

No. 09-2615

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

AFFIDAVIT OF ROBERT PICKLE

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NOW COMES Robert Pickle of Halstad Township, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury, based on his own personal knowledge and information:

1. I inquired of the clerk more than once regarding the filing of sealed materials in connection with our principal brief, and the timing of a motion to file under seal. I was advised by the clerk that a motion to file under seal would be considered timely if it was served on the day the principal brief was due.

2. I also inquired as to whether the affidavit we filed with our motion to enlarge the record in Case No. 08-2457 was part of the record in this case, since the documents pertaining to royalty and kickback payments from Remnant Publications, Inc. and pertaining to the terminated whistleblowers had already been determined to be part of the record in this case. I was advised by the clerk that the affidavit would need to be refiled in this case, but the documents would not need to be refiled.

3. As already explained in the record¹: Folders on a DVD identified as Exhibit H to [RA 171](#) contain Plaintiffs' four non-confidential document productions, which were all produced without any indexing whatsoever. I spent considerable time separating the three large PDF's into individual documents, and giving the PDF files descriptive filenames that identified each file's contents. The

¹[RA 152](#) p. 7; [RA 171](#) pp. 6–7; [RA 107](#) p. 4; [RA 220](#) pp. 16–17; [RA 103](#) pp. 1–2. The descriptive filenames enabled an analysis similar to what is described in [RA 81](#) p. 1 ff.

resulting descriptively named PDF files reside in Folders 7–10 of Exhibit H.

4. In preparing SE 159 for the appendix, I intended to provide the same: The unindexed PDF files as produced by Plaintiffs in their three electronic “confidential” productions, and the descriptively named files I made as I tried to sort through all the material.

5. I spent some time shortening some filenames down to the 103-character limit imposed by a CD/DVD file system, and also producing HTML indexes corresponding to the table of contents required for appendixes that would enable this Court to easily navigate to the various files. Using PHP, I checked these indexes for accuracy, and produced separate indexes for the various categories referred to in our submissions, such as documents pertaining to printing, common office supplies, and office furniture, all abusively designated as confidential.

6. However, not too long before our brief was due, I looked at [RA 171](#) p. 7 again and noted that we had only proffered below the files produced by Plaintiffs, not both the files produced by Plaintiffs and the files as renamed by me. I therefore jettisoned the idea of providing two copies, and hoped to have the time to provide HTML indexes with links that went to the non-descriptly named files.

7. But time did not quite allow. As it was, (a) a program crash prevented producing disc labels for SE 159 like those for EX 851, (b) the submitted materials contained some minor clerical errors, (c) a re-citing of DA 51 was omitted at the end of the discussion of the proffered CD on page 60 (p. 69) of our brief, and (d)

an explanation that Defendants' required redactions of social security and financial account numbers were rectangular solid black boxes while Plaintiffs' unilateral redactions were not was omitted. In the shortness of time, I quickly created text files for the directories that contained a listing of Plaintiffs' non-descript file names, which really didn't accomplish anything worthwhile at all.

8. In retrospect, it now appears that the proffer described in [RA 171](#) p. 7 was for files already renamed and already split into smaller files, and thus most of my concern was unwarranted. I should have provided to this Court the files as split and renamed by myself rather than the files as named and produced by Plaintiffs. When exactly over the passage of time I became confused as to what we had proffered, I do not recall.

9. But the point of describing the production of the CD identified as SE 159 is that we were doing our best to comply with this Court's December 4, 2009, order, to the very letter: Since we had not proffered two sets of files below, I was not going to file two sets of files here, even if it meant abandoning the plans and labors of months, and putting us at a disadvantage.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 30th day of December, 2010.

s/ Bob Pickle
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Subscribed and sworn to me
this 30th day of December, 2010.

s/ Lori J. Rufsvold
Notary Public—Minnesota

My Commission Expires Jan. 31, 2010