy test kit receipt, or documents referencing such, that allegedly constitute evidence against Linda Shelton, and no documents pertaining to policies concerning who would and would not have access to such evidence.

r. No documents pertaining to the 2005 church discipline case of Linda Shelton, or pertaining to the unwillingness of any individual to allow Linda Shelton to testify in her own defense at that trial, or pertaining to the December 2005 refusal to allow Linda Shelton to speak to the 3ABN Board.

s. No cease and desist letters, including without limitation the cease and desist letters sent to Nicholas Miller and the former mayor of Thompsonville.

t. No documents or recordings pertaining to Walter Thompson or Shelton's

allegations made against those concerned about Shelton's conduct, which allegations have included without limitation that of lies, embezzlement, making threats on the lives of Plaintiff Shelton or his family, and posing as a doctor.

u. No documents pertaining to the authorship, approval, script, or notes of the December 31, 2006, televised tribute to alleged pedophile Tommy Shelton.

v. No documents pertaining to the authorship, approval, script, or notes of the August 10, 2006, televised broadcast that likened Shelton to Moses and John the Baptist, Dr. Arild Abrahamsen to King Herod, Linda Shelton to Herodias, and Alyssa Moore to Salome.

w. No documents pertaining to the cessation of appearances of David Gates, Barbara Kerr, or others on 3ABN.

x. No documents pertaining to the hindrance by 3ABN of the employment or future ministry of Barbara Kerr, Derrell Mundall, Linda Shelton, or others.

y. No correspondence pertaining to the Plaintiffs' negotiations with ASI regarding the proposed ASI tribunal, including the "Procedural Suggestions" of October 31, 2006, Harold Lance's January 24, 2007, statement, and other documents.

z. No documents pertaining to payments by 3ABN to ASI, or by ASI to 3ABN.

aa. No identifiable documents pertaining to the formation of 3ABN Books or similar entities, or the makeup of its committees.

ab. No invoices or purchase orders pertaining to purchases by 3ABN from either D & L Publishing (hereafter "D&L") or DLS Publishing (hereafter "DLS"), save a single invoice for \$25,000 from late 2001 that leaves \$50,000 worth of purchases by 3ABN in 2001 from D&L seemingly impossible to account for.

ac. No documents pertaining to royalty payments received by Shelton.

ad. No documents pertaining to the identification, history, or location of assets or inventory of D&L or DLS.

ae. No documents pertaining to 3ABN Music, Crossbridge Music, Inc., or the Avid Group.

af. No documents pertaining to investigations or proceedings by the Internal Revenue Service, by the Department of Justice, by the Illinois Department of Revenue, by the Federal Communications Commission, or in Franklin County Circuit Court.

ag. No documents pertaining to the replacement of Shelton by Jim Gilley, or Jim Gilley's refusal to investigate the multitude of allegations against Shelton.

ah. No documents pertaining to refusals to allow the Defendants to speak to the 3ABN Board.

ai. No documents pertaining to whether or not Shelton is a prophet or the Lord's anointed, whether he has had visions or dreams, or whether he can be subjected to correction by church or state.

aj. No documents pertaining to John Lomacang's teachings on the seven trumpets, or the reactions of Hal Steenson or others to those teachings.

ak. No minutes or documents of the 3ABN Board or Executive Committee prior to 2001 or after April 16, 2007.

al. No minutes or documents of the 3ABN Board for October 19, 2003, for September 19, 2004 (other than page 2), for May 29, 2005 (other than page 1), for October 2, 2005, and for January 29, 2006 (other than page 1).

am. No minutes or documents of the 3ABN Executive Committee for October 21, 2005.

an. No documents pertaining to the open letters of Tommy and Carol Shelton

sent to Dunn Loring, Virginia, in early 2007.

ao. No corporation documents pertaining to Three Angels Enterprises, LLC, Crossbridge Music, Inc., and other domestic and foreign organizations related to 3ABN.

ap. No employee handbooks other than the March 2005 edition.

aq. Insufficient documents containing policies regarding accounting, finance, fraud, and rental or sale of assets or things owned by or donated to 3ABN, and other issues.

ar. No documents, audio recordings, or video recordings containing the 3ABN Story, referencing a promised \$100,000 donation of video equipment by Hal Steenson, or acknowledging that that promised donation never took place.

as. No issues of *3ABN World*, *Catch the Vision*, or other newsletters or catalogs.

at. No complete, unredacted Form 990's for 3ABN, and no tax returns filed by Three Angels Enterprises, LLC, and Crossbridge Music, Inc.

au. No documents breaking down the figures for contributions on 3ABN's Form 990's into figures for sales revenue, revenue from trusts and charitable gift annuities, tithes, and other contributions.

av. Insufficient documents providing detail for "Cost of goods given away" or "Cost of goods sold" on the 2006 financial statement or Form 990, and no identifiable documents providing detail for these categories for other years.

aw. No identifiable or insufficient documents pertaining to detail associated with categories on the financial statements or Form 990's labeled as "Auto," "Bad debt," "Contract labor," "Credit card fees," "Interest" expense, "Love gifts," "Miscellaneous," "Music production," "noncash" contributions, "Other changes in net assets," (line 20 of Form 990), "Other" expenses, "Other revenue," "School subsidy," or "Special projects."

- ax. No documents pertaining to Request to Produce #10, other than engagement letters from Gray Hunter Stenn LLP.
- ay. No identifiable documents pertaining to contributions to 3ABN made by officers, directors, or members.
- az. Insufficient documents pertaining to Request to Produce #12.
- ba. No documents from attorneys or law firms pertaining to investigations or audits of 3ABN made by those attorneys or law firms.
- bb. No reports, recordings, photographs, or other documents from investigative firms employed by or on behalf of the Plaintiffs.
- bc. No documents pertaining to the impact Save3ABN.com had on Seventh-day Adventist church leaders.
- bd. No identifiable documents pertaining to donors who have reduced or stopped giving to 3ABN.
- be. No identifiable documents describing or listing all charitable gift annuities by state of origin.
- bf. No copies of all required state registrations for trust services related work.
- bg. No identifiable trust services logs recording trust services activity since January 1, 2000.
- bh. No identifiable documents pertaining to charitable gift annuities originating in the state of Washington or naming Lottie Wiedermann as an annuitant.
- bi. No invoices paid to Westphal Law Group or Lunsford & Westphal,
- bj. No identifiable documents pertaining to the trust file of May Chung.
- bk. No documents pertaining to the accounting procedures, policies, usage, scheduling, fees charged, or remuneration practices of the 3ABN Sound Center.



bl. No documents pertaining to the accounting procedures or policies regarding the use, sale, or disposal of donated items or assets, including without limitation the method of arriving at a fair market value or sales price of each item or asset, and the issuing of receipts to donors or buyers of such items or assets.

bm. No documents pertaining to items buried on 3ABN property.

bn. No invoices associated with the building of the school, gymnasium, or Angel Lane.

bo. No documents pertaining to reimbursements to 3ABN for the cost of legal, investigative, or surveillance expenses incurred since January 1, 2003.

bp. No invoices pertaining to purchases from Media Opportunities IPTV.

bq. No documents pertaining to the piano presumably sold to Tommy Shelton in 1998 for \$2000.

br. No documents supporting Shelton or Tommy Shelton's claims of health problems due to the allegations against them.

bs. No documents pertaining to Mollie Steenson's membership or tenure on the Executive Committee of the Illinois Conference of Seventh-day Adventists, or pertaining to the compensation John Lomacang directly or indirectly receives from 3ABN, or pertaining to Seventh-day Adventist schools on the 3ABN campus in regards to the presence of alleged pedophiles or convicted sex offenders in proximity to those schools.

bt. No documents pertaining to contributions of text pertaining to Plaintiff-related issues by 3ABN personnel, or their agents or relatives, to internet websites, and no correspondence with those making such contributions.

bu. No documents pertaining to 3ABN's anticipated merger with Amazing Facts.

bv. No applications filed with the FCC or documents pertaining to those applications, no documents pertaining to the purchase or sale of television or radio stations (other than an itemization of costs for WBLC), and no documents pertaining K16EI.

bw. No recordings of broadcasts from the May 2004 camp meeting, and the 3ABN Today LIVE's of August 10 and December 31, 2006, and February 15, 2007.

bx. No documents supporting certain claims found in the May 9, 2007, affidavits of Mollie Steenson and Larry Ewing.

by. No corporation documents pertaining to DLS.

bz. No tax returns, financial statements, accounting records, or bank statements pertaining to Shelton, D&L, or DLS.

ca. No proof of Shelton's payment for the house he bought from 3ABN in 1998.

cb. No proofs of receipt or payment of the loans or mortgages Shelton gave to the Fjarli Foundation or received from Jim Gilley.

cc. No proofs of payment to 3ABN for services Shelton received from 3ABN, including without limitation Shelton's use of the corporate jet to receive marriage counseling on April 15, 2004, and legal services pertaining to Shelton's divorce or this lawsuit.

cd. No identifiable documents pertaining to 3ABN items or assets subsequently in the possession of Shelton or one of his relatives, other than a single document referencing vans given or sold to Linda Shelton and Derrell Mundall.

ce. No invoices or other documents regarding materials or labor pertaining to any home Shelton has lived in since founding 3ABN.

cf. No emails authored or received by Shelton.

6. The proof of service for the subpoena served upon Ann Duenow of MidCountry

bank on January 16, 2008, is attached hereto as **Exhibit B**.

7. On August 8, 2008, Remnant Publications, Inc. (hereafter "Remnant") filed an appeal from Magistrate Judge Carmody's order to produce documents to the Defendants, based on the Plaintiffs' motion filed in this Court on June 25, 2008. Remnant's memorandum is attached hereto as **Exhibit C**. Barb Barr, Judge Enslen's case manager has informed me that a decision could be rendered a couple weeks after Judge Enslen's chambers received all the documents, which did not occur until after August 28, 2008. Thus, a decision could be rendered as early as the end of this week.

8. Plaintiffs' counsel represented that he opposed this motion to extend the time, and his email to that effect is attached hereto as **Exhibit D**. While Plaintiffs' counsel in the discovery conference of June 4-5, 2008, agreed to an extension of 90 days to all discovery deadlines, including the deadline of June 11, 2008, a date the Defendants had repeatedly stressed in the discovery conference. However, on June 6, 2008, Plaintiffs' counsel informed Defendant Pickle that he had not included an extension of the June 11 deadline in the proposed stipulation he had drafted.

9. Attached hereto as Exhibit E is the fax I received about 4:30 pm CDT on June 11, 2008, which would be about 5:30 pm EDT. The fax demanded that we withdraw our June 10 motion to extend the time. But doing so would have made untimely a later request to extend the time.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 8th day of September, 2008.

/s/ Bob Pickle

Robert Pickle

Subscribed and sworn to me  
this 8th day of September, 2008.

/s/ Randall C. Aarestad

Notary Public—Minnesota

My Commission Expires Jan. 31, 2010

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

---

THREE ANGELS BROADCASTING )  
NETWORK, INC, )  
DANNY LEE SHELTON, )  
Plaintiffs, )  
vs. )  
GAILON ARTHUR JOY, )  
ROBERT PICKLE, )  
Defendants. )

---

**CIVIL ACTION  
NO. 07-40098-FDS**

**Amended Order**  
**September 11, 2008**

**HILLMAN, M.J.**

**Nature of the Case**

On April 6, 2007, Three Angels Broadcasting Network, Inc. (hereinafter “3ABN”) and Danny Lee Shelton (hereinafter “Shelton”) filed a complaint against Gailon Arthur Joy (hereinafter “Joy”) and Robert Pickle (hereinafter “Pickle”) for trademark infringement, trademark dilution, defamation, and intentional interference with advantageous economic prospective business advantage.

**Nature of the Proceeding**

By Order of Reference dated July 10, 2008, Defendant Robert Pickle’s Motion to Compel Three Angels Broadcasting Network, Inc. To Produce Documents and Things, and His Motion to Compel Danny Lee Shelton To Produce Documents and Things (Docket No. 61), and Plaintiff’s Motion for Protective Order (Docket No. 74) have been referred to me for disposition.

**Background**

On November 29, 2007, Pickle served a request to produce under Federal Rule of Civil Procedure 34(a) on plaintiff 3ABN, which contained 36 requests for production of documents. On December 7, 2007, Pickle served a second request to produce documents on Shelton, which contains 44 requests for production of documents. Pickle contends that plaintiffs have failed to produce any documents responsive to his requests. Instead, plaintiffs have asserted that all of the documents requested by Pickle are irrelevant, confidential or privileged. The plaintiffs have filed an opposition to the motion to compel. In their opposition, plaintiffs contend that they have produced over twelve thousand non-confidential documents responsive to Pickle's requests, and at the time they filed their opposition, were working to produce confidential documents, subject to the Confidentiality and Protective Order, issued by this Court on April 17, 2008. A hearing was held on the motion on July 24, 2008.

Plaintiff has moved this court for a protective order and for judicial intervention into the discovery process. They assign as reasons for the protective order a series of subpoenas ostensibly issued under Fed.R.Civ.P. 45 on six non-parties to this litigation. Several of those subpoena's have resulted in judicial action or motions to quash in the districts in which they were served.

### **Discussion**

Pickle's production requests and Rule 45 subpoenas appears to be overbroad and far-reaching. Many of the requests are prefaced with the word "all" and thus, fail to describe with particularity each document or thing requested. For example, defendant Pickle seeks "all types of phone records or other documents enumerating phone calls made by 3ABN officers from January 1, 2003, onward . . ." He also seeks "all" minutes and other documents

of the 3ABN Board for the entire length of time of 3ABN's existence, and on an ongoing basis." Furthermore, since the parties have not complied with L.R. 37.1 there is no listing of the specific discovery request at issue and their position with respect to it. This failure to comply with L.R. 37.1 results in the referenced regularity of Defendant's complaints and not a request by request breakdown of why information is sought and the argument for its production. Given the broad definitions utilized by Pickle<sup>1</sup>, it is apparent that a substantial number of documents which would fall within the subject matter of the requests would be irrelevant to any claims or defenses, and otherwise outside of the scope of discoverable information under Federal Rule of Civil Procedure 26(b)(1). At the same time, it is apparent from the hearing that plaintiffs are taking much too narrow a view as to whether documents or other things in their possession may be relevant to their claims and/or defendants' defenses. The plaintiffs also assert that they are about to serve additional responsive documents on the defendants subject to the Confidentiality Agreement. Plaintiffs should not have to be reminded that it is they who have initiated this action and as part of their claims, they are seeking significant monetary damages from the defendants. Documents which they may deem irrelevant to the specific statements they allege were defamatory may well be relevant to put the statements in context, or relevant on the issue of whether the plaintiffs have actually been damaged by the alleged statements. If the plaintiffs fail to produce documents which are relevant to their claims or potential defenses, then they may be subject to sanctions, including limiting evidence which they may introduce at trial, or limiting the scope of any damages to

---

<sup>1</sup>At the hearing, defendants indicated that they adopted the definitions utilized by the plaintiffs in their discovery requests. However, defendants did not file a motion for protective order for purposes of narrowing the plaintiffs' requests and therefore, this Court did not have the opportunity to address whether those requests were overly broad.

which they could be entitled should they prevail.

The defendants also contend that the plaintiffs' responses are inadequate because they have simply produced volumes of documents without specifying the requests as to which the documents are responsive. The plaintiffs have an obligation to produce the documents as kept in the usual course of business or organize and label them to correspond to the categories of the request. *See* Fed. R. Civ. P. 34(b)(2)(E)(i). From the parties' submissions and the issues raised during the hearing, the Court has doubts as to whether the plaintiffs have fulfilled their obligation under Rule 34(b)(2)(E)(i).

In light of both parties' noncompliance with the applicable discovery rules, I am denying Pickle's motion to compel, without prejudice, and ordering that defendants re-serve their Rule 34 requests for production of documents and things. The defendants shall be limited to 25 requests for each defendant (including subparts) which shall be tailored to comply with this Court's rules governing discoverable information. The defendants shall serve their revised requests on or before September 26, 2008. Any additional Rule 34 requests may be made only with leave of the Court. The plaintiffs shall respond to such requests within thirty (30) days and such responses shall be indexed and indicate which documents respond to which requests.

With respect to Plaintiff's motion for a protective order, I am allowing that motion with respect to the further filing of any subpoenas under Fed.R.Civ.P. 45. Any further subpoenas, by any party to this action must only be issued upon leave of the court. I will note that as recently as this week the defendant's have moved for leave of court to issue subpoenas citing the pending motion for protective order. They are to be commended for exercising an abundance of caution.



All further motions to compel filed with this Court shall comply with both the Federal Rules of Civil Procedure and this Court's Local Rules and, in particular, LR, D.Mass. 37.1.

**Conclusion**

It is ordered that:

Defendant Robert Pickle's Motion to Compel Three Angels Broadcasting Network, Inc. to Produce Documents and Things and His Motion to Compel Danny Lee Shelton to Produce Documents and Things (Docket No. 61) is denied without prejudice. On or before September 26, 2008 defendants shall serve on the plaintiffs a revised request for production of documents pursuant to Fed. R. Civ. P. 34, in accordance with this Order.

Plaintiff's Motion for Protective Order (Docket No. 74), allowed. No party is to issue subpoenas to any non-party under Fed.R.Civ.P. 45 without leave of the court. In all other respects, the Plaintiff's motion is denied.

/s/ Timothy S. Hillman  
TIMOTHY S. HILLMAN  
MAGISTRATE JUDGE



Roumeliotis had said nothing about a Rule 7030 deposition.

4. Richards asked questions pertaining to the adversary proceeding, presumably on behalf of Pucci and/or FPK. According to the PACER attorney reports for Case Nos. 07-43128, 07-04173, and 08-cv-40090, Richards is not an attorney in any of these proceedings, and Pucci is representing both Pucci and FPK in the adversary proceeding (07-04173 and 08-cv-40090).

5. Roumeliotis asked Joy to identify who paid for his groceries, and who paid for the gas that got put in the borrowed car Mrs. Joy drives. He also asked Joy about the particulars of domain names registered after Joy filed for bankruptcy. He also asked Joy if he would identify those who had reported 3ABN and Shelton to the IRS, and Joy's sources within 3ABN.

6. Roumeliotis claimed that 3ABN and Shelton were Joy's creditors, which is the whole basis for 3ABN and Shelton meddling in Joy's bankruptcy. Yet Roumeliotis never identified what exactly Joy owed 3ABN and Shelton, and the stipulated order of November 21, 2007, included the provision that 3ABN and Shelton would not "seek damages in the Civil Action on account of any pre-petition claim."

7. Attached hereto as **Exhibits A–B** are sample subpoenas for U.S. Attorney Courtney Cox and the Fjarli Foundation. Some parts are not completed since, for example, it is presently unknown where or when documents should be produced.

8. Attached hereto as **Exhibit C** is Jerrie Hayes' November 8, 2007, letter to Joy, which I referred to in the post that can be found at page 53 of Docket Entry #42. This letter documents that the Plaintiffs attempted to get Joy to send his equipment to Minnesota where he could not witness the imaging of his hard drive(s), that three copies would be made instead of one, and that a computer forensics expert would sign an agreement rather than physically seal the device containing the image with a seal that was signed by the parties or their representatives.

9. Attached hereto as **Exhibits D–J** are relevant pages from the Form 990-PF's of

the Garmar Foundation (hereafter “Garmar”), a foundation operated by Garwin McNeilus (hereafter “McNeilus”), his wife Marilee, and other family members (Ex. D pp. 2–3), for July 2000 through June 2007. From these Form 990-PF’s we can determine what gifts 3ABN received from the Garmar Foundation and how these grants declined by more than 93% over 6 years, with more than a 66% drop in the fiscal year immediately following Shelton’s June 25, 2004, divorce.

**Table 1: Garmar Foundation Grants to 3ABN**

Fiscal Year	Grants to 3ABN	% Decline
July 2000–June 2001	\$434,197	
July 2001–June 2002	\$350,000	20.39%
July 2002–June 2003	\$350,000	0%
July 2003–June 2004	\$265,000	24.29%
July 2004–June 2005	\$90,000	66.04%
July 2005–June 2006	\$61,000	32.22%
July 2006–June 2007	\$30,000	50.81%

10. Since the Defendants did not launch their investigations of the Plaintiffs until August 2006, the Defendants are not responsible for Garmar’s sizable decline in grants to 3ABN, which had already declined by 86.18% ( $100 - (61,000 \div 434,197)$ ) by that point in time.

11. The March 1991 issue of *Corporate Report Minnesota* (hereafter “CRM”) carried an article critical of McNeilus, “a portrait of a man of seeming contradictions. A generous, religious man, McNeilus was accused time and time again of crippling his rivals, rather than competing with them. His critics charge him with everything from predatory pricing to industrial espionage,” including wiretapping. McNeilus then used Attorney Gerald Duffy and Siegel Brill of Minneapolis to retaliate with lawsuits against CRM and its sources. McNeilus tried to discover the identity of CRM’s confidential sources, but the court allowed CRM to protect their identity. (21 Media L. Rep. 2171, 2175 (Dodge Cty., Minn., Dist. Ct. 1993)). Attached hereto as **Exhibits K–M** are three Minneapolis *Star Tribune* articles about CRM’s article and the suits that followed.

12. The Defendants in the instant case reported on various allegations against Shelton that were circulating. Shelton was accused of illegally recording phone calls and of inappropriate retaliatory measures against his critics. Shelton used Attorney Gerald Duffy and Siegel Brill to retaliate with a lawsuit, and has endeavored to discover the identities of the Defendants' sources in the course of the litigation. Attached hereto as **Exhibit X** is a thread from BlackSDA.com, on page 7 of which is an email written by Shelton around June 2006 that claims that McNeilus would foot the bill if there was litigation.

13. Given the similarity of allegations against both McNeilus and Shelton, given their use of the same Minnesota law firm and attorney, given the same attempts to identify sources, and given Shelton's claim that McNeilus would foot the bill for litigation, it is hard to imagine that McNeilus was swayed by the Defendants into reducing his donations to 3ABN.

14. No identifiable documents pertaining to the IRS investigation have yet been produced to the Defendants by the Plaintiffs.

15. On September 5, 2008, Shelton publicly claimed that 3ABN, Remnant Publications, Inc. (hereafter "Remnant"), Gray Hunter Stenn LLP (hereafter "GHS"), and he were investigated by the IRS, that at least he and 3ABN ordered the IRS to destroy all the documents that he and 3ABN had produced to the IRS, and that "the IRS has destroyed all of the 100,000 plus documents." Shelton's public claim to this effect is attached hereto as **Exhibit O**.

16. On July 7, 2008, Doug Batchelor of Amazing Facts claimed that the IRS had concluded its audit of 3ABN and Shelton, and that the "verdict" was that there was "Not one infraction, not one discrepancy, not one fine!" Doug Batchelor denied that there was any fire amidst the smoke, and called the expression of concerns about Shelton's conduct a "smear campaign." He claimed that the source of his information regarding the conclusion of the IRS investigation was Jim Gilley's assertions regarding what the investigators told 3ABN's attorneys.

Doug Batchelor's email, which was widely circulated and forwarded, is attached hereto as

**Exhibit P.**

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 15th day of September, 2008.

/s/ Bob Pickle

Bob Pickle  
Halstad, MN 56548  
Tel: (218) 456-2568

Subscribed and sworn to me  
this 15th day of September, 2008.

/s/ Randall C. Aarestad  
Notary Public—Minnesota

My Commission Expires Jan. 31, 2010

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____ )	
Three Angels Broadcasting Network, Inc., )	
an Illinois non-profit corporation, and )	
Danny Lee Shelton, individually, )	Case No.: 07-40098-FDS
)	
) Plaintiffs, )	
v. )	
)	
Gailon Arthur Joy and Robert Pickle, )	
)	
) Defendants. )	
_____ )	

**AFFIDAVIT OF ROBERT PICKLE**

NOW COMES Robert Pickle of Halstad Township, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury:

1. On July 21, 2008, Steffan Philip announced on the 3abnDefended Yahoo group that he had obtained the domain name 3ABNtalk.com, and was going to be starting up another forum. His announcement taken from the thread “Gailon Arthur Joy the fraudster” is attached hereto as **Exhibit A**. The domain name was obtained around July 6, 2008.

2. On September 19, 2008, Steffan Philip expressed surprise on 3ABNtalk.com that the Defendants were seeking documents pertaining to Arild Abrahamsen (hereafter “Abrahamsen”) and Linda’s Shelton’s travels. His post to that effect is attached hereto as **Exhibit B**.

3. I believe it was in the first part of September 2008 that Mr. Joy and I had a conference call with Attorney Gregory Simpson. After Mr. Joy told Mr. Simpson that Brenda

Walsh was not on the Plaintiffs' witness list, I remember Mr. Simpson stating that he was going to have to add her.

4. Attached hereto as **Exhibit C** is an email of July 8, 2007, written by Walter Thompson (hereafter "Thompson"), in which Thompson states that Linda Shelton had given Danny Shelton (hereafter "Shelton") biblical and "church manual" grounds for remarriage, which in Seventh-day Adventist theology means that Linda Shelton had committed adultery. He also states that this lawsuit is intended to reveal truth, not hide truth.

5. Attached hereto as **Exhibit D** is an email of July 16, 2007, written by Thompson in which Thompson states that Shelton had legal and moral grounds for divorce, and that this is backed up by "trustworthy witnesses and hard evidence." He also states that this lawsuit is intended to "expose truth."

6. Attached hereto as **Exhibit E** is a series of emails written between March 6 and 8, 2005, by Thompson and Johann Thorvaldsson (hereafter "Thorvaldsson"). Thompson states that he has never accused Linda Shelton of adultery, and that he has never had the kind of evidence necessary to back up such a claim.

7. Attached hereto as **Exhibit F** is a May 28, 2006, email written by Cindy Tutsch, a General Conference employee, to Linda Shelton. Cindy Tutsch cites four "central pins" of evidence that 3ABN contends give Shelton biblical grounds for remarriage. #1 is Linda's vacations with Abrahamsen in Florida and Norway before and after the divorce. #3 is a message from Linda Shelton's answering machine left by her mother, suggesting that she was in Florida with Abrahamsen. #4 is the finding of the pregnancy test.

8. Attached hereto as **Exhibit G** are the first pages of a thread from [BlackSDA.com](http://BlackSDA.com) which contains the response of Dr. Kay Kuzma (hereafter "Kuzma") to a piece Thorvaldsson had written. Her response was posted on August 16, 2004. (Kuzma, 3ABN Board members



Thompson and Bill Hulseley, and Attorney Nicholas Miller comprised a special committee that was supposed to deal with Linda Shelton's situation.) The only evidence she gives regarding Linda Shelton's alleged adultery is "... that the other man had been to the States and spent time with Linda before she left Danny, and that immediately after she left Danny, the other man was with Linda. A few weeks later they spent time traveling together through Europe." This thread made up 80 pages of the Plaintiffs' Rule 26(a)(1) materials, being found on CD #1 at page 6157. A 5-page thread from [Maritime-SDA-Online.org](http://Maritime-SDA-Online.org) which also contained Kuzma's letter was also included in CD #3 of the Plaintiffs' Rule 26(a)(1) materials at page 240. That thread is attached hereto as **Exhibit H**, and contains a rebuttal by Thorvaldsson that again references 3ABN's allegations that Linda Shelton was in Florida with Abrahamsen, and that this is what led to the divorce.

9. One of the things that Shelton most often harped on over the course of this saga, besides telephone calls, was Linda Shelton's alleged vacation plans with Abrahamsen, and in particular, the planned trip to Florida in April 2004. Attached hereto as **Exhibit I** is a March 19, 2004, email written by Shelton to Abrahamsen in which Shelton discusses the planned "secret trip to Florida." Attached hereto as **Exhibits J-K** are emails written to Thorvaldsson by Shelton on August 8 and 14, 2004, in which he refers to the planned trip to Florida as well as other "vacations," including one just three days after the Sheltons' divorce. In the August 14th email, Shelton blames their divorce on all the alleged vacation plans. Attached hereto as **Exhibit L** is an August 23, 2004, email by Shelton to Thorvaldsson's son, again referring to the planned trip to Florida. Attached hereto as **Exhibits M-N** are emails of September 19 and October 5, 2004, written by Shelton to Linda Shelton, again referring to the planned trip to Florida.

10. Attached hereto as **Exhibit O** is a November 1, 2004, post on [ClubAdventist.com](http://ClubAdventist.com) by Norm Finch in which he posts a copy of an October 26, 2004, email by Shelton to himself,

he is considering “divorce.” Shelton refers to the planned Florida trip, among other things.

16. Attached hereto as **Exhibit U** is Shelton’s email of April 29, 2004, to Richard and Cheri Bethune. Shelton states that the marriage is over, that Linda Shelton is deep into “spiritual adultery,” and that Linda Shelton would probably be placed on leave of absence from 3ABN, and suggested that she was going to be fired. He also referred to “two attempts” at “secret vacations” that he had “foiled.”

17. Attached hereto as **Exhibit V** is Shelton’s offer to Linda Shelton to buy her half of their house.

18. Attached hereto as **Exhibits W–X** are proposed subpoenas containing language similar or identical to what the Defendants would use if the Court grants leave. A necessary alteration may be the addition of whatever language the appropriate federal agency needs in order to know which Arild Abrahamsen in Norway the Defendants are seeking information about.

19. Attached hereto as **Exhibit Y** is the Plaintiffs’ motion to quash the Defendants’ subpoena *duces tecum* of Gray Hunter Stenn LLP in the Southern District of Illinois. In ¶ 7 the Plaintiffs state that they requested Gray Hunter Stenn to resist the Defendants’ subpoena.

20. Attached hereto as **Exhibit Z** is a thread from [BlackSDA.com](http://BlackSDA.com) that was started on July 28, 2006. (The first page of the exhibit is the poll at the top of the thread printed out normally. The remaining pages of the exhibit are a printout of the rest of the thread using [BlackSDA.com](http://BlackSDA.com)’s printer friendly format, which did not include the poll.) The thread is entitled, “Why Did Linda Buy The Pregnancy Test Kit?” and comprises 133 pages of the Plaintiffs’ Rule 26(a)(1) materials, found on CD #1 at page 403. [Save3ABN.com](http://Save3ABN.com)’s article on this topic can be found at page 430 on CD #2 of the Plaintiffs’ Rule 26(a)(1) materials.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 30th day of September, 2008.

/s/ Bob Pickle

Bob Pickle  
Halstad, MN 56548  
Tel: (218) 456-2568

Subscribed and sworn to me  
this 30th day of September, 2008.

/s/ Perry W. Kolnes

Notary Public—Minnesota

My Commission Expires Jan. 31, 2010



for purposes of the document production with the page numbers “TABN002620” and “TABN002621.” Both pages of the “Thompson Memo” were labeled “CONFIDENTIAL.” A true and correct copy of the Thompson Memo will be filed under seal in accordance with Local Rule 7.2 of the District of Massachusetts as Exhibit A to this Affidavit.

2. The designated document is self-evidently an internal business record of Plaintiff Three Angels Broadcasting Network (“3ABN”) in which an 3ABN’s Chairman of the Board, Walt Thompson, memorializes actions taken with respect to a workplace personnel dispute among staff at 3ABN’s wills and trust department. The only recipient of the email memo is Mollie Steenson, an employee of 3ABN.

3. Because this document was an internal record pertaining to 3ABN’s investigation and handling of an employment dispute within 3ABN, 3ABN produced it subject to the Protective Order and stamped it as “Confidential.” On September 10, 2008, Defendant Robert Pickle sent an email indicating that “We are considering filing TABN002620 and TABN002621 as exhibits in connection with a pleading, and are giving you notice as required by the Confidentiality Order.” There followed an exchange of email correspondence between counsel for Plaintiffs and the Defendants in which Plaintiffs advised that Defendants were free to use the document so long as it was filed under seal, and so long as any written material revealing the contents of the document was also filed under seal. Defendants were unwilling to accept this limitation. Redaction of sensitive

information was explored but rejected because the portion of the document that Defendants wanted to use included the sensitive information. A true and correct copy of the email communications between the parties will be filed under seal in accordance with Local Rule 7.2 of the District of Massachusetts as Exhibit B to this Affidavit.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: September 30, 2008

/s/M. Gregory Simpson  
M. Gregory Simpson

Subscribed and sworn to me  
this 30th day of September, 2008.

Kristin Kingsbury \_\_\_\_\_  
Notary Public  
My Commission Expires Jan 31, 2010

---

---

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MASSACHUSETTS**

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No. 07-40098-FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**MOTION FOR VOLUNTARY DISMISSAL**  
**AND REQUEST FOR ORAL ARGUMENT**

---

**MOTION**

Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Shelton  
hereby move the Court for an Order as follows:

1. Ordering dismissal of the above-captioned lawsuit without prejudice;
2. Ordering return to Plaintiffs of all materials supplied to Defendants that Plaintiffs designated as Confidential under the Confidentiality and Protective Order issued in this case on April 17, 2008 (ECF Doc 60), including but not limited to the records of MidCountry Bank which were delivered under under seal to, and remain in the custody of, Magistrate Judge Hillman and records of Remnant Publications produced directly to Defendants on September 22, 2008;
3. Ordering Defendants to dismiss any pending third party subpoenas that have been issued on the basis of this case; and

4. Staying discovery pending resolution of this motion, including but not limited to the pending obligation to respond to document requests served by the Defendants.

This Motion is based upon Plaintiffs' Motion for Voluntary Dismissal, Plaintiffs' Memorandum in Support of the same, and any affidavits filed herewith, the arguments of counsel and all other files, records and proceedings herein.

**REQUEST FOR ORAL ARGUMENT**

Plaintiffs respectfully request that this Honorable Court set a day and time for oral argument to be heard on this Motion, and further request that leave be granted for the parties to appear by telephone.

Respectfully Submitted:

**Attorneys for Plaintiffs Three Angels  
Broadcasting Network, Inc. and  
Danny Shelton**

Dated: October 23, 2008

FIERST, PUCCI & KANE, LLP  
John P. Pucci, Esq., BBO #407560  
J. Lizette Richards, BBO #649413  
64 Gothic Street  
Northampton, MA 01060  
Telephone: 413-584-8067

-and-

SIEGEL, BRILL, GREUPNER,  
DUFFY & FOSTER, P.A.

s/ M. Gregory Simpson

Gerald S. Duffy (MNReg. #24703)  
M. Gregory Simpson (MN Reg. #204560)  
Kristin L. Kingsbury (MNReg. #346664)  
100 Washington Avenue South  
Suite 1300  
Minneapolis, MN 55401  
Tel: 612-337-6100 / Fax: 612-339-6591



Local Rule 7.1 Certificate

Undersigned counsel hereby attests that Plaintiffs have complied with the requirements of Local Rule 7.1 by having, in good faith, through counsel and without success, conferred with Defendants in an attempt to resolve or narrow the issues raised in this motion.

Dated: October 23, 2008

/s/ M. Gregory Simpson  
M. Gregory Simpson

Certificate of Service

I, M. Gregory Simpson, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 23, 2008.

Dated: October 23, 2008

/s/ M. Gregory Simpson  
M. Gregory Simpson

---

---

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MASSACHUSETTS**

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No. 07-40098-FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION  
FOR VOLUNTARY DISMISSAL**

---

**INTRODUCTION**

Plaintiffs Three Angels Broadcasting, Inc. ("3ABN") and Danny Lee Shelton ("Shelton") submit this memorandum in support of their Motion for Voluntary Dismissal pursuant to Fed. R. Civ. P. 41(a)(2). Plaintiffs believe they have obtained all the tangible relief that could be obtained in this lawsuit by other means, and that the lawsuit cannot achieve additional meaningful relief for the Plaintiffs.

**FACTS**

Plaintiffs commenced the above-captioned lawsuit on or about April 5, 2007. The case is in the document discovery phase. (Affidavit of M. Gregory Simpson, filed and served herewith, ¶ 2). No depositions have been taken, nor have any dispositive motions

been filed or served. (*Id.*). The parties recently stipulated to an order extending discovery and unexpired deadlines by 90 days. (*Id.*).

A review of the Complaint (ECF Doc. 1) shows that it contains four counts: Count I states a claim for infringement of trademark under 15 U.S.C. § 1114 arising out of the Defendants alleged use of Plaintiff 3ABN's marks and registered domain names called "save3ABN.com" and "save3ABN.org." Count II of the Complaint states a claim for dilution of trademark under 15 U.S.C. § 1125(c) arising out of the operation and maintenance of the same websites. Count III of the Complaint states a claim for defamation arising out of specific statements published on the internet at the website [www.save3ABN.com](http://www.save3ABN.com), which contained false accusations of the commission of crimes by both Plaintiffs. Finally, Count IV of the Complaint states a claim for intentional interference with economic relations, arising out of the conduct that was the subject of the defamation count, which had the impact of interfering with 3ABN's relationships with its donors.

After the commencement of the lawsuit, certain developments occurred that have made much of the relief sought in the Complaint either moot or unnecessary. (*See* Affidavit of Dr. Walt Thompson, filed and served herewith). Count I and Count II sought an order shutting down two internet web sites owned and operated by the Defendants. The registered owner of the web sites was Defendant Joy. (*Id.* ¶ 3). Mr. Joy filed for bankruptcy protection on August 14, 2007. (The automatic stay on collection activity was subsequently lifted). On February 12, 2008, 3ABN purchased the infringing website domain names from the bankruptcy trustee. (*Id.*). The websites immediately ceased

operations. (*Id.*) Therefore, the relief sought in the complaint with respect to Counts I and II was obtained in the course of the bankruptcy proceeding.

Although monetary relief for Defendants' violation of federal trademark laws and common law claims is sought in the Complaint, it is not likely that Plaintiffs would recover any monetary relief no matter what the final outcome of the lawsuit might be. As to Mr. Joy, the bankruptcy court order lifting the automatic stay required 3ABN to give up its right to seek damages against Mr. Joy. (Affidavit of M. Gregory Simpson ¶ 3 and Ex. 1). Therefore, as to Counts I and II there is no tangible relief that could be afforded against Mr. Joy. As to Mr. Pickle, it is the assessment of 3ABN's counsel based on Court filings by Mr. Pickle which indicate that he is a man of modest means, that he would be unable to pay any substantial award of damages. (Simpson Aff. ¶ 4 and Ex. 2). In any case, the prospect of an award of monetary damages was never a significant motivation for the Plaintiffs in bringing this lawsuit, and they are not interested in continuing it merely because of a theoretical possibility of receiving some compensation from one of the defendants.

The Plaintiffs were, however, motivated by a desire for a judicial determination that certain public statements by the Defendants were false. These concerns have also abated in recent months. While the lawsuit was ongoing, the Internal Revenue Service conducted an investigation into 3ABN and Danny Shelton. (Thompson Aff. ¶ 4). The audit took more than a year and encompassed over 100,000 financial records. (*Id.* ¶ 5). At its conclusion last July, the IRS contacted counsel for Plaintiffs and inquired as to whether the file materials should be destroyed or returned. (*Id.*) Plaintiffs were advised

that this is what the IRS does when it concludes an investigation without finding sufficient evidence to warrant prosecution. (*Id.*). The Board of 3ABN deems this action by the IRS to be sufficient public assurance that 3ABN's financial accounting and tax reporting are in order and in full compliance with the law. (*Id.*). Certainly, there can be no greater assurance to 3ABN's public that its filings comply with the law than the fact that the IRS reviewed them and found nothing that warranted even a revised return, let alone criminal prosecution. Thus, the objective of the lawsuit to obtain a finding that its tax filings were not in violation of the law was met by means other than this lawsuit.

Also during the lawsuit, several additional allegations made by the Defendants involving the treatment of certain employees of 3ABN's wills and trusts department were investigated by a California state agency and the U.S. Equal Employment Opportunity Commission. (Thompson Aff. ¶ 6). In March of 2008, Plaintiffs were advised that the complaints had been dismissed for insufficient evidence. (*Id.*). This also served as a vindication of 3ABN with respect to the Defendants' statements with respect to that issue. (*Id.*).

As might be expected following official governmental actions implicitly rejecting the most serious of Defendants' damaging statements, the public's confidence in the Plaintiffs appears to have been restored. Last week the 3ABN Board recently reviewed figures indicating that donation levels have been restored to the levels they enjoyed before the Defendants began their campaign of disparagement. (Thompson Aff. ¶ 8). This indicated to the Board that the public's confidence in 3ABN has been restored. As 3ABN's Board Chairman, Dr. Walt Thompson, states:

When the Board came to the conclusion that 3ABN's reputation was no longer being significantly harmed by the Defendants' activities and that continuation of the lawsuit could not achieve more than what we had already achieved by other means, it was time to shut the lawsuit down.

(Thompson Aff. ¶ 8).

Although Plaintiffs believe that they would ultimately achieve a ruling in this case that the Defendants' statements were false and defamatory, the need to obtain such a ruling is much less than it was when the lawsuit began and no longer justifies the expense and distraction that are inherent in litigation.

### **ARGUMENT**

#### **I. DISMISSAL SHOULD BE GRANTED.**

The purpose of Rule 41(a)(2) is to permit a plaintiff, with approval of the court, to voluntarily dismiss an action "so long as no other party will be prejudiced." *Puerto Rico Maritime Shipping Authority v. Leith*, 668 F.2d 46, 50 (1<sup>st</sup> Cir. 1981). Generally, dismissal of an action under Rule 41(a)(2) is committed to the discretion of the court. *See Doe v. Urohealth Systems, Inc.*, 216 F.3d 157, 160 (1<sup>st</sup> Cir. 2000). Neither the prospect of a second suit nor a technical advantage should bar dismissal. *See Puerto Rico Maritime Authority*, 668 F.2d at 50. Dismissal should in most cases be granted, unless the result would be to legally harm the defendant. *See Century Mfg. Co. v. Central Transport Int'l, Inc.*, 209 F.R.D. 647, 648 (D. Mass. 2002). Dismissal under the rule is without prejudice unless the Court specifies otherwise. *See Fed. R. Civ. P. 41(a)(2)*. In exercising its discretion, the court may consider such factors under Rule 41(a)(2) as the defendant's effort and expense of preparation for trial, the plaintiff's diligence in

prosecuting the action, and the plaintiff's explanation for seeking dismissal. *See Doe*, 216 F.3d at 160. Rule 41(a)(2) authorizes the Court to condition the dismissal on "terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

Here, voluntary dismissal should be granted because Plaintiffs are seeking dismissal at an early stage of the litigation, no counterclaims or dispositive motions are on file, and no legal prejudice to the Defendants can be shown. Document discovery is underway, but no depositions have yet been taken. The parties have cooperated to extend deadlines when necessary. The Plaintiffs have been diligent in prosecuting the action, as a review of the lengthy ECF Docket sheet will attest. In addition to what is shown on the Court Docket, Plaintiffs served document requests and interrogatories on the Defendants, to which responses have been received, and in addition conducted third party discovery. There can be no argument that either side lacked diligence.

Dismissal should be without prejudice because the Defendants will not suffer a *legal* disadvantage from such a dismissal. They will be in the same legal position that they occupied before the suit commenced. Thus, no conditions are necessary to protect the Defendants against prejudice.

## **II. CONFIDENTIAL INFORMATION SHOULD BE RETURNED.**

Plaintiffs also request that the Court order the return of confidential information provided to the Defendants pursuant to the Confidentiality and Protective Order issued in this case on April 17, 2008 (ECF Doc 60), including but not limited to the records of MidCountry Bank which were delivered under seal to, and remain in the custody of, Magistrate Judge Hillman. All parties submitted proposed orders to Magistrate Judge

Hillman that required return of the confidential information at the conclusion of the litigation. (*See* Proposed Order submitted by Defendant Pickle, Doc. 57, at p. 11; Defendant Joy's Proposed Order, Doc. 59 at p. 10; Plaintiffs' Proposed Confidentiality Order, Doc. 58 at p. 12).

Consistent with the parties' requests, the Confidentiality and Protective Order expressly provides that material produced under it "shall be used for no other purpose than this litigation." (Doc. 60 at pp. 1-2). The Order has an Exhibit A that recipients of Confidential material must sign, which states: "Upon the earlier of: (i) demand of counsel of record of the party who supplied the Confidential Information to me or (ii) within 30 days after the final termination of instant litigation, including appeal, I will return all Confidential Information and all copies thereof, including notes, abstracts, summaries and memoranda relating thereto which contain any of the substance thereof, to the person or party from whom I received the Confidential Information." (Doc. 60 page 8 of 8). Thus, the Order contemplates return of all Confidential Information produced during the litigation.

Since receiving information designated as "Confidential" under the Order issued in this case, Defendant Joy has published several statements on internet blogs that appear to refer to material he has received under the confidentiality order, which state or at least imply that the material proves wrongdoing on the part of the Plaintiffs. An example is the following statement published shortly after Mr. Joy received material pursuant to a third party subpoena issued to Remnant Publications, which produced records clearly marked as "confidential" under the order issued in this case:



The message was carefully considered and designed to get a very specific Response. It has fulfilled it's purpose, but, *with the evidence we now Have, not simply sources, but real, hard, supportive evidence that demonstrates the sources were woefully under-reporting the scope of the abuses*, I MUST STAND FIRMLY ON THAT STATEMENT.

(Simpson Aff. Ex. 3A) (italics supplied). On another occasion, also shortly after receipt of the Remnant documents, Mr. Joy wrote:

Those documents, and all other documents, are not subject to any “seal” per order of the court. YUP, old boy, they came right to my desk and are still at my right hand until they are prepared for the “experts”. Those and the bank statements and now the audit of the auditor will all be in the hands of experts in time!!!

(*Id.* Ex. 3B) Thus, the threat that the Defendants may reveal the contents of confidential information is not merely an idle possibility. Mr. Joy is doing it already.

Plaintiffs therefore request an order compelling Defendants to retrieve from their consultants and deliver to Plaintiffs all materials, and all copies of materials, which were produced under the Confidentiality and Protective Order issued in this case, and to sign an affidavit or otherwise swear on oath that they have retained no confidential material or copies of confidential material. This order should extend to:

1. All documents produced to Defendants by the Plaintiffs that were stamped as “Confidential” under the Court’s confidentiality order;
2. All documents produced by Remnant Publications pursuant to the subpoena issued in this case out of the U.S. District Court for the Eastern District of Michigan; and

3. The documents delivered under seal to Magistrate Judge Hillman by MidCountry Bank pursuant to the subpoena issued in this case out of the U.S. District Court for the District of Minnesota.

**III. THIRD PARTY SUBPOENAS SHOULD BE DISMISSED.**

Although the issue is now largely moot, Defendants should be directed to dismiss or cancel any outstanding subpoenas issued in this case, wherever such subpoenas may have been served. Rule 45 authorizes the use of subpoenas on non-parties to obtain information needed for a *pending* lawsuit. *See* Fed. R. Civ. P. 45(a)(1)(A)(ii). Once the lawsuit is no longer pending, the subpoena ceases to be valid under Rule 45, and must be dismissed.

**IV. DISCOVERY OBLIGATIONS SHOULD BE STAYED PENDING RESOLUTION OF THIS MOTION.**

Finally, Plaintiffs request that this Court stay discovery obligations pending resolution of this motion to dismiss. Plaintiffs are currently under an obligation to respond to requests for production of documents served by the Defendants. In addition, Plaintiffs have served Notices of Deposition upon the Defendants in order to comply with current scheduling order deadlines. The benefit of dismissing the action would be lost if the parties were required to conduct discovery and comply with other scheduling order deadlines while this motion is pending. Therefore, Plaintiffs request that this Court stay discovery obligations while this motion is pending.

**CONCLUSION**

For the reasons stated above, Plaintiffs seek an order voluntarily dismissing this lawsuit without prejudice, ordering the return of confidential information, dismissing third party subpoenas and staying discovery pending resolution of this motion.

Respectfully Submitted:

Dated: October 23, 2008

SIEGEL, BRILL, GREUPNER,  
DUFFY & FOSTER, P.A.

s/ M. Gregory Simpson  
Gerald S. Duffy (MNReg. #24703)  
M. Gregory Simpson (MNReg.#204560)  
Kristin L. Kingsbury (MNReg. #346664)  
100 Washington Avenue South  
Suite 1300  
Minneapolis, MN 55401  
(612) 337-6100  
(612) 339-6591 – Facsimile

-and-

FIERST, PUCCI & KANE, LLP  
John P. Pucci, Esq., BBO #407560  
J. Lizette Richards, BBO #649413  
64 Gothic Street  
Northampton, MA 01060  
Telephone: 413-584-8067

Attorneys for Plaintiffs Three Angels  
Broadcasting Network, Inc. and  
Danny Shelton

Certificate of Service

I, M. Gregory Simpson, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 23, 2008.

Dated: October 23, 2008

/s/ M. Gregory Simpson  
M. Gregory Simpson



taken, nor have any dispositive motions been filed or served. The parties recently stipulated to an order extending discovery and unexpired deadlines by 90 days.

3. On August 14, 2007, Gailon Arthur Joy filed for bankruptcy in the United States Bankruptcy Court for the District of Massachusetts, Case No. 07-43128-JBR. The bankruptcy court order lifting the automatic stay required 3ABN to give up its right to seek damages against Mr. Joy for prepetition actions. A true and correct copy of the bankruptcy court order is attached hereto as Exhibit 1.

4. Based on court filings by Defendant Robert Pickle seeking relief from the requirement to appear in person on the basis of hardship, among other things, it appears that he is a man of modest means who would be unable to pay any substantial award of damages. True and correct copies of two such filings by Mr. Pickle are attached as Exhibit 2.

5. Attached hereto as Exhibit 3A and 3AB are two internet postings made by Gailon Arthur Joy that refer to what we believe can only be Confidential documents produced in this litigation.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: October 23, 2008

s/M. Gregory Simpson  
M. Gregory Simpson

Subscribed and sworn to me  
this 23rd day of October, 2008.

s/ Amy Jo Ditty  
Notary Public  
My Commission Expires: January 31, 2010



Certificate of Service

I, M. Gregory Simpson, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 23, 2008.

Dated: October 23, 2008

/s/ M. Gregory Simpson  
M. Gregory Simpson



---

---

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc.,  
an Illinois non-profit corporation, and  
Danny Lee Shelton, individually,

Case No. 07-40098 FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

---

**AFFIDAVIT OF DR. WALT THOMPSON**

---

STATE OF ILLINOIS        )  
  )  
FRANKLIN, ss.             )

Dr. Walt Thompson, being first duly sworn upon oath, deposes and states as follows:

1. I am the Chairman of the Board of Directors of the non-profit corporation Three Angels Broadcasting Network, Inc. ("3ABN"), duly organized in the state of Illinois. I have been an officer of 3ABN since January 15, 1995 and I make this Affidavit of my personal knowledge and information.

2. The Board of Directors of Three Angels Broadcasting Network, Inc., has directed its attorneys to seek dismissal of the above-captioned lawsuit against Robert Pickle and Gailon Arthur Joy. The lawsuit was brought to shut down websites owned and operated by Mr. Joy and Mr. Pickle that were used to spread disparaging statements

about 3ABN and its co-founder and past President, Danny Lee Shelton. The major goals of the lawsuit have now been achieved by means outside of the lawsuit, and the Board determined that the lawsuit was no longer necessary.

3. The lawsuit alleges that Mr. Joy and Mr. Pickle violated federal trademark laws by owning and operating web sites that contained the “3ABN” name, which they used to publish false accusations about 3ABN and Mr. Shelton. However, on August 14, 2007, Mr. Joy filed for personal bankruptcy in the Massachusetts bankruptcy courts. The websites that 3ABN alleged were in violation of trademark laws were among Mr. Joy’s assets. On February 12, 2008, 3ABN bought them from the bankruptcy trustee for a nominal sum. The web sites were then immediately shut down, which achieved one of the major goals of the lawsuit.

4. The Board feels that the other major objective of the lawsuit, that of assuring the public that 3ABN’s financial and administrative conduct was proper, was also achieved outside of the lawsuit. Although 3ABN and Danny Shelton have always used the services of outside accounting firms to make sure that their tax returns and other filings are accurate and in full compliance with the laws, the Internal Revenue Service conducted a thorough review of 3ABN and Mr. Shelton which included a review of their financial records for the audit period, 2000 to 2006.

5. The investigation took more than a year. In July, our attorneys advised us that the IRS investigation had ended and that there would be no finding that 3ABN or Mr. Shelton had committed any wrongful act. The Board had hoped for a letter from the IRS indicating that 3ABN and Mr. Shelton were in full compliance with the law, but our attorneys inform us that the IRS does not issue such letters no matter what their

investigation shows. In this case, the IRS reviewed over 100,000 pages of financial records, interviewed numerous witnesses, and then simply ended the investigation without requesting that 3ABN or Mr. Shelton change their tax returns in any way or pay additional taxes. The Board views this IRS action as a vindication of its position that 3ABN and Danny Shelton fully complied with tax laws because if the IRS had found any violations, it would have at least ordered us to file corrected returns.

6. Similarly, Mr. Pickle and Mr. Joy had made allegations that certain 3ABN employees in the wills and trusts department had been mistreated. These allegations were investigated by California state authorities and the U.S. Equal Employment Opportunity Commission. Our attorneys advised us in March that the claims had been dismissed by the EEOC for insufficient evidence. Once again, the governmental agencies charged with enforcing the law looked into the allegations and determined there was no evidence that any law had been violated.

7. The Board originally authorized the lawsuit in order to protect the 3ABN name from being hijacked by people who wanted to use it to attract 3ABN's supporters to their website, and then burden them with messages of despair and distrust instead of hope and faith. The Board took forceful steps to prevent that from happening because we feel that protecting our organization's good name is necessary to fulfillment of our mission of broadcasting the Everlasting Gospel as described in the Three Angels Messages of Revelation 14 and 18 around the world.

8. Last week, the Board reviewed figures showing that 3ABN's donation levels have returned to the level they enjoyed before the attack on our reputation began. We think this shows that the public's confidence in 3ABN has been restored. When the

Board came to the conclusion that 3ABN's reputation was no longer being significantly harmed by the Defendants' activities and that continuation of the lawsuit could not achieve more than what we had already achieved by other means, it was time to shut the lawsuit down. The Board promptly voted to direct its attorneys to dismiss the lawsuit.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: 10/22/08

s/ Walter C. Thompson  
Dr. Walt Thompson  
Chairman of the Board, Three  
Angels Broadcasting Network, Inc.

Subscribed and sworn to me  
this 22 day of October, 2008.

s/ Shannon Weiler  
Notary Public  
My commission expires 9-20-2009  
State of WI  
County of Walworth

Certificate of Service

I, M. Gregory Simpson, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 23, 2008.

Dated: October 23, 2008

/s/ M. Gregory Simpson  
M. Gregory Simpson



3. Nevertheless, since Plaintiffs' counsel had given the impression to Magistrate Judge Frazier that issues of scope and relevance were still unresolved in Massachusetts, the Honorable Philip Frazier was reticent to risk issuing an order that would conflict with that of this Court. He therefore continued the subpoena in question and ordered the transfer of the matter to the District of Massachusetts.

4. However, Plaintiffs' counsel had earlier told me by telephone that he considered the issues of scope and relevance already resolved by the September 11, 2008, order of the Honorable Timothy S. Hillman.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 23rd day of October, 2008.

/s/ Bob Pickle  
Bob Pickle  
Halstad, MN 56548  
Tel: (218) 456-2568

Subscribed and sworn to me  
this 23rd day of October, 2008.

/s/ Perry W. Kolnes  
Notary Public—Minnesota

My Commission Expires Jan. 31, 2010

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____ )	
Three Angels Broadcasting Network, Inc., )	
an Illinois non-profit corporation, and )	
Danny Lee Shelton, individually, )	Case No.: 07-40098-FDS
)	
) Plaintiffs, )	
v. )	
)	
Gailon Arthur Joy and Robert Pickle, )	
)	
) Defendants. )	
_____ )	

**DEFENDANTS’ MEMORANDUM IN OPPOSITION TO  
PLAINTIFFS’ MOTION FOR VOLUNTARY DISMISSAL**

**INTRODUCTION**

The Plaintiffs and their counsel file this motion as an attempt to further obstruct discovery, evade disclosure of wrongdoing at trial, dodge misuse of process and malicious prosecution counterclaims by the Defendants, and avoid an adverse result. The explanations of Three Angels Broadcasting Network, Inc. (hereafter “3ABN”) for seeking dismissal without prejudice are unconvincing. The motion does not meet accepted standards for granting dismissal without prejudice, or granting dismissal at all. Danny Lee Shelton (hereafter “Shelton”), individually, fails to explain why his claims should be dismissed. Plaintiffs filed their motion just six days after Plaintiffs’ counsel assured Defendant Pickle that no such motion would be filed.

**FACTS**

***Plaintiffs’ Initial Motives for the Instant Suit***

When the Plaintiffs filed their case on April 6, 2007, they were not “seeking monetary

benefit,” stated 3ABN Board chairman Walter Thompson (hereafter “Thompson”) on October 13, 2007. (Affidavit of Robert Pickle (hereafter “Pickle Aff.”) Ex. A p. 1; cf. Doc. 121 p. 3).

Thompson gave as reasons for filing the instant suit (a) Defendant Pickle’s concerns about the cover up by Danny Lee Shelton (hereafter “Shelton”) of the child molestation allegations against Tommy Shelton, and (b) the Defendants’ alleged refusal to “cooperate with ASI attempts to develop a procedure for examining the facts on both sides” regarding Shelton’s divorce and remarriage. (Pickle Aff. ¶ 1, Ex. A. p. 1). Adventist-laymen’s Services and Industries (hereafter “ASI”) surprisingly announced on January 5, 2007, that they had pulled out of negotiations the night before. (Pickle Aff. ¶ 2, Ex. B). D. Michael Riva’s letter to Community Church of God trustees threatening litigation over the allegations against Tommy Shelton is also dated January 5, 2007. (Doc. 63-17). ¶ 48(d) and 50(a)–(b) of the Plaintiffs’ complaint refer to issue (b). (Doc. 1). These issues underlying the instant case remain entirely unresolved.

### ***Finally, a Settlement Proposal***

On October 17, 2008, Plaintiffs’ counsel telephoned Defendant Pickle, and for the first time during this litigation that Defendant Pickle can recall, explicitly made a settlement proposal to him, based on the need to save expenses associated with *discovery*. (Pickle Aff. ¶¶ 3–5). The proposal was not made in writing. In that telephone conversation, Plaintiffs’ counsel explicitly stated that he would not be filing a motion to dismiss. (Pickle Aff. ¶¶ 6–7). When asked, Defendant Pickle stated that he was interested in settling. (Pickle Aff. ¶ 8).

There have been no subsequent oral or written communications between Plaintiffs’ counsel and Defendant Pickle regarding settlement. (Pickle Aff. ¶ 10, Ex. C pp. 6–7). Plaintiffs’ counsel did not confer with Defendant Joy. (Pickle Aff. ¶¶ 11–12, Ex. C pp. 4–5).

### ***Defendants Were Preparing a Motion to Ask Leave to Subpoena EEOC Investigative Files***

The Court will have noticed the Plaintiffs’ motion to enforce protective order that was



later withdrawn. (Doc. 112; Doc. 119). This motion concerned key documents produced by 3ABN that were to be used in connection with a motion by the Defendants seeking the investigative files for the complaints of Ervin Thomsen (hereafter “Thomsen”) and Kathy Bottomley (hereafter “Bottomley”) filed with the Equal Employment Opportunity Commission (hereafter “EEOC”) and the California Department of Fair Employment and Housing (hereafter “DFEH”). Plaintiffs’ counsel represented that he did not oppose the motion.

The Defendants wanted to verify that certain key documents were disclosed by 3ABN to the EEOC and DFEH, since failure to do so could taint the investigation and affect the findings. The Defendants can document similar examples of selective disclosure on the part of the Plaintiffs in both 3ABN’s property tax case and the instant suit.

Plaintiffs’ counsel took the position that if the Defendants stated in an unsealed memorandum that a sealed confidential document was evidence that 3ABN management purposely terminated whistleblowers over allegations against Leonard Westphal (hereafter “Westphal”), allegations that 3ABN management knew were true (the essence of the complaints filed with the EEOC), that would be a violation of the confidentiality order. Plaintiffs’ counsel stated that nothing could be said regarding a confidential document in an unsealed memorandum that “helps your argument or casts my clients in a bad light,” or that “permit[s] anybody to draw negative inferences against my clients.” (Pickle Aff. Ex. D). However, Plaintiffs’ counsel had explicitly told this Court in the hearing of March 7, 2008, that their December 18, 2007, motion for a protective order was seeking protection of only “financial and business records.”

... now we’re not talking about other information. We’re not talking about employment related information, ministry related information, theological information. We’re simply talking about this very narrow window of financial bookkeeping and accounting and auditing documents.

(Doc. 89 pp. 24–25).

***Defendants Now Have a Basis for Counterclaims***

In opposing the appeal of Remnant Publications, Inc. (hereafter “Remnant”), the Defendants filed evidence that Shelton received kickbacks from Remnant pertaining to sales to 3ABN, as well as enormous royalties. (Doc. 96-9 p. 3–4; Doc. 96-11 p. 54). After losing this appeal on September 8, 2008, Remnant decided against appealing further, and produced the documents by September 22, 2008. After reviewing these documents, the Defendants believe them to be key to their defense.

Attorney Gerald Duffy (hereafter “Duffy”) asserts that Plaintiffs’ counsel did a thorough review of all of the Plaintiffs’ records. (Doc. 96-2). Thompson states that the law firm representing the Plaintiffs thoroughly investigated the Plaintiffs’ financial records prior to taking on the instant case. (Pickle Aff. Ex. E). Plaintiffs’ counsel therefore knew of evidence of Shelton’s kickbacks and substantial royalties attributable to his 3ABN activities, and that Shelton had failed to report all his income and assets on his July 2006 financial affidavit. This lawsuit was therefore without basis, yet the Plaintiffs and their counsel prosecuted this case anyway.

Simpson falsely claims that Defendant Joy revealed confidential information that is “not generally known or readily available to the public,” and is “proprietary information, confidential business or commercial information, and/or trade secrets relating to its business.” (Doc. 121 pp. 7–8; Doc. 60 p. 2). No information within the confidential documents was disclosed.

Simpson misconstrues the second quotation, which was in answer to “anyman’s” assertion that the Remnant documents had been produced under seal to Magistrate Judge Hillman. (Doc. 121 p. 8; Pickle Aff. Ex. F p. 3, Ex. C pp. 1, 4). “anyman” is believed to be the son of Thompson. (Pickle Aff. ¶ 16). Thus, Plaintiffs’ counsel may not have informed the Plaintiffs that the Defendants were now in possession of the key evidence from Remnant, and Defendant Joy’s posts put the Plaintiffs and their counsel on notice that the Defendants now have

a basis for counterclaims of misuse of process and malicious prosecution. (Pickle Aff. Ex. F).

## ARGUMENT

### **I. THE PLAINTIFFS VIOLATED LOCAL RULE 7.1(a)(2)**

The instant motion for voluntary dismissal came as a complete surprise, since Simpson had told Defendant Pickle on October 17, 2008, that he would not be filing such a motion, and had not conferred further. (Pickle Aff. ¶¶ 6–7, 10, Ex. C pp. 6–7). Defendant Pickle had made it clear that he was interested in settling on proper terms. (Pickle Aff. ¶ 8). Simpson did not confer with Defendant Joy regarding voluntary dismissal. (Pickle Aff. Ex. C pp. 1, 4–6). Because the vast issues to consider in such a motion have not been narrowed, the Defendants have been prejudiced regarding their attempt to respond. The motion should be denied on that basis.

Given the falsity of Simpson’s Local Rule 7.1 certification attached to his motion, and the apparent attempt of Simpson to avoid liability for malicious prosecution and misuse of process, Simpson’s conduct could be considered evidence of conflict of interest.

### **II. DISMISSAL MUST NOT PREJUDICE DEFENDANTS**

“Voluntary dismissal without prejudice [pursuant to Rule 41(a)(2)] is ... not a matter of right.” *Zagano v. Fordham Univ.*, 900 F.2d 12, 14 (2d Cir. 1990). The purpose of Fed. R. Civ. P. 41(a)(2) is to prevent dismissals that prejudice the defendants and to permit the court to impose curative conditions it deems necessary. *Mobil Oil Corp. v. Advanced Env’tl Recycling Techs., Inc.*, 203 F.R.D. 156, 158 (D. Del. 2001). A noted treatise observes:

Legal prejudice is shown when actual legal rights are threatened or when monetary or other burdens appear to be extreme or unreasonable. . . .

[T]he factors most commonly considered on a motion for a voluntary dismissal are: (1) the extent to which the suit has progressed, including the defendant’s effort and expense in preparing for trial, (2) the plaintiffs diligence in prosecuting the action or in bringing the motion, (3) the duplicative expense of relitigation, and (4) the adequacy of plaintiff’s explanation for the

need to dismiss. Other factors that have been cited include whether the motion is made after the defendant has made a dispositive motion or at some other critical juncture in the case and any vexatious conduct or bad faith on plaintiff's part.

8 *Moore's Federal Practice* § 41.40[6], pp. 41-140 – 41-142 (3d ed. 2003).<sup>1</sup> This list of considerations is not exhaustive. *Id.* at p. 41-141. A voluntary dismissal that strips a defendant of a defense that would otherwise be available may be sufficiently prejudicial to justify denial. *Ikospentakis v. Thalassic Steamship Agency*, 915 F.2d 176, 177 (5th Cir. 1990); *Phillips v. Illinois Cent. Gulf R.R.*, 874 F.2d 984, 987 (5th Cir. 1989).

Dismissal without prejudice ought to be limited to a fairly short period after commencement of the action. *Grover*, 33 F.3d at 719 (“At the point when the law clearly dictates a result for the defendant, it is unfair to subject him to continued exposure to potential liability by dismissing the case without prejudice.”); *also Chodorow v. Roswick*, 160 F.R.D. 522, 524 (E.D. Penn. 1995) (when plaintiff's sole motive is his “realization that his case has been weakened by events and his corresponding hope that the passage of time will somehow improve things for him” court should grant plaintiff's motion to dismiss with prejudice); *Millsap v. Jane Lamb Mem'l Hosp.*, 111 F.R.D. 481, 483-84 (S.D. Iowa 1986) (defendant demonstrated adequate prejudice to support dismissal with prejudice, when suit was pending for three years and plaintiffs could not find credible expert opinion evidence).

None of these factors or considerations support the Plaintiffs' motion in this instance.

#### **A. Vexatious Conduct or Bad Faith on Plaintiff's Part**

Vexatious conduct has been found where a plaintiff has filed frivolous actions, committed

---

<sup>1</sup> See *Zagano*, 900 F.2d at 14; *Grover By Grover v. Eli Lilly and Co.*, 33 F.3d 716, 718 (6th Cir. 1994); *Catanzano v. Wing*, 277 F.3d 99, 110 (2nd Cir. 2001); *Ellett Bros. Ins. v. U.S. Fidelity & Guar. Co.*, 275 F.3d 384, 388 (4th Cir. 2001); *Paulucci v. City of Duluth*, 826 F.2d 780, 783 (8th Cir. 1987); *Pace v. Southern Express Co.*, 409 F.2d 331, 334 (7th Cir. 1969); *Ferguson v. Eakle*, 492 F.2d 26, 29 (3d Cir.1974); *Scallen v. Minnesota Vikings Football Club*, 574 F. Supp. 278, 280 (D. Minn 1983) (plaintiff's rule 41(a)(2) motion denied due to prejudice caused by expense of defendant's discovery and motion preparation, plus likelihood plaintiff would bring another lawsuit and future anti-trust claims).

perjury, or entered or maintained an action in bad faith. *Blue v. United States Dep't of Army*, 914 F.2d 525, 532 (4th Cir. 1990).

Despite the fact that the Plaintiffs had stated in public advertising, and in sworn testimony and legal briefs in a case under appeal until March 31, 2008, that 3ABN's programming is not copyrighted, Duffy accused the Defendants of copyright infringement in his letter of January 30, 2007. (Doc. 63-18 p. 2; Pickle Aff. ¶17, Ex. G, H p. 8, I p. 24, J–K). The Plaintiffs prepared to litigate over copyright infringement by registering for the first time ever a broadcast with the U.S. Copyright Office on February 8, 2007. That broadcast was the one containing the tribute to alleged pedophile Tommy Shelton. (Pickle Aff. ¶ 18, Ex. L–M). Though the Plaintiffs included a copyright infringement allegation in their complaint (Doc. 1 ¶ 30), they failed to include such as a count since they knew they could not prevail.

Though the only allegedly defamatory statements Duffy referred to in his letter concerned child molestation allegations against Tommy Shelton, no such allegations are explicitly mentioned in the Plaintiffs' complaint, though they do fall under ¶¶ 48(a) and 48(c). (Doc. 63-18 p. 2; Doc. 1). Again, the Plaintiffs knew they could not prevail over these issues. (Pickle Aff. ¶ 19, Ex. N–R).

Duffy's letter also accused the Defendants of trademark infringement and dilution. (Doc. 63-18 pp. 1–2). Duffy claimed non-existent common law copyright in an attempt to cover up Shelton's use of Duffy to silence concerns about child molestation allegations, while claiming that the Defendants' claim that Shelton used lawyers to that end was defamatory. (*Id.*). The Defendants therefore published the letter with commentary in order to let the public know that Shelton was indeed doing what Duffy claimed he was not doing. (Doc. 8-2 pp. 2–12). The attached commentary cited Sixth and Ninth Circuit cases which demonstrated the fallaciousness of the Plaintiffs' trademark claims. (Doc. 8-2 pp. 6–7). While the Plaintiffs included trademark

issues in their complaint and called for a permanent injunction against the Defendants in their prayer for relief, they have failed to move the Court for a preliminary injunction since they knew they could not prevail.

The Court should note that Simpson's out-of-context citations of Defendant Joy in his memorandum are used to bolster Simpson's contention that Defendant Joy is disclosing confidential information when he discloses "wrongdoing" on the part of the Plaintiffs. (Doc. 121 pp. 7-8). A perusal of the record demonstrates that this has been the driving force behind the Plaintiffs' litigation efforts. Rather than to prove that there has been no wrongdoing, the Plaintiffs filed and prosecuted this suit in order to muzzle and intimidate the Defendants, and prevent further disclosures of the Plaintiffs' improprieties, whether financial, ethical, or moral. This, therefore, was the driving force behind the efforts to permanently impound the instant case, to impose an overbroad confidentiality order, and to limit the scope of discovery, as well as to protract out the litigation as long as possible. (Doc. 2; Doc. 10; Doc. 40; Doc. 74).

While the parties served their initial disclosures on or about August 3, 2007, the Plaintiffs did not move for a confidentiality order to protect their Rule 26(a)(1) materials until December 18, 2007. (Doc. 37-2 pp. 2-7; Doc. 40). Though reserving relevancy concerns in that motion, the Plaintiffs did not move for an order limiting the scope of discovery until June 25, 2008. (Doc. 41 p. 3; Doc. 74). While the Plaintiffs explicitly stated that they weren't seeking a confidentiality order to cover employment matters, they subsequently invoked the confidentiality order to hide the egregious misconduct of Westphal which led to the termination of the 3ABN Trust Services whistleblowers. (Doc. 89 p. 25; Doc. 112; Pickle Aff. ¶ 20, Ex. S-BB).

Regarding why the Plaintiffs weren't producing their Rule 26(a)(1) materials, Plaintiffs' counsel stated in the hearing of March 7, 2008:

Again, we're not making a purposeful delay here. We genuinely want to show that 3ABN is an upright, financially proper ministry,

but we don't want to turn those documents over that are proprietary, confidential, trade secret.

(Doc. 89 p. 16). Yet after all that purposeful delay, all the allegedly proprietary, confidential, and trade secret documents the Plaintiffs ended up producing amounted to but 207 pages: 72 pages of the publicly available 2006 issue of *Catch the Vision*, 74 pages of seven editions of corporate bylaws, at least the first and last of which are part of public record, 39 pages of the 2005 employee handbook, part of which the Defendants had already used as an exhibit, and 22 pages consisting of eight other documents, none of which establish that "3ABN is an upright, financially proper ministry." (Doc. 81 ¶¶ 14, Table 4).

The Plaintiffs objected to every one of Defendant Pickle's Requests to Produce on the basis that everything sought was confidential, privileged, or irrelevant. (Doc. 62 p. 8; Doc. 68 ¶ 6). This Court ordered the Plaintiffs to respond by October 27, 2008, to revised requests, and to evade that order the Plaintiffs filed the instant motion, claiming to the Defendants that they didn't have to comply until this motion is heard. (Doc. 107 p. 4; Pickle Aff. Ex. CC).

The Plaintiffs filed motions to quash the Defendants' subpoenas *duces tecum* of MidCountry Bank (hereafter "MidCountry") and Gray hunter Stenn LLP (hereafter "GHS"), and encouraged GHS and Remnant to resist compliance. (Doc. 76-3 pp. 18-19; Doc. 75 p. 4; Doc 114-26 ¶ 7). Finally, after the Defendants are close to getting access to the records of MidCountry and GHS, the Plaintiffs through the instant motion seek to prohibit that access.

The Plaintiffs invoked the automatic stay of Defendant Joy's bankruptcy case in order to sideline him in the instant case, only to then go after his hard drives. (Pickle Aff. ¶ 22, Ex. DD; Doc. 29). After obtaining an order from this Court allowing them to copy his hard drives, Plaintiffs' counsel then sought to violate that order. (Doc. 108 p. 3). The grievous violation of an automatic stay that the Plaintiffs themselves invoked resulted in Defendant Joy filing adversary proceedings against them and their counsel. (*Joy v. Shelton, et al*, D.Ma. No. 4:08-cv-40090).

The Plaintiffs acknowledge that they released Defendant Joy from all their claims against him way back on November 21, 2007, when the automatic stay was lifted. (Doc. 122-2 p. 1). Yet as late as September 23, 2008, 3ABN still claimed to be a creditor of Defendant Joy, filing its *sixth* motion to Extend Time to Object to Discharge or to Determine Dischargeability of a Debt. (Pickle Aff. Ex. EE).

As already stated, Simpson indicated on October 17, 2007, that the Plaintiffs' wish to settle was motivated by a desire to avoid *discovery* expenses over the next three months. (Pickle Aff. ¶ 5). This coincides with sources that have indicated that donations are way down and that 3ABN is in deficit mode. (Pickle Aff. ¶ 24). Yet the Plaintiffs justify the instant motion on the mere hearsay that donations are now back at the levels they were prior to the Defendants issuing their investigative reports. (Doc. 123 ¶ 8).

In the hearing of March 7, 2008, Plaintiffs' counsel stated:

The vast bulk of our allegations in the complaint, and if you review the pinpoint allegations of the complaint concerning the specific statements of defamation that we have alleged, those individual statements primarily deal with various specific financial transactions that Mr. Pickle or Mr. Joy or both on the various websites have stated were improper for whatever reason.

(Doc. 89 p. 10). “[T]he specific statements of defamation that [the Plaintiffs] have alleged” may be found under ¶¶ 46(a)–(k), 48(a)–(d), 50(a)–(i). (Doc. 1). On their face, ¶¶ 48(a)–(d) and 50(a)–(i) do not have anything to do with financial transactions. In a recent conversation, Plaintiffs' counsel admitted that they have tried to keep Shelton's divorce out of the lawsuit. (Pickle Aff. ¶ 25). Yet that is what ¶ 50 is supposed to be all about! The Plaintiffs have good reason to avoid the allegations under ¶ 50. (Pickle Aff. ¶¶ 26–27, Ex. FF).

The Honorable Magistrate Judge Philip Frazier in the hearing of October 22, 2008, told Plaintiffs' counsel that ¶ 46(g) of the complaint was quite broad, and yet Plaintiffs' counsel has continually asserted that the complaint's allegations are “specific” or “pinpoint.” (Pickle Aff. ¶



28; Doc. 89 p. 10). At the very least, ¶¶ 46(a), (e), 48(a), and (c) are also quite broad.

As already stated, Plaintiffs' counsel knew that the financial allegations against the Defendants were frivolous, and yet they filed and prosecuted this case anyway. (*supra* p. 4). Plaintiffs' counsel must have known about evidence for Shelton's double dipping book deals whereby he received both royalty and sales revenue from 3ABN's purchases of his books via at least four publishing companies, including kickbacks ranging from 10% to 32%.

In the hearing of March 7, 2008, Plaintiffs' counsel stated:

[Mr. Pickle and Joy] may easily change their mind as has been shown on their conduct in the various websites which has now been expanded after the bankruptcy matter to include at least seven other save 3ABN based websites where they are posting this exact same information.

(Doc. 89 p. 30). Regarding these 15 or 16 other sites which were in operation before the Plaintiffs purchased and transferred the domain names Save3ABN.com and Save3ABN.org (Pickle Aff. ¶ 29), the Plaintiffs now wish to pretend that these other sites do not exist in order to extricate themselves from a lawsuit they know they cannot win, evade counterclaims of misuse of process and malicious prosecution, and avoid discovery yet again.

Because of the Plaintiffs' vexatious conduct and bad faith, their motion for voluntary dismissal should be denied.

**B. Plaintiffs' Diligence in Prosecuting the Action**

By no stretch of the imagination have the Plaintiffs been diligent in prosecuting this action, and their motion should be denied on that basis.

The Plaintiffs have never pursued their alleged claims pertaining to Shelton's cover up of the child molestation allegations against Tommy Shelton, failed to include copyright infringement as a count, and failed to seek a preliminary injunction. Long ago they ceased prosecuting any claims pertaining to Shelton's divorce, without amending their complaint, even

though a large portion of their defamation claims pertain to that divorce.

The Plaintiffs have served no written discovery requests in this action upon the Defendants since August 20, 2007, other than a request for documents the Defendants received from two subpoenas *duces tecum*. (Pickle Aff. ¶ 30). The Defendants have maintained that the Plaintiffs must produce substantive documents prior to the Defendants scheduling depositions, preventing them from so scheduling. Yet the Plaintiffs are not so encumbered since the Defendants produced thousands of documents to the Plaintiffs around August and September 2007. Other than subpoenas *duces tecum* to obtain the identities of anonymous posters on two internet forums, of dubious relevance (Doc. 80 pp. 6–7), and a deposition of Linda Shelton that never took place, the Plaintiffs have confined their efforts in this litigation to covering up their own wrongdoing through protective orders, and to obstructing the Defendants’ discovery efforts.

Shelton as an individual, though a party to this lawsuit, has apparently thus far refused to cooperate with discovery, not having produced any documents identifiable as coming from him rather than from 3ABN. (Pickle Aff. ¶ 31).

### **C. Plaintiffs’ Diligence in Bringing the Motion**

The Plaintiffs bring their motion more than 18 months after the commencement of this action, and, according to a probable typographical error in the electronic order of June 27, 2008, after the current end of discovery. (“The motion to extend all deadlines for discovery by 90 days is GRANTED. ... Discovery to be completed by 9/9/2008.”).

Perhaps ¶ 46(g) was intended to refer to allegations pertaining to Shelton’s lucrative book deals, though it is broad enough to cover a host of wrongdoing. After being served with the Plaintiffs’ complaint on April 30, 2007, since the allegation was broad, the Defendants researched and published stories by July 2007 pertaining to Shelton’s reporting on his 2003 IRS Schedule A of a donation of horse(s) as \$20,000 cash, without filing the required Form 8283 and

appraisal(s), along with documentation showing that the reported donation(s) may have been inflated by a factor of 4 to 40. (Pickle Aff. ¶ 32, Ex. GG–HH). The Defendants also published stories documenting Shelton’s receiving from 3ABN of a section 4958 excess benefit transaction in 1998, and his denial under penalty of perjury on IRS Form 990 that any such transaction took place. (Doc. 81-8 pp. 45–54; Pickle Aff. ¶ 33, Ex. II–JJ). Thus by July 2007 the Plaintiffs knew that their case was in jeopardy, but they did not file for voluntary dismissal.

In the fall of 2007 when the Defendants published their exposé concerning royalties Shelton received from Remnant, the Plaintiffs knew that the Defendants had the public documents necessary to make a case for subpoenaing documents from Remnant. (Doc. 81-7 pp. 22–29). Even after purchasing [Save3ABN.com](http://Save3ABN.com) and [Save3ABN.org](http://Save3ABN.org) in February 2008, the Plaintiffs still did not file for voluntary dismissal. After Magistrate Judge Carmody ruled on June 20, 2008, that Remnant would have to produce documents to the Defendants, after she denied Remnant’s motion to amend on July 28, 2008, after Judge Richard Alan Enslin denied Remnant’s appeal on September 8, 2008, the Plaintiffs still did not file for voluntary dismissal. (Pickle Aff. Ex. KK–MM). Only after Remnant caved and produced the incriminating documents, and the Defendants put the Plaintiffs on alert that the Defendants knew that they now had a basis for counterclaims of misuse of process and malicious prosecution, only then did the Plaintiffs finally, after so long delay, file their motion. The motion should therefore be denied.

#### **D. Defendants’ Efforts and Expense in Preparing for Trial**

The Defendants have thus far carried on a four-front war in the Districts of Massachusetts and Minnesota, the Western District of Michigan, and the Southern District of Illinois, due to the obstructionism of the Plaintiffs and their allies regarding the Defendants’ discovery efforts.

The Plaintiffs by the use of their Exhibit 2 for the instant motion acknowledge that Defendant Pickle has devoted his normal work hours to preparing his defense, resulting in

substantial loss of income. (Doc. 122-2 p. 4). The resulting, necessary frugality has been to the educational and orthodontic detriment of Defendant Pickle's dependents. (Pickle Aff. ¶ 35).

The Plaintiffs seek the dismissal of their case without prejudice. By referencing the permissibility of dismissal even with the prospect of a second suit or a tactical advantage, the Plaintiffs leave open the possibility of their refile, perhaps in another jurisdiction. (Doc. 121 p. 5). The only way that Defendant Pickle can match the immense resources of the Plaintiffs is to defend himself *pro se*, and live extremely frugally until the end of the conflict. Yet intense, 18-month conflicts separated by voluntary dismissals without prejudice will exhaust his resources and prejudice his ability to defend himself, even *pro se*. (Pickle Aff. ¶ 36).

Thousands of dollars have been spent by the Defendants, four experts have been retained, and thousands of miles have been traveled in preparing their defense. (Pickle Aff. ¶¶ 37–39). Considering their resources, the Defendants have made a relatively large investment of time, money, and effort, and are nearing the point where they can prove beyond a reasonable doubt the fallacious nature of all of the Plaintiffs' claims. The Defendants would be prejudiced by such a late voluntary dismissal without prejudice.

**E. Motion Made at a Critical Juncture in the Case, and Progress of Case**

Having obtained documents from Remnant, in possession of Duffy and Thompson's admissions that the law firm thoroughly reviewed the Plaintiffs' financial records, and now with admissions on the record by the Plaintiffs that they have sought the cover up of wrongdoing during this suit rather than an award of monetary damages, the Defendants are at the point where they have a solid basis for counterclaims of misuse of process and malicious prosecution.

If the Court grants a voluntary dismissal, the Defendants will be forced to separately file their counterclaims against the Plaintiffs and their counsel. The Defendants would intend to file those counterclaims in the same venue as the instant case. If the Plaintiffs challenge venue or

jurisdiction, the Defendants will be prejudiced by the additional expense and effort necessary to overcome those obstacles. If the Plaintiffs do not so challenge, they gain little by dismissal.

That the instant motion comes on the eve of seeking leave to serve subpoenas upon the DFEH and the EEOC in order to determine whether 3ABN tainted the investigations through selective disclosure is also suspicious, but is not out of character for Plaintiffs that are so paranoid about discovery.

**F. Duplicative Expense of Relitigation**

We note:

[A] voluntary dismissal should not be denied when the work product in the dismissed action will not be wasted but may be utilized in subsequent or continuing litigation.

*Moore's* § 41.40[7][a], p. 41-146 (citing *inter alia Puerto Rico Mar. Shipping Auth. v. Leith*, 668 F.2d 46, 50 (1st Cir. 1981)). By including in their motion a request for an order to return all documents from Remnant, MidCountry, and the Plaintiffs, the Plaintiffs ensure that there will be substantial duplication of expense, especially given the long, protracted war over discovery they have shown themselves prone to fight.

The Defendants believe that MidCountry did not stamp its records confidential. The Defendants also believe that Remnant was the designating party for its records. It is questionable whether the Plaintiffs even have standing to request the return of non-confidential documents on the behalf of MidCountry, or the return of confidential documents on behalf of Remnant.

Given the circumstances, the Defendants do not seek dismissal, but if the Court grants dismissal, the Court should order that all work product and discovery from this case may be utilized in the separate action the Defendants would intend to file, or in any future action over the same or similar claims that the Plaintiffs file against the Defendants. Otherwise, the Plaintiffs' motion should be denied.

**G. Adequacy of Plaintiffs' Explanation for the Need to Dismiss**

Danny Lee Shelton, individually, gives no reasons whatsoever for the dismissal of his personal claims in the suit. 3ABN fails to establish a need for dismissal, much less give an adequate explanation.

The Plaintiffs pretend that the objectives of their suit have already been achieved (Doc. 123 ¶ 3), and yet only ¶ 5 of the 11 paragraphs of their prayer for relief can be claimed as being partly accomplished. But the Plaintiffs are estopped from asserting that 3ABN's facetious purchase of the domain names Save3ABN.com and Save3ABN.org (as well as Defendant Joy's alleged pre-petition claims against Shelton as an individual) is evidence of an achieved objective. (*supra* p. 11). There are at least 16 times as many Save 3ABN websites now than when the Plaintiffs filed suit. (Pickle Aff. ¶ 29). The Plaintiffs have accomplished nothing if they do not obtain the permanent injunctions they seek in ¶¶ 3–4 of their prayer for relief.

The hearing of March 7, 2008, is not the only time the Plaintiffs have made clear their interest in the other Save 3ABN domain names. The Court will recall our previous reference to the September 9, 2008, Rule 2004 examination of Defendant Joy which included questions concerning matters pertaining to this case, one being the new Save 3ABN domain names. (Doc. 109 ¶ 1–5). Simpson therefore misleads when he states that no depositions have yet been taken (Doc. 121 p. 6), for the Rule 2004 examination was in part a deposition for the instant case. Atop the list of document requests in Exhibit A of the subpoena served for that examination is that which seeks information concerning domain names, including Save 3ABN domain names obtained after Defendant Joy's filing for bankruptcy. (Pickle Aff. Ex. NN).

The Plaintiffs intend for this Court to find as fact that the IRS has vindicated 3ABN, solely on the hearsay testimony of the repeatedly factually challenged Thompson regarding the unsupported assertions of unnamed attorneys. (Doc. 123 ¶ 4–5). Thompson claims that the IRS

“conducted a thorough review of 3ABN and Mr. Shelton.” Though both he and Shelton made similar claims regarding the state of Illinois to deflect questions concerning 2006 book royalties and the 1998 real estate deal, Administrative Law Judge Barbara Rowe noted in her denial of 3ABN’s petition for a rehearing that 3ABN had refused to produce even their 2000 and 2001 Form 990’s when requested by the intervenors! (Doc. 81-4 p. 48; Pickle Aff. Ex. OO, Ex. PP pp. 3–4).

The Plaintiffs intend for this Court to find as fact that the EEOC has vindicated 3ABN by dismissing Thomsen and Bottomley’s complaints on the grounds of insufficient evidence. (Doc. 123 ¶ 6). Yet, given what has gone on in this case, it is not difficult to imagine that selective disclosure on the part of 3ABN hid the true, incriminating facts from these investigative agencies.

The Plaintiffs wish this Court to find as fact that donations are back up since 3ABN’s reputation has been restored, solely on Thompson’s hearsay testimony. If they are indeed up, is it because of donations from the general public, or from insiders like 3ABN Board members or ASI officers? Is it because the public believes that Shelton has been replaced as president by Jim Gilley (hereafter “Gilley”), even though public filings after Gilley took over still report Shelton as being president? (Pickle Aff. ¶ 43, Ex. QQ–RR). Or is Thompson’s claim a bald faced lie?

Gilley is reported to be recuperating from triple bypass and heart valve replacement surgery. Finances are so much on his mind that still in the hospital on October 8, 2008, he asked folks, perhaps jokingly, to send in \$5 million by October 17. (Pickle Aff. ¶ 44, Ex. SS). \$5 million is more than 25% of all of 3ABN’s reported expenses for the year 2006. (Doc. 49-2 p. 17 at ln. 17). It is possible that 3ABN’s financial picture is not as rosy as what Thompson wants the Court to believe.

**G. Defendants Will Lose Favorable Rulings and Defenses Otherwise Available**

Truth is an absolute defense against claims of defamation, and for claims of defamation *per se*, the burden of proof is shifted to a degree upon the Defendant.

The Plaintiffs have encouraged the invocation of accountant-client privilege to prevent discovery by the Defendants of the Plaintiffs' auditor's records. (Doc. 114-26 ¶ 7). Massachusetts has no accountant-client privilege. If the Plaintiffs refile their case in a venue that has such a privilege, they would likely try to invoke this privilege again. Depriving the Defendants of discovery of the auditor's records would severely prejudice the Defendants by depriving them of a way of challenging the Plaintiffs' tax filings, financial statements, and other accounting records, and would make it much more difficult for the Defendants to prepare a truth defense.

We have previously referenced Nicholas Miller's allegation of document fraud concerning billing records, and an anonymous source within 3ABN that alleged that documents have been destroyed prior to the year 2000. (Doc. 63-33 p. 16; Doc. 81-5 p. 33). That source identified 3ABN CFO Larry Ewing (hereafter "Ewing") as the individual involved in that document destruction. (Pickle Aff. ¶ 45). With this filing we provide a document alleging that Ewing was involved in crafting special annuity contracts to circumvent the laws of the state of Washington after 3ABN had already being fined for writing Charitable Gift Annuities without authorization. Then, after circumstances changed, Ewing is alleged to have ordered the destruction of paperwork associated with those contracts. (Pickle Aff. Ex. W at p. 3). Dismissal without prejudice would give the Plaintiffs further opportunity to destroy or alter evidence.

A number of witnesses on the Defendants' witness list are aged or in ill health. (Pickle Aff. ¶ 46). Upon information and belief, 3ABN Board members May Chung and Merlin Fjarli are respectively afflicted with Alzheimer's Disease and incapacitated by a stroke. (*Id.*). The longer the issues in the suit are unresolved, the greater the odds that key witnesses will die, become senile, or become incapacitated before trial.



Since Ewing was until recently the CFO of 3ABN, he is a key witness. However, 3ABN has recently replaced him (Pickle Aff. Ex. RR), and Ewing has returned to Canada, making it more difficult and expensive to subpoena him for testimony and to appear at trial. Postponement of a resolution of the issues in the instant case would give the Plaintiffs additional time to replace and make unavailable other key witnesses.

The Plaintiffs have sought to obtain images of the Defendants' hard drives, to permanently impound the entire case, to impose confidentiality upon even materials the Defendants produced in the Defendants' Rule 26(a)(1) disclosures, and to limit the scope of discovery. The Defendants believe that the rulings on those issues were favorable to the Defendants, as was the decision in the District of Minnesota that MidCountry must produce its records, and as was the decision in the Western District of Michigan that Remnant must produce the requested documents. The Defendants would be prejudiced if they lost these substantial, favorable rulings by dismissal of the instant case without prejudice, especially since these decisions required so much time and effort to obtain.

### **CONCLUSION**

The Defendants believe that the above considerations are a sufficient basis for the Court to outright deny the instant motion without abusing discretion.

If the Court instead decides to grant the motion, the Defendants pray the Court to impose conditions that would alleviate the prejudice resulting to the Defendants, including but not limited to ordering the transfer of work product and discovery to future actions filed by the Defendants or Plaintiffs, the imposition of all costs and fees pertaining to work product and discovery that cannot be so transferred, and the dismissal of this case with prejudice. The Defendants pray the Court to evaluate the motion for each Plaintiff separately to the extent that the Defendants are less prejudiced thereby.

If the Court dismisses the case with prejudice, the Defendants pray the Court to give notice of that intention to the Plaintiffs, to give the Plaintiffs an opportunity to be heard, and to give the Plaintiffs an opportunity to withdraw their motion for voluntary dismissal and proceed with litigation. *United States v. One Tract*, 95 F.3d 422, 425 (6th Cir. 1996).

If the Court is inclined to dismiss the case without prejudice due to the dubious reasons the Plaintiffs have given for dismissal, the Defendants pray the Court to schedule an evidentiary hearing in order to find as fact (a) what donation levels really were for the years 2002 to present, (b) what months true donations dropped and rose, (c) why donation levels rose and fell, (d) whether any current increased level of donations is due to insiders such as 3ABN Board members or ASI officers rather than to a restoration of 3ABN's reputation, (e) whether or not the IRS criminal investigation vindicated the Plaintiffs by determining that there was nothing wrong with a number of different transactions, and (f) whether 3ABN did not produce certain documents to the EEOC, thus tainting that investigation.

If the Court grants such an evidentiary hearing, the Defendants pray the Court to order the parties to provide a list to the Court of documents and witnesses believed necessary to establish the facts asserted by the Plaintiffs as explanations for their need for dismissal.

The Defendants also pray for whatever further relief the Court deems just and fair.

Respectfully submitted,

Dated: October 30, 2008

/s/ Gailon Arthur Joy, pro se  
Gailon Arthur Joy, pro se  
Sterling, MA 01564  
Tel: (978) 333-3067

and

/s/ Robert Pickle, pro se  
Robert Pickle, pro se  
Halstad, MN 56548  
Tel: (218) 456-2568  
Fax: (206) 203-3751



a written demand to settle upon Defendant Joy or myself, even though they stated in their Rule 26(f) Conference Report that they would do so by August 31, 2007. (Doc. 18 p. 6). On Friday, October 17, 2008, Attorney Gregory Simpson (hereafter "Simpson") called me and for the first time that I can recall explicitly stated that the Plaintiffs wanted to settle, and gave me a settlement proposal.

4. Simpson's verbal-only proposal was that all parties sign mutual releases without having to cease disparaging one another. I replied that I thought there should be some sort of compensation for the damages caused by this suit.

5. Simpson asserted that this would be the last opportunity to settle, since the next three months would involve a lot of expense due to discovery. Thus the stated motives for settling was to avoid expense and to avoid discovery. Simpson admitted later under my questioning that parties could settle up to trial, during trial, and even during appeal.

6. Simpson asserted that if the Defendants did not agree to settle, the Plaintiffs could move to dismiss, and there would be nothing that the Defendants could do to prevent such a dismissal.

7. After Simpson stated the above, I specifically asked him whether the Plaintiffs would move to dismiss, and Simpson explicitly asserted in the phone conversation of October 17 that no such motion to dismiss would be filed.

8. Simpson asked me if I was interested in settling, and I said I surely was. But of course a settlement needs to be on proper terms amenable to all parties.

9. Simpson asserted that the IRS investigation's conclusion has brought vindication to 3ABN, and we discussed yet again the 1998 real estate deal and the falsification by Danny Shelton (hereafter "Shelton") of a figure on his 2003 tax return. Simpson acknowledged that the IRS would not have looked at the 1998 real estate deal since it was too old. Simpson also

asserted that both the IRS and Gray Hunter Stenn LLP (hereafter “GHS”) had determined that there was nothing wrong with Danny Shelton’s reporting of a donation of horse(s) as cash on his 2003 IRS Schedule A, and nothing wrong with his failure to file IRS Form 8283 with appraisal(s). I indicated to Simpson that if the Plaintiffs were interested in settling, this kind of playing games had to stop.

10. Between October 17, 2008, and the filing of the motion for voluntary dismissal on October 23, there was no further verbal communication from Mr. Simpson concerning either settlement or dismissal, and there was no written communication at all. Simpson acknowledges such in an email of October 24, 2008. Attached hereto as **Exhibit C** is a series of emails between myself, Simpson, and Defendant Joy, which contains Simpson’s email of October 24 on pages 6–7. I find it odd, though, that Simpson seems to conveniently forget in this email that he told me in that October 17 conversation that he would not file a motion for voluntary dismissal, and that I told him that I was interested in settling.

11. Also in my conversation with Simpson on October 17, 2008, Simpson told me that he would negotiate with Defendant Joy separately, since we could arrive at settlement independently of each other. I told Simpson that I would still confer with Defendant Joy regarding the settlement proposal since we are co-defendants, even though we do not always have the same opinions. Simpson asked me to discuss the proposal with Defendant Joy.

12. In his email on pages 4–5 of Exhibit C, Simpson admits not having communicated with Defendant Joy prior to filing the instant motion.

13. The three emails in Exhibit C from Defendant Joy make it painfully clear that we now have a basis for claims of misuse of process and malicious prosecution, that Simpson never conferred with Defendant Joy before filing the instant motion, and that Simpson has knowingly misconstrued the meaning of Defendant Joy’s posts in his memorandum for the instant motion.

14. Attached hereto as **Exhibit D** is the October 7, 2008, email to me by Simpson, stating that I cannot make negative inferences in a memorandum about the Plaintiffs unless my comments are also filed under seal, if those negative inferences are based upon a sealed, confidential document.

15. Attached hereto as **Exhibit E** is an October 29, 2007, email by Thompson asserting that the law firm representing the Plaintiffs did a thorough review of the Plaintiffs' financial records before taking on this case.

16. Attached hereto as **Exhibit F** are relevant posts from a thread on [AdventTalk.com](http://AdventTalk.com). In these posts Defendant Joy put the Plaintiffs and their counsel on notice that we now have a basis for claims of misuse of process and malicious prosecution against them. "anyman," believed to be Thompson's son Gregory Scott Thompson, asserted that the documents from Remnant may have been produced under seal to Magistrate Judge Hillman, and Defendant Joy replied that they were not, and that they would be going to our experts for review.

17. Attached hereto as **Exhibit G** is a 3ABN brochure stating that 3ABN-produced programming is not copyrighted. Attached hereto as **Exhibits H-I** are transcripts of Mollie Steenson and Linda Shelton's testimony from 3ABN's September 2002 property tax case hearing, which testimony was a basis for 3ABN arguing that 3ABN-produced programming is not copyrighted. (Ex. I p. 8, Ex. J p. 24). Attached hereto as **Exhibits J-K** are relevant pages of legal briefs filed by 3ABN in the same case, which was still under appeal until March 31, 2008, which state that none of 3ABN's programming is copyrighted.

18. Attached hereto as **Exhibit L** is the search results page on the U.S. Copyright Office's website, which shows only one broadcast ever registered by 3ABN. That broadcast, the 2006 New Years' Eve Special, contained a 22-minute tribute to alleged pedophile Tommy Shelton, a tribute which is posted on the Save 3ABN websites. That tribute came so soon after

the announcement in early December 2006 of new allegations against Tommy Shelton, one retired church official told me he was outraged. 3ABN's registration of that broadcast, dated February 8, 2007, is attached hereto as **Exhibit M**.

19. We have previously filed a letter by Roger Clem accusing Tommy Shelton of molesting him. (Doc. 81-11 pp. 6-7). Some of the other statements we have published include those by Brad Dunning (allegedly propositioned as a minor), Vicki Barnard (whose son first came forward on January 24, 2007, claiming to have been molested around age 8), and Sherry Avery (who alleges that she caught Tommy Shelton in someone else's house with a boy). The statements that served as a basis for these articles are attached hereto as **Exhibits N-P**. We also have two letters written by Tommy Shelton to Duane Clem, who claims to have been victimized by Tommy Shelton at the age of 19. These letters are attached hereto as **Exhibits Q-R**.

20. Just a sampling of the documents pertaining to the egregious misconduct of Westphal will be referenced here. Westphal was accused by whistleblowers in the 3ABN Trust Services Department of rage, screaming at staff, non-staff, and potential clients, sexual harassment, racism (including in employment matters), poor job performance, padding his expense reports, falsifying timesheet(s), and private inurement. Attached hereto as **Exhibits S-Z** are documents alleging those allegations. The four whistleblowers were terminated in the spring of 2006, while Westphal was rewarded with a cover story in the June 2006 issue of 3ABN World. Relevant pages of that issue are attached hereto as **Exhibit AA**. Allegations of rage, racism, sexual harassment, and professional misconduct go back at least to 1992. A portion of a police report regarding Westphal's arrest on January 24, 1992, for felonious spousal assault is attached hereto as **Exhibit BB**. (The entire report could not be released without Westphal's authorization or a court order.) That spouse, Dr. Lou Westphal, asserts that the foot injury referred to in that police report was in actuality a fracture.

21. Attached hereto as **Exhibit CC** is the October 23, 2008, email by Simpson in which he states that he will not be responding to my revised Requests to Produce by October 27, 2008. Thus, he refused to comply with this Court's order of September 11, 2008. (Doc. 107 p. 4).

22. Attached hereto as **Exhibit DD** is the letter of September 13, 2007, by which Plaintiffs' counsel invoked the automatic stay of Defendant Joy's bankruptcy. It came to my attention this week that Docket entries 22, 28, and 88 of the instant case are not accessible, and I suspect that # 28 has something to do with a document the Plaintiffs filed under seal that pertains to this invocation.

23. Attached hereto as **Exhibit EE** is 3ABN's *sixth* motion to Extend Time to Object to Discharge or to Determine Dischargeability of a Debt filed on September 23, 2008, in Defendant Joy's bankruptcy, even though Defendant Joy owes 3ABN nothing.

24. Sources assert that 3ABN's donations are way down and that 3ABN is in deficit mode. I received information to this effect less than a week prior to the Plaintiffs filing the instant motion.

25. Simpson and I talked a number of times leading up to our conversation on October 17, 2008, so I don't recall for sure whether it was in that conversation or an earlier one when he told me that they had tried to keep Shelton's divorce out of the lawsuit. I replied that that is what ¶ 50 is all about.

26. Under ¶ 50(f), the Plaintiffs' complaint omits the name of Brandy Elswick Murray (hereafter "Murray") in referring to Shelton's allegedly inappropriate relationship that 3ABN's officers and directors were aware of. Sources allege that Murray discussed the topic of oral sex with co-worker Everlina Germany (hereafter "Germany") in connection with a relationship with Shelton. Sources allege that Germany out of concern later spoke with Shelton who laughed, and that Germany subsequently found herself terminated from her volunteer position.



27. Attached hereto as **Exhibit FF** is a series of emails between Shelton and Linda Shelton dated September 12, 2005. Linda Shelton states, “It’s a dreadful shame that you have sold out God’s worldwide network for sex,” and “OS, etc. is not being directed by God.” The date of these emails is close to the time that 3ABN Board member Nicholas Miller (hereafter “Miller”) found himself pressured to resign, after becoming “deeply concerned” about “personal” information regarding Shelton. (Doc. 63-33 p. 16). Though the similarity in timing may be coincidental as it relates to the specific concerns of Linda Shelton and Germany, Miller must have been concerned about the relationship since he told me that Shelton tried to transfer property to Murray before they were married, and that after the 3ABN Board had decided not to pay Murray, Shelton had funneled money to her anyway through another non-profit organization.

28. I was present at the telephonic hearing of October 22, 2008, in the Southern District of Illinois over which the Honorable Magistrate Judge Philip Frazier presided. After Simpson asserted that the allegations in the complaint concerned only specific transactions, I cited ¶ 46(g) of the complaint, and upon questioning Simpson admitted that my quotation was correct. Magistrate Judge Frazier then stated that that allegation was indeed broad.

29. On or about December 25, 2007, and January 12, 19, and 20, 2008, prior to 3ABN’s purchase of the domain names [Save3ABN.com](#) and [Save3ABN.org](#), the following domain names were obtained: [Save-3ABN.com](#), [Save-3ABN.info](#), [3ABNanalyzed.info](#), [3ABNcritiqued.info](#), [3ABNevaluated.info](#), [3ABNexamined.info](#), [3ABNinvestigated.info](#), [Analyzing3ABN.info](#), [Critiquing3ABN.info](#), [Evaluating3ABN.info](#), [Examining3ABN.info](#), [Investigating3ABN.info](#), [Rescue3ABN.info](#), [Rescuing3ABN.info](#), [Savedfrom3ABN.com](#), [Saving3ABN.info](#). From what I recall, all but perhaps one of these domain names pointed to functioning websites prior to the transfers of [Save3ABN.com](#) and [Save3ABN.org](#), transfers that were not initiated by the domain registrars until February 28 and March 3, 2008. Since

Save3ABN.org was never actually a website, there are now 16 times as many Save 3ABN websites than when the Plaintiffs first filed suit.

30. After I received documents pertaining to subpoenas served upon Glenn Dryden and Kathy Bottomley, Simpson demanded that I immediately send him copies or he would file a motion to compel. (I believe the incident occurred the first part of June 2008.) I thought that a bit rude given the fact that when I made a similar request to Jerrie Hayes, she responded that she had 30 days to comply, and given the fact that the Plaintiffs still had not produced document one in response to my Requests to Produce served in November and December 2007. I do not recall any other written requests other than the original interrogatories and requests to produce served on us on August 20, 2007.

31. In the Plaintiffs' productions of documents in June 2008 in alleged response to my requests to produce, I found but one invoice pertaining to 3ABN's purchases from D & L Publishing or DLS Publishing. This fact as well as the absence in production of any of the evidence that Shelton had claimed to have against Linda Shelton makes me think that Shelton did not contribute any documents in those productions. I certainly can't think of any documents that definitely came from him as an individual rather than from 3ABN.

32. Attached hereto as **Exhibits GG–HH** are the Defendants' articles about Shelton's reporting of donation(s) of horse(s) as cash, without filing the required Form 8283 or appraisal(s), at possibly inflated values. These were printed off of Saving3ABN.info and Investigating3ABN.info respectively, and were published about June or July 2007.

33. Attached hereto as **Exhibits II–JJ** are the Defendants' articles analyzing whether the 1998 house deal was correctly reported on 3ABN's 1998 Form 990, and raising the question of whether Shelton committed perjury by signing that Form 990. These were printed off of Critiquing3ABN.info and Examining3ABN.info respectively. Exhibit JJ was published probably

in September 2007, but the other stories on the house deal were published in June or July 2007.

34. Attached hereto as **Exhibits KK–MM** are three orders issued in the miscellaneous case in the Western District of Michigan.

35. I have for much of the time since being served on April 30, 2007, been working day and night on my defense. I figure that given the immense resources of the Plaintiffs, and the millions of dollars at their disposal, if I hired an attorney at typical rates I would end up broke and have to represent myself anyway before this case was concluded. That is a major reason why I am *pro se*. But all this investment of time has prevented me from engaging in adequate gainful employment, necessitating that our family put on hold our daughter's college plans, and our son's desperately needed orthodontic work. Such things cannot be put on hold forever.

36. After being served with this suit, I took stock of our situation and determined that we should be able to survive until 2010, which sounded realistic given the delays we anticipated due to the Plaintiffs' likely recalcitrance. But the disconcerting prospect of a voluntary dismissal without prejudice leaves our family's future a bit nebulous.

37. I made a fact finding trip to the 3ABN vicinity in southern Illinois, as well as elsewhere, in June 2007 and April 2008, collecting evidence and information to use in my defense. The distance between my home and 3ABN one way is almost 1,000 miles. On one of these trips I had to hire an assistant to go with me.

38. Examples of expenditures over the course of this litigation include roughly \$3,500 for MidCountry Bank's records, which we still haven't seen, and a special high-speed scanner/copier to handle the processing of the large number of pages of auditor's records at the Defendants' expense.

39. The Defendants have already retained the services of four accounting experts (two being auditors and one being a Certified Fraud Examiner).

40. Attached hereto as **Exhibit NN** is the subpoena served upon Defendant Joy for his Rule 2004 examination by 3ABN, which examination took place on September 9, 2008.

41. Attached hereto as **Exhibit OO** is an email by Thompson claiming that the State of Illinois “reviewed all of our financials” in order to deflect concern over the 1998 real estate deal. However, the property tax case only concerned the years 2000 and 2001, and opposing counsel in that case seemed unaware of this transaction when I spoke with him.

42. Attached hereto as **Exhibit PP** is Administrative Law Judge Barbara Rowe’s order denying 3ABN’s request for a rehearing in their property tax case. She notes on pages 3–4 that 3ABN refused to produce its Form 990’s when the intervenors requested them.

43. Jim Gilley was announced by Shelton as being the new president of 3ABN on September 6, 2007. Attached hereto as **Exhibit QQ** is an October 1, 2007, filing by 3ABN in the state of Michigan that still lists Shelton as president. Attached hereto as **Exhibit RR** is an April 16, 2008, filing by 3ABN in the state of Florida that still lists Shelton as president.

44. On October 7, 2008, Jim Gilley was reported to be through triple bypass and heart valve replacement surgery. Attached hereto as **Exhibit SS** is an October 8, 2008, email containing his request to folks to send in \$5 million by October 17.

45. The source that more than a year alleged document destruction at 3ABN connected that destruction with the name of 3ABN CFO Larry Ewing.

46. I have been told by sources close to 3ABN Board member May Chung that she is afflicted with Alzheimer’s Disease. Sources have also alleged that 3ABN Board member Merlin Fjarli can no longer speak due to a stroke he suffered earlier this year. Other witnesses on our witness list are either up in years or have health concerns. Thus, if litigation over the issues in the complaint is postponed too long, these witnesses may not be able to appear at trial due to death, senility, or incapacitation.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 30th day of October, 2008.

/s/ Bob Pickle

Bob Pickle  
Halstad, MN 56548  
Tel: (218) 456-2568

Subscribed and sworn to me  
this 30th day of October, 2008.

/s/ Perry W. Kolnes

Notary Public—Minnesota

My Commission Expires Jan. 31, 2010



received.

**TABLE 2: Various Miscellaneous Expenditures over the Course of the Litigation**

Date	Item	Payee	Purpose	Cost
10/23/07	<i>Mending Broken People</i> (used)	Better World Books	Background, research	\$9.01
11/16/07	Postage for court documents	U.S. Postal Service	Opposition to emergency motion	\$15.75
11/19/07	Certified letter to Hayes	U.S. Postal Service	Notice for getting Rule 26(a)(1) mtrls	\$3.06
11/19/07	FaxAway deposit	FaxAway (email to fax)	Service of letters, etc.	\$10.00
11/27/07	Service of subpoena	Branch County Sheriff	Service on Remnant Publications	\$18.00
12/06/07	Service of subpoena	Branch County Sheriff	Service on Century Bank & Trust	\$18.00
12/06/07	Certified letter to Hayes	U.S. Postal Service	RPD's for Danny Shelton	\$4.54
12/28/07	Copying of court documents	Red River State Bank	Opposition: motion for protective order	\$6.75
12/28/07	Postage for court documents	U.S. Postal Service	Opposition: motion for protective order	\$21.25
01/03/07	Mundall, Miller, Hayes, Tommy	U.S. Postal Service	Certified service of possible motion	\$14.82
01/07/08	Filing of miscellaneous case	Clerk of W.D.MI	Necessary for issuing subpoenas	\$39.00
01/07/08	Accrued PACER charges	PACER	Downloading court filings	\$42.96
01/11/08	Copies: 3ABN's annual filings	Oregon DOJ	Research into 3ABN finances	\$10.20
01/15/08	Certified lt. to Derrell Mundall	U.S. Postal Service	Service of possible motion	\$3.23
02/01/08	Internet fax service	FaxAway	Sending documents to attorneys	\$10.00
02/15/08	Photocopies	Red River State Bank	Copies of court documents	\$2.40
02/19/08	Photocopies	Red River State Bank	Copies of court documents	\$1.70
02/21/08	Service of subpoena	Branch County Sheriff	Service on Remnant Publications	\$18.00
02/22/08	DVD recorder	Dyscern LLC	Old unit damaged(?) during CD recovery	\$35.50
03/14/08	Refund: canceling account	FaxAway	Now faxing using Brother 8860DN.	<b>-\$8.19</b>
03/14/08	Copies: 3ABN's annual filings	Illinois Attorney General	Research into 3ABN finances	\$8.25
04/04/08	Accrued PACER charges	PACER	Downloading court filings	\$14.24
04/22/08	Copies of real estate records	Franklin Co. Clerk	re: Real estate shenanigans	\$27.00
04/22/08	Copies of court records	Circuit Clerk	re: DLS's marital assets case	\$48.50
04/22/08	Room for the night	Amer. Best Value Inn	Lodging in West Frankfort, Illinois	\$49.90
04/24/08	Parking fee	Springfield courthouse	Research at courthouse	\$2.00
04/25/08	Shower	N. Lisbon Travel Center	Shower	\$6.00
04/30/08	Assistant for fact-finding trip	John Kannenberg	His charge to me to assist	\$395.00
05/01/08	Postage	U.S. Postal Service	Motion to compel Remnant	\$15.60
05/28/08	Records of MidCountry Bank	MidCountry Bank	Discovery re: private inurement	\$3,682.50
06/06/08	Drive enclosure	NewEgg.com	Preparation for on-site inspection of Auditor's records	\$23.42
06/06/08	Hard drive for enclosure	ZipZoomFly.com		\$63.53
07/03/08	Postage for service	U.S. Postal Service	Motion to compel in S.D.IL	\$26.14
07/07/08	CD sleeves	Office Max	Protect discovery-related CD's	\$5.31
07/27/08	Cellphone excess minutes	John Kannenberg	Excess usage during April trip	\$50.40
07/07/08	Accrued PACER charges	PACER	Downloading court filings	\$19.52
08/20/08	Postage for service	U.S. Postal Service	Opposition to Remnant Appeal	\$17.29
09/12/08	Postage for service	U.S. Postal Service	Status report for S.D.IL	\$5.36
09/15/08	Articles: Duffy and McNeilus	Newslibrary.com	Background research	\$5.95
09/26/08	Postage for service	U.S. Postal Service	Revised RPD's	\$2.36
10/03/08	Accrued PACER charges	PACER	Downloading court filings	\$8.64
10/10/08	Records of MidCountry Bank	MidCountry Bank	Refund of excess shipping charge	<b>-\$147.91</b>
	Charges through Oct. 28, 2008	PACER (D.MA only)	Charges through October 28, 2008	\$9.92
<b>Total</b>				<b>\$4,614.90</b>

3. I purchased a Brother 8860DN in order to scan or copy the large number of

documents we asked Gray Hunter Stenn LLP (hereafter “GHS”) to produce, since we needed to protect GHS as far as possible from undue expense. The unit, toner, and drum which I purchased cost a total of \$522.66. I used the unit to prepare filings for the courts in the Western District of Michigan and the Southern District of Illinois, where ECF filing was not permitted. Table 3 presents the total number of copies run off of this unit for those filings (including copies for opposing counsel), times 10¢ per copy.

**TABLE 3: Copying Costs**

<b>Date</b>	<b>Documents</b>	<b>Copies</b>	<b>Rate</b>	<b>Cost</b>
05/01/08	Motion to Compel Remnant	548	\$0.10	\$54.80
07/03/08	Motion to Compel GHS	998	\$0.10	\$99.80
08/20/08	Opposition to Remnant’s Appeal	500	\$0.10	\$50.00
09/12/08	Status Report to S.D.IL	21	\$0.10	\$2.10
<b>Total</b>				<b>\$206.70</b>

4. Table 4 is a summary of the hours I have logged working on my defense. There were times when I did not record my hours. For work I do in this locality where I live, I charge \$25 an hour.

**TABLE 4: Hours Invested in Defense**

<b>Time Period</b>	<b>Hours Recorded</b>	<b>Rate</b>	<b>Cost</b>
Nov. 2007	134.00	\$25.00	\$3,350.00
Dec. 2007	131.50	\$25.00	\$3,287.50
Jan. 2008	76.67	\$25.00	\$1,916.75
Feb. 2008	167.33	\$25.00	\$4,183.25
Mar. 2008	90.50	\$25.00	\$2,262.50
Apr. 2008	51.67	\$25.00	\$1,291.75
May 2008	41.75	\$25.00	\$1,043.75
Jun. 2008	78.00	\$25.00	\$1,950.00
Jul. 2008	57.00	\$25.00	\$1,425.00
Aug. 2008	84.75	\$25.00	\$2,118.75
Sep. 2008	163.75	\$25.00	\$4,093.75
Oct. 2008	127.67	\$25.00	\$3,191.75
<b>Total</b>			<b>\$30,114.75</b>

5. Attached hereto as **Exhibit A** are a series of invoices I received from one of the



experts we retained, which total \$20,342.32.

6. Attached hereto as **Exhibit B** is an invoice from Attorney Laird Heal to Gailon Arthur Joy in the amount of \$666.69. Attached hereto as **Exhibit C** is an invoice from Attorney Laird Heal to myself in the amount of \$53,600.25.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 13th day of November, 2008.

/s/ Bob Pickle

Bob Pickle  
Halstad, MN 56548  
Tel: (218) 456-2568

Subscribed and sworn to me  
this 13th day of November, 2008.

/s/ Lori J. Rufsvold  
Notary Public—Minnesota

My Commission Expires Jan. 31, 2010

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting )  
Network, Inc., and )  
Danny Lee Shelton, )  
Plaintiffs, )  
vs. )  
Gailon Arthur Joy, )  
and Robert Pickle, )  
Defendants. )

Case No. 07cv40098-FDS

BEFORE: The Honorable F. Dennis Saylor, IV

Telephonic Status Conference

United States District Court  
Courtroom No. 22  
One Courthouse Way  
Boston, Massachusetts  
December 14, 2007

Marianne Kusa-Ryll, RDR, CRR  
Official Court Reporter  
United States District Court  
595 Main Street, Room 514A  
Worcester, MA 01608-2093  
508-929-3399  
Mechanical Steno - Transcript by Computer

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

(via telephone)  
Siegel, Brill, Greupner, Duffy & Foster, P.A.  
Jerrie M. Hayes, Esquire  
100 Washington Avenue South, Suite 1300  
Minneapolis, Minnesota 55401  
for the Plaintiff, Three Angels Broadcasting Network, Inc.

(via telephone)  
Fierst, Pucci & Kane, LLP  
John P. Pucci, Esquire  
64 Gothic Street, Suite 4  
Northampton, Massachusetts 01060  
for the Plaintiffs, Three Angels Broadcasting Network, Inc.,  
and Danny Lee Shelton

(via telephone)  
Gailon Arthur Joy  
P.O. Box 1425  
Sterling, Massachusetts 01564  
Pro Se

(via telephone)  
Robert Pickle  
1354 County Highway 21  
Halstad, Minnesota 56548  
Pro Se

1 motion was filed today, but the motion for -- the motion to  
2 compel the 26(a)(1) documents and some sanctions. A little bit  
3 of background there.

4 I did receive an informal request for the 26(a)(1)  
5 documents from Defendant Pickle. Obviously, under the rules,  
6 we have no obligation to provide that, unless the request is  
7 made formally through written discovery; but despite that,  
8 knowing that Mr. Pickle was pro se, I volunteered to provide a  
9 time and date for inspection of those materials. I gave him a  
10 notice schedule of how much time we would need, either if he  
11 wanted to inspect in person, or if he just wanted us to send  
12 copies, and then I also brought to Mr. Pickle's attention that  
13 the bulk of the information that would be responsive and  
14 relevant from our 26(a)(1), you know, assessment of the case  
15 were very, very confidential and sensitive trade secret and  
16 business information and private financial information on Danny  
17 Shelton's part and that we were very concerned about releasing  
18 that information to either Mr. Pickle or Mr. Joy knowing  
19 they're both pro se counsel. In light of the history in this  
20 case of court documents and other public records being put out  
21 on the Internet and not just published baldly, but published  
22 with fairly colorful and what we believe is mischaracterizing  
23 commentary on those documents, and both plaintiffs feel very  
24 concerned about releasing any of that information without a  
25 protective order in place.

1           We exchanged a number of emails and written  
2 communication, Mr. Pickle and myself, trying to -- sort of  
3 trying to hammer out the issues on the 26(a)(1) documents, and  
4 we just were not successful in doing so. It -- it was sort of  
5 a beat-us-to-the-courthouse kind of thing. We have a motion  
6 for a protective order that we plan to file as well, and I'm  
7 assuming that will be also referred to Magistrate Hillman and  
8 likely heard about the same time.

9           Our position, frankly, is that both Mr. Joy and  
10 Mr. Pickle should have conferred to the truth of the statements  
11 that they made about 3ABN and Danny Shelton or literally  
12 satisfied themselves that the statements weren't false, and so  
13 they should already have in their possession whatever  
14 documents, statements, materials, and other information that  
15 they used in order to allay their own concerns about the truth  
16 or falsity of those statements. There's nothing, as far as  
17 we're concerned, that they would need more to prove a defensive  
18 truth at least, and we feel that it's really nothing more than  
19 a blatant attempt to harass and abuse the plaintiffs by trying  
20 to dig up some scrap of fact that provides post hoc  
21 verification of the statements they've made.

22           They've asserted no counterclaim, despite having  
23 repeatedly represented to this Court and on the Internet, that  
24 they intended to do so. So what facts they might need to mount  
25 a defense to a trademark and a defamation allegation is

1 certainly not going to become by rifling through 3ABN and Danny  
2 Shelton's private financial, accounting, and auditing  
3 information.

4 Basically, the upshot of that is that we are planning  
5 again to make a motion for a protective order, and I would  
6 assume that will go to Magistrate Hillman for determination;  
7 but we would like to -- to -- to have discovery stayed at least  
8 until that motion for a protective order can be heard and  
9 decided.

10 A couple of smaller matters related to discovery, I  
11 guess, that I'll throw in while I'm here. (Telephone) There  
12 has been somewhat of a failure to respond to written discovery  
13 and to Magistrate Hillman's order by Defendant Joy. The  
14 written discovery was served on him, as I indicated earlier, on  
15 August the 29th, or the 20th. We still have not received any  
16 written answers to those interrogatories or requests for  
17 production of documents. If -- even not counting the nine days  
18 of service before our constructive notice of the discharge,  
19 30 days following the listing of the automatic stay would be  
20 December 21, and we would just ask that those materials be  
21 provided to us on or before the 21st.

22 Last, but unfortunately, this is certainly not the  
23 least. There has been, we believe, some improper discovery  
24 happening here. We are doing our very best to be patient with  
25 the fact that both Mr. Pickle and Mr. Joy are representing

1 themselves pro se. That said, however, both must still follow  
2 the rules concerning discovery, subpoenas, and concerning the  
3 contact of party witnesses.

4 We have been informed that there have been contacts  
5 made and attempts to depose, without having ever received  
6 formal deposition notices or any kind of communication through  
7 us, counsel, our client representatives, members of the 3ABN  
8 Board of Directors, and employees that definitely should not be  
9 contacted.

10 We have also been notified that four subpoenas have  
11 issued, at least two of which are improper, and were not issued  
12 from the correct court. I know one -- a third one, has already  
13 been objected to by the recipient, and -- and all of this sort  
14 of behind-the-scenes discovery is happening, but no formal  
15 discovery has yet been served on either of the plaintiffs.

16 And I guess we -- we just want to take this  
17 opportunity to make it very clear on the record that we expect  
18 Mr. Pickle and Mr. Joy, who are, you know, I guess, admirably  
19 trying to represent themselves pro se, that they are still  
20 obligated to follow the rules of procedure; that they are not  
21 allowed to contact party witness -- witnesses or party  
22 representatives without contacting counsel; and that we are to  
23 receive notice of subpoenas at the time they are issued and  
24 served, not sometime thereafter and not when the subpoenas have  
25 been improper.

1           So, to that extent, I think that's what we're looking  
2 for out of this conference. That's, as far as I know, the  
3 status of things; and, again, there has been a considerable  
4 delay in discovery, and -- and I suppose the ultimate upshot of  
5 all that being that we are looking for a three- to four-month  
6 extension in all of those deadlines in order to kind of get  
7 back into the case again, get out of the bankruptcy issues, and  
8 move forward with -- with the matter at hand.

9           THE COURT: All right. Who wants to take the lead  
10 responding?

11           Mr. Joy? Mr. Pickle?

12           MR. JOY: Well, let me -- let me start.

13           THE COURT: Uh-huh. Who's this? I'm sorry.

14           MR. JOY: This is -- this is Gailon Joy here.

15           THE COURT: Okay.

16           MR. JOY: Let me begin by stating that counsel is very  
17 colorful in her statements, but, in fact, they mischaracterize  
18 repeatedly what has actually happened here.

19           When I have received or when I did receive the request  
20 for the copy of the computers, we made an appropriate offer to  
21 them to come in and actually make those available. She then  
22 sent me specific -- specific letters stating that it was not in  
23 their interest, because I -- at the time, your Honor, I was ill  
24 with colitis and pneumonitis, secondary to some sort of  
25 infection that I received. In any event, the bottom line is



1 they didn't want to be subject to that. We then elected to use  
2 the third-party location, specifically Mr. Heal; and once  
3 again, they -- we had it scheduled, and they failed to -- to  
4 follow through and actually do that recording. So we made  
5 every reasonable effort.

6 In addition -- and I'd like to point out, your Honor,  
7 that at this point in time, we, within the time frame  
8 necessary, made available virtually every single document that  
9 we had planned on using both in the ecclesiastical request or  
10 the ecclesiastical process, as well as this particular trial.  
11 We did that in both the digital format as well as copies  
12 to -- to the counsel on the other side, and we also made  
13 available to them a complete copy of the appropriate e-mail and  
14 hard drive information that was available on the -- on the  
15 machines that we had used for the use of any 3ABN, et cetera,  
16 and that was done and given to and recommended and acknowledged  
17 by their, quote, computer expert, unquote. So, they have  
18 substantial amounts of information from us, and have yet to  
19 produce document one on their part, not document one.

20 Counsel at the time for Mr. Pickle made an attempt to  
21 schedule a time to view and copy the information that was  
22 available at Mr. Pucci's office. That was obviously refused.  
23 Mr. Pickle then followed with a request to do the same thing  
24 at -- at Ms. Hayes' office; and frankly, that fell apart under  
25 some premise that the information of the 500 pages that they

1 supposedly had pursuant to the 26 -- 26(f) report, those  
2 documents are suddenly supposedly privileged and trademark  
3 secret and on and on and on.

4 The bottom line is I think it was made pretty clear at  
5 the conference that we had regarding that that if they had  
6 specific documents, which they felt needed protected -- a  
7 protective order, they were to make an appropriate motion to do  
8 so. They haven't done that.

9 In addition, they were given permission to redact.  
10 They haven't done that. They haven't provided document one.  
11 Now, the other -- the other important thing is they have made  
12 claims -- they have made claims, per se, frankly, I think that  
13 those claims are going to fail shortly on the very simple  
14 premise that the evidence is growing; that, in fact, the things  
15 that we've stated were, in fact, factually correct, and  
16 obviously that would put the onus back on them to have to prove  
17 their case, and we've done what we had to do to demonstrate  
18 what we needed to do to defend our case. We gave them an  
19 extensive witness list. And let me see here. Just let me go  
20 over this a moment here.

21 Regarding the bankruptcy, we did not view -- we did  
22 not view the save3ABN site as an asset. It's hardly an asset.  
23 It's not a commercial process. There's plenty of case law on  
24 that. It certainly didn't constitute any commercial value.  
25 This attempt -- this attempt to work with the trustee to

1 purchase the domain name is just an underhanded, precalculated  
2 effort to try to undermine the process of this Court, and we'll  
3 be addressing that at the appropriate time.

4 It certainly is -- the only person that would even be  
5 interested in paying for something like this, obviously, would  
6 be 3ABN, and we just didn't view it as an asset. Nobody ever  
7 made an offer to purchase it before. It certainly has no  
8 commercial value. Therefore, it was not listed as an asset.  
9 In fact, it's more of a liability, if you put this case into  
10 the scenario, and we did, by the way, declare the case in the  
11 bankruptcy filing.

12 Now, indeed we did do a motion to dismiss the  
13 bankruptcy, because frankly the situation that -- the situation  
14 that prevailed at the time that I had to file the bankruptcy,  
15 specifically the company that I was working with literally had  
16 its license taken away, and we were left virtually unemployed;  
17 and virtually, as there were other issues as well, so the  
18 bottom line is we found ourselves in a very tough spot. We  
19 also had to negotiate issues relating to the buy-back of loans,  
20 et cetera, and we had to do that without the company there as a  
21 protected entity.

22 All those issues have been pretty much resolved at  
23 this point. We only had about 20,000 in personal creditors,  
24 and, frankly, those are obviously manageable. So we made a  
25 legitimate motion to dismiss on the very singular premise, but

1 we pretty much have resolved the issue that forced us into a  
2 situation where we needed to protect ourselves from creditors.  
3 Pardon me. And that's where the bankruptcy stood.

4 Now, regarding the bankruptcy, there was some going  
5 back and forth with, you know, with the -- with Judge Hillman.  
6 Judge Hillman himself put -- put an end to the copying of the  
7 machines by order, because of the automatic stay; and, in fact,  
8 I think the record will reflect that these people knew about  
9 the bankruptcy, knew constructively about the bankruptcy, if  
10 nothing else, by that time, and yet they continued to pursue  
11 the claim; and that's, again, an issue that will be, I guess,  
12 resolved in the Bankruptcy Court under separate -- under  
13 separate counsel. And I'm not going to belabor that issue, but  
14 they can -- you know, they can deal with that appropriately;  
15 however -- pardon me -- it is true that I did not complete my  
16 interrogatory responses, again, because of the automatic stay.  
17 Pardon me. And so I had left -- I left those. I could  
18 easily -- you know, I could easily complete those and get them  
19 back. I don't have any problem with that. We've been very up  
20 front and forward. We provided all the documentation that we  
21 had. We'll continue to do so. We have nothing to hide.

22 Let's see here. The other thing I wanted to address,  
23 this contact of Mr. McNeilus, and that's who she would  
24 obviously be referencing. Okay. Mr. McNeilus is a witness on  
25 our list. He is not a witness on their list. That's the first

1 basis, you'll have to follow the same rules a lawyer would  
2 follow. Okay? And, you know, if there's a problem arising out  
3 of what has happened in the past, if someone files a motion  
4 requiring Court attention, I'll take it up.

5 MR. PICKLE: A concern I have, your Honor, is that  
6 this process not get bogged down any more than necessary. The  
7 initial disclosures were filed on August 3rd, and -- or were  
8 given to us on August 3rd, and we still don't have any of those  
9 Rule 26(a)(1) materials that were disclosed on the plaintiffs'  
10 disclosures.

11 Your Honor, we'd like to save as much in the way of  
12 costs as possible. So, one idea we had was to -- to depose the  
13 board members that are on the witness -- the 12 board members  
14 that are listed on the plaintiffs' witness list at the time of  
15 their January 4th meeting. They're in Southern Illinois. That  
16 list of 12 comes from eight different states, and -- and after  
17 the two new board members have been added, we're up to 14 board  
18 members, I guess, 14 or 15. Now, they're from nine states and  
19 British Columbia. So, we'd like to depose them at the time of  
20 their board meeting. So I've asked Attorney Hayes on four  
21 different occasions when the board meeting is so that we could  
22 issue a notice of deposition and so forth and arrange to do  
23 that. I have yet to find out when the board meeting is. She  
24 would not -- she would not disclose that. She said that she  
25 wouldn't.

1           Second, it's just now we're getting kind of close to,  
2 you know, the proper amount of time of notice. If it is like  
3 towards the end of January, we're running out of time to give  
4 the proper notification. And their next board meeting would be  
5 in May, and I just hate to see it drag on longer than is  
6 necessary. So, that's a concern I have.

7           I'd hate to see discovery stayed while there is an  
8 order -- when they're going to, you know, file this order for  
9 the -- or file a motion for -- asking for a protective order.  
10 Yeah, this commercial and business -- the bulk of their  
11 materials have to do with commercial and business, sensitive  
12 confidential information. I just have a hard time imagining  
13 that it's that -- if the bulk of their material is really of  
14 that nature, and it's that top-secret how they really have a  
15 case against us.

16           THE COURT: All right. I'm not going to prejudge  
17 that.

18           MR. PICKLE: Yes.

19           THE COURT: Let -- let me -- let me take that issue up  
20 as well at the risk of hopping around unduly. I'm not going to  
21 stay discovery. If counsel wants to file a motion for a  
22 protective order, they should file a motion. It ought to be  
23 narrowly tailored, and counsel should consider alternatives to  
24 blanket protections, things such as redactions and so forth,  
25 but I'm not going to impose a blanket stay of discovery. If a

1 motion for protective order is appropriate, the thing to do is  
2 to get the motion on file, and that will be referred to the  
3 magistrate judge as well.

4 And I -- I will offer only the general view. It's  
5 going to be the magistrate judge's issue to decide, but things  
6 do tend to be overdesignated as confidential, which is a  
7 constant plague in civil litigation, and so I just ask counsel  
8 to be -- to pick your spots and to tailor things as narrowly as  
9 you think appropriate under the circumstances.

10 All right. Unless there's anything further, let  
11 me -- I've addressed the motion for a protective order, number  
12 one.

13 I think I've addressed the issue of contacts with  
14 represented parties. I think I've addressed the issue of the  
15 requirement of notification of opposing counsel on things, such  
16 as depositions, and other events.

17 The motion to compel will be referred, as I indicated,  
18 in due course to the magistrate judge. My understanding,  
19 plaintiffs have indicated that written discovery responses are  
20 due December 21st, and I believe that counsel have indicated  
21 that -- or I'm sorry -- Mr. Joy, I think, indicated that he  
22 could respond in a timely fashion, given that that's only one  
23 week away; and given the holidays, I will assume either that  
24 Mr. Joy can respond on time, or that counsel will grant a week  
25 or two extension, if reasonably necessary, under the

1 MR. PICKLE: I have a similar question regarding  
2 interrogatories. I don't have the federal rule in front of me,  
3 but a Rule 26(f) conference report, all parties propose 25 per  
4 each party interrogatory.

5 THE COURT: There's a limitation in the rule as well.  
6 I don't remember what it is, but it's, I think, 25 would be  
7 within the limit.

8 MR. PICKLE: So is that 25 -- that's 25 different  
9 questions, correct?

10 THE COURT: Right. Yeah, but including subparts. So  
11 you can't break -- you can't take ten questions and cram them  
12 into one.

13 MR. PICKLE: And that would be regardless of -- okay.

14 THE COURT: I don't know. You'll have to look at the  
15 rule. I'm obviously showing here how often the magistrate  
16 judges handle this, as opposed to me, since I don't have the  
17 rules in front of me and can't remember what they say, but my  
18 own prejudice, for what it's worth, is that depositions and  
19 document exchanges are valuable, and interrogatories rarely  
20 produce anything useful. So, I'm -- I'm less sanguine about  
21 providing extra ones.

22 MR. PICKLE: I guess, your Honor, one last issue, I  
23 also filed a motion for relief from the Court to be able to  
24 file electronically, and so would that be also delegated to  
25 Magistrate Hillman?



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting	)	
Network, Inc., and	)	
Danny Lee Shelton,	)	
Plaintiffs,	)	
	)	
	)	
vs.	)	Case No. 07cv40098-FDS
	)	
	)	
Gailon Arthur Joy,	)	
and Robert Pickle,	)	
Defendants.	)	

BEFORE: The Honorable F. Dennis Saylor, IV

Status conference

United States District Court  
Courtroom No. 2  
595 Main Street  
Worcester, Massachusetts  
September 11, 2008

Marianne Kusa-Ryll, RDR, CRR  
Official Court Reporter  
United States District Court  
595 Main Street, Room 514A  
Worcester, MA 01608-2093  
508-929-3399  
Mechanical Steno - Transcript by Computer

1 APPEARANCES:

2 (via telephone)  
3 Siegel, Brill, Greupner, Duffy & Foster, P.A.  
4 M. Gregory Simpson, Esquire  
5 Kristin L. Kingsbury, Esquire  
6 100 Washington Avenue South, Suite 1300  
7 Minneapolis, Minnesota 55401  
8 for the Plaintiffs, Three Angels Broadcasting Network, Inc.,  
9 and Danny Lee Shelton

6 Fierst, Pucci & Kane, LLP  
7 J. Lizette Richards, Esquire  
8 64 Gothic Street, Suite 4  
9 Northampton, Massachusetts 01060  
for the Plaintiffs, Three Angels Broadcasting Network, Inc.,  
and Danny Lee Shelton

10 (via telephone)  
11 Gailon Arthur Joy  
12 P.O. Box 1425  
Sterling, Massachusetts 01564  
Pro Se

13 (via telephone)  
14 Robert Pickle  
15 1354 County Highway 21  
Halstad, Minnesota 56548  
Pro Se

16

17

18

19

20

21

22

23

24

25

1 trouble.

2 MR. SIMPSON: That's fine. Just let me know, Judge.

3 THE COURT: All right. Let me begin with there are  
4 some motions pending, which I think the time for response has  
5 not yet run, and I have quickly reviewed an order from  
6 Magistrate Judge Hillman, which was issued today.

7 What I'm going to do is to -- the motion for discovery  
8 that was filed on September 8th, Docket entry 98, appears to be  
9 moot, because an amended motion for discovery was filed on  
10 September the 9th, Docket No. 104.

11 Docket -- motions -- the motion for discovery, leave  
12 to cause subpoena to be served on U.S. Attorney Courtney Cox  
13 and upon the Fjarli Foundation, if I'm pronouncing that right,  
14 No. 94, and the amended motion for discovery, leave to cause  
15 subpoena to be served upon a port director and upon Delta  
16 Airlines, will be referred to the magistrate judge for  
17 resolution once a response from plaintiffs has been filed.

18 And as an aside, I didn't realize Courtney Cox was a  
19 U.S. Attorney.

20 Is Jennifer Aniston now a United States Attorney?

21 MR. SIMPSON: I wondered that.

22 THE COURT: Don't answer that.

23 The motion for extension of time filed by defendants,  
24 No. 101, to extend the deadlines for discovery of 90 days, what  
25 I'm going to do is this: I'm going to also refer that to the

1 magistrate judge and -- and grant him authority to extend  
2 discovery from zero to 90 days, such as he thinks is  
3 appropriate. It's hard for me to answer that in the abstract  
4 without having a handle really on where matters stand  
5 and -- and without really having time to digest this order.  
6 So, if he does extend discovery, we will -- I will have  
7 Mr. Castles adjust the remainder of the calendar as well, but  
8 he -- he will have plenary authority to enter such orders as he  
9 sees fit up to an extension of 90 days on all discovery  
10 deadlines. And I think that takes care of the pending motions.

11 Counsel for the Plaintiff, Mr. Simpson, have I hit all  
12 the motions that are pending? I think it's just those three at  
13 this point.

14 MR. SIMPSON: The only thing that you didn't mention,  
15 Judge, is the request for sanctions to Pickle's motion -- Mr.  
16 Pickle's motion to extend discovery, and that was briefed in  
17 document -- ECF documents 72 and 73.

18 What that relates to, Judge, is the fact that  
19 Mr. Pickle, Mr. Joy, and I spent several days -- several hours  
20 over several days, hashing out a resolution to the discovery  
21 dispute that we believed we had reached an agreement that  
22 called for them to withdraw the motion without prejudice. We  
23 would then admit -- well, we were in the process of reviewing  
24 and Bates stamping and screening for privilege and  
25 confidentiality thousands of documents, which we ultimately

1 MR. SIMPSON: Yes.

2 THE COURT: But I'll refer that request for resolution  
3 to the magistrate judge.

4 MR. SIMPSON: Thank you, Judge.

5 THE COURT: All right.

6 MR. JOY: Your Honor, I would like to speak to that --

7 THE COURT: Yes, you don't need to respond on the  
8 merits, because I'm not going to rule on them and have no basis  
9 for accepting or rejecting what was said, but I will let you  
10 respond.

11 MR. JOY: Well, your Honor, it may be significant  
12 here.

13 THE COURT: This is Mr. Joy? I'm sorry. This is --

14 MR. JOY: Yes, sir.

15 THE COURT: Okay.

16 MR. JOY: Yes. Okay. The very simple fact is that in  
17 a subsequent communication with us, Mr. Simpson did indeed  
18 claim that he had supposedly faxed it to us, and then also  
19 mailed them to us. Neither myself nor Mr. Pickle ever received  
20 the mail that was supposedly sent. Neither of us also received  
21 the fax, which goes to a common fax server. He then explained  
22 or attempted to explain that it went to a wrong phone number.  
23 We contacted the detective agency that recorded the receipt of  
24 that, and found out that, in fact, they also had not received  
25 such a fax. So I just wanted to put that on the record to make

1 it clear that we believe it was actually a Rule 11 issue here.

2 THE COURT: All right. I -- I -- let's -- again, I'm  
3 not going to resolve it now. What you say on the record here  
4 doesn't -- I mean if you don't respond to something, it doesn't  
5 constitute a waiver, so I'm going to let Magistrate Judge  
6 Hillman work that out.

7 MR. PICKLE: Your Honor, could I -- I just have one  
8 quick question on that. I know at least regarding some  
9 sanction of time for relief here, where a party is ordered to  
10 pay costs, an opportunity to be heard must be had. Now in this  
11 case, where there is no motion filed asking for relief, how do  
12 we have the opportunity to be heard?

13 THE COURT: Well, let me do the following. It's, I  
14 guess, a reasonable point.

15 Mr. Simpson, how quickly can you recast that in the  
16 form of a motion, which is probably just putting a caption on  
17 your request and calling it a motion?

18 MR. SIMPSON: Well, just a matter of two days.

19 THE COURT: All right. Why don't you do that.  
20 I'll -- I'll give you until September the 15th, I think, next  
21 Tuesday; is that right?

22 MR. PICKLE: I think that's Monday.

23 THE COURT: Monday, September the 16th, to get that on  
24 file, and then call that a motion. It will be referred to the  
25 magistrate judge.

1           And then, Mr. Joy and Mr. Pickle, you'll have the  
2           usual amount of time in which to respond and submit affidavits  
3           or exhibits or whatever it is you think you need to do in  
4           response, okay?

5           MR. PICKLE: Thank you, your Honor.

6           MR. JOY: Thank you, sir.

7           THE COURT: All right. Is there anything else that we  
8           can attend to here?

9           I think what I'm going to do is I'm going to set it  
10          for a further status conference, really as a place holder. I  
11          don't quite know what Magistrate Judge Hillman is going to do  
12          in terms of the timetable, but I would like to set it for a  
13          status conference, even expecting that it may be moved just so  
14          that I'm -- I have something in the calendar where I'll see  
15          you, and that we can talk about the timetable.

16          Putting that aside for the moment, is there anything  
17          else that we ought to talk about now?

18          Mr. Simpson?

19          MR. SIMPSON: I think you covered everything, Judge.  
20          That was what my agenda was.

21          THE COURT: Mr. Joy.

22          MR. JOY: I think relatively our problem, of course,  
23          is that we still have very reluctant discovery, and every time  
24          we make a move, they oppose, and we get hung up in waiting for  
25          Judge Hillman to respond; and you know, it just becomes

1 problematic, we not being able to proceed, but the bottom line  
2 is we will leave that, I guess, for Judge Hillman.

3 THE COURT: Okay. Mr. Pickle.

4 MR. PICKLE: I think that's about it, your Honor.

5 THE COURT: All right. What I'm going to do then is  
6 I'm going to set it for a status conference in -- I think, late  
7 October sounds about right at this stage; and again, it's a  
8 place holder. It doesn't need to be that far out. If I need  
9 to see you sooner, and it can be moved back if, for example,  
10 discovery is extended into November, we probably ought to wait  
11 until the close of discovery before further status.

12 All right. Let me get something on the calendar.

13 (The Court conferred with the clerk.)

14 THE CLERK: Three o'clock on October the 30th, will  
15 that work?

16 MR. SIMPSON: I'm checking my calendar, Judge. This  
17 is Greg Simpson. October 30th looks fine.

18 THE COURT: Is that all right with you, Mr. Joy and  
19 Mr. Pickle?

20 MR. PICKLE: I believe so, your Honor.

21 THE COURT: Okay.

22 MR. JOY: Yes, sir, your Honor.

23 THE COURT: All right. October 30th then, status  
24 conference again. Nothing magic about the date, but I  
25 want -- ideally I would see you very shortly after the close of



1 if they become incomplete when made. So -- but I'm going to  
2 leave the timing of it up to Magistrate Judge Hillman.

3 MR. SIMPSON: Judge, this is Greg Simpson.

4 THE COURT: Yes.

5 MR. SIMPSON: Mr. Pickle's client raises  
6 another -- it's the same point really that we have attempted to  
7 schedule Mr. Pickle and Mr. Joy for deposition -- for their  
8 depositions; and as of last week, they took the position that  
9 they didn't want to produce themselves for deposition while the  
10 document discovery is un -- is outstanding, even though I don't  
11 see a relationship between those two issues. I would like to  
12 take their depositions, so I'm anticipating we're going to have  
13 a dispute, unless they're willing to produce themselves. They  
14 wouldn't give any dates that they were available, so I was just  
15 going to have to pick some and then bring a motion if they  
16 didn't show up, and I prefer not to do that.

17 Can you give us some guidance on that.

18 MR. PICKLE: Your Honor, that is false.

19 MR. JOY: That is false.

20 MR. PICKLE: Totally false.

21 THE COURT: Hold on, hold on, everyone. Without  
22 characterizing anything, Mr. Pickle and Mr. Joy are going to be  
23 deposed. I'm not going to -- without something in front of me,  
24 without an opportunity for both sides to weigh in, I'm not  
25 going to characterize it, but whatever else happens in

1 discovery from this point forward, whatever deadlines are set,  
2 Mr. Pickle and Mr. Joy will -- the plaintiffs will have an  
3 opportunity to depose them; and if -- if you all can work that  
4 out so that it happens before Magistrate Judge Hillman has  
5 issued a ruling on the motion to extend the deadline, that's  
6 fine, as far as I'm concerned.

7 If you feel you need to file a motion to compel, or a  
8 motion for a protective order, we'll take that up in due  
9 course.

10 MR. SIMPSON: Fair enough.

11 THE COURT: Okay.

12 MR. JOY: Your Honor.

13 THE COURT: Certainly, there's no possibility that I  
14 will let this case go forward much longer without the key  
15 players being deposed.

16 Yes, sir.

17 MR. JOY: Your Honor, frankly, we did not -- we did  
18 not say we were not going to be deposed. We suggested that we  
19 schedule the deposition following the current scope and  
20 relevance motion responses from the judge.

21 THE COURT: Again, this is not a dispute I need to  
22 resolve. If you -- if you think the matters are resolved, and  
23 you can come up with a convenient date, that's great. If the  
24 matters are not resolved, and you have a dispute, the aggrieved  
25 party is going to have to file a motion.

1 MR. PICKLE: Your Honor, just to finish up with the  
2 concern I was kind of thinking of when I was starting to ask  
3 the question. Yes, our position has been, and I guess we  
4 relayed this in the status conference in May. You know, we  
5 raised it at different times that we really feel we need to get  
6 the documents that we've requested before we can  
7 do -- effectively do depositions, so that we know what -- what  
8 questions, you know, we can make sure that our questions really  
9 deal with the evidence we're looking at.

10 And I'm just a little concerned that it's that we  
11 might -- you know, depending on how long it takes for some of  
12 these decisions to be handed down and how long it takes for us  
13 to get the documents that we may have trouble getting the  
14 depositions scheduled after getting the documents we've  
15 requested.

16 THE COURT: Again, I'm going to leave this for the  
17 time being in the hands of the magistrate judge. If it comes  
18 back to me in some form or another, my response is going to be  
19 you -- you have the right to depose Mr. Joy and Mr. Pickle, as  
20 they have a right to depose Mr. Shelton, or whoever it is, you  
21 know, are the key players on the other side. You have the  
22 right to do so with a full document, or reasonably full  
23 document production in hand; and I would like, you know, this  
24 case to move, but I -- because I am not immersed in the ins and  
25 outs of the disputes, I'm going to leave that in his hands, and

1 we'll take it from there, okay.

2 MR. PICKLE: Thank you, your Honor.

3 THE COURT: I -- I'm -- at the end of the day, I'm  
4 going to try to do the rational thing, and the rational thing  
5 is to have both sides exchange documents and then take the  
6 depositions of the key people once they have the documents in  
7 hand. And I would like that to happen in some reasonably  
8 prompt time frame, but I'm going to leave that to him in the  
9 first instance.

10 MR. PICKLE: Thank you, your Honor.

11 MR. SIMPSON: From the plaintiffs' perspective, that  
12 sounds like a good resolution. I think Magistrate Hillman has  
13 a good grasp of the case, so...

14 THE COURT: All right. And again to state the  
15 obvious, no matter how tempers may flare or  
16 disputes -- whatever disputes may come up, everyone needs to be  
17 reasonably professional and -- and attempt to work together  
18 to -- to accommodate one another's schedules and so forth,  
19 and -- and to be as reasonable as you can under the  
20 circumstances.

21 MR. SIMPSON: We'll take that to heart, Judge.

22 THE COURT: Okay.

23 MR. SIMPSON: All right.

24 THE COURT: All right. Anything further?

25 MR. SIMPSON: Nothing from the plaintiffs' side,