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

JOINT APPENDIX — PAGES JA 001–JA 540

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JOINT APPENDIX
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APPEAL, TRADE

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

Three Angels Broadcasting v Joy, et al.,
Assigned to: Judge Rya W. Zobel
Case in other court: First Circuit, 09-02615
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

Date Filed	#	Docket Text
04/06/2007		Case Assigned to Judge F. Dennis Saylor, IV. (Shattuck, Deborah) (Entered: 04/06/2007)
04/06/2007	1	COMPLAINT against Gailon Arthur Joy, Robert Pickle filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # 1 Exhibits to complaint# 2 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 1 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	2	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: # 1 proposed order)(Jones, Sherry) (Entered: 04/06/2007)
04/06/2007	3	MEMORANDUM in Support re 2 MOTION to Seal Document filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # 1 exhibits to memo in support)(Jones, Sherry) (Entered: 04/06/2007)
04/06/2007	4	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 2 Motion to Seal case. (Castles, Martin) (Entered: 04/25/2007)
04/25/2007	5	Judge F. Dennis Saylor IV: PRELIMINARY ORDER OF IMPOUNDMENT entered re 2 MOTION to Seal Document 1 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

		IV. (Castles, Martin) (Entered: 04/25/2007)
05/02/2007	6	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: # 1 attorney certifications)(Jones, Sherry) (Entered: 05/02/2007)
05/04/2007		Filing fee: $ 200.00, receipt number 405079 for 6 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 6 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	7	NOTICE of Appearance by Laird J. Heal on behalf of Gailon Arthur Joy, Robert Pickle. (Jones, Sherry) (Entered: 05/10/2007)
05/10/2007	8	Opposition re 2 MOTION to Seal Document and permanent impoundment 1 Complaint filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 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 2 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	9	ANSWER to Complaint by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Part 2)(Hassett, Kathy) (Entered: 05/21/2007)
05/24/2007	10	REPLY to Response to Motion re 2 MOTION to Seal Document and Permanent Impoundment re 1 Complaint filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # 1 Text of Proposed Order # 2 Affidavit of Mollie Steenson# 3 Exhibits to Affidavit of Mollie Steenson# 4 Affidavit of Larry Ewing)(Hassett, Kathy) (Entered: 05/24/2007)
06/08/2007	11	NOTICE of Pro Se Appearance by Gailon Arthur Joy. (Jones, Sherry) (Entered: 06/08/2007)
06/08/2007	12	SUR-REPLY to Motion re 2 MOTION to Seal Document 1 Complaint filed by Gailon Arthur Joy. (Attachments: # 1 proposed order)(Jones, Sherry) (Entered: 06/08/2007)

06/08/2007	13	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	14	MOTION for Sanctions, MOTION to Strike supplemental pleadings by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 exhibit part 1# 2 exhibit part 2# 3 exhibit part 3)(Jones, Sherry) (Entered: 06/08/2007)
06/11/2007	15	SUPPLEMENTAL MEMORANDUM in Opposition to Plaintiff's Motion for permanent impoundment re 2 MOTION to Seal Document filed by Robert Pickle. (Attachments: # 1 Exhibit)(Jones, Sherry) (Entered: 06/12/2007)
06/21/2007		Judge F. Dennis Saylor IV: Electronic ORDER entered finding as moot 13 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 14 Motion for Sanctions and denying 14 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	16	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	17	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	18	REPORT of Rule 26(f) Planning Meeting. (Pucci, John) (Entered: 07/20/2007)
07/20/2007	19	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	20	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 7/26/2007. 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) Modified on 11/13/2009 (Scalfani, Deborah). (Entered: 07/27/2007)
07/27/2007	21	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	23	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	24	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	25	Proposed Document(s) submitted by Robert Pickle. Document received: Proposed Order. (Heal, Laird) (Entered: 08/27/2007)
08/27/2007	26	Proposed Document(s) submitted by Gailon Arthur Joy. Document received: Proposed Order. (Heal, Laird) (Entered: 08/27/2007)
08/27/2007	27	MEMORANDUM OF LAW by Gailon Arthur Joy to 26 Proposed Document(s) submitted. (Attachments: # 1 Supplement Certificate of Service)(Heal, Laird) (Entered: 08/27/2007)
10/24/2007	29	MOTION for Hearing *Status Conference* by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # 1 Exhibit Joy Bankruptcy Petition)(Pucci, John) (Entered: 10/24/2007)
10/26/2007		Judge F. Dennis Saylor IV: Electronic ORDER entered. REFERRING MOTION 29 MOTION for Hearing *Status Conference* 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	30	Judge Timothy S. Hillman : ORDER entered granting 29 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	31	NOTICE by Robert Pickle *of Appearance Pro Se filed by Laird Heal on behalf of Pickle* (Attachments: # 1 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	32	Emergency MOTION for Hearing *Status Conference* 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 32 Emergency MOTION for Hearing *Status Conference* 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	33	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 32 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 32 Motion for Status Conference. "The Plaintiff's Emergency Motion for Hearing status confernce 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	34	Opposition re 32 Emergency MOTION for Hearing *Status Conference* filed by Robert Pickle. (Smith3, Dianne) Additional attachment(s) added on 11/21/2007 (Smith3, Dianne). (Entered: 11/20/2007)
12/14/2007	35	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	36	MEMORANDUM in Support re 35 MOTION to Compel MOTION for Sanctions filed by Robert Pickle, c/s. (Jones, Sherry) (Entered: 12/14/2007)
12/14/2007	37	AFFIDAVIT of Robert Pickle in Support re 35 MOTION to Compel MOTION for Sanctions filed by Robert Pickle. (Attachments: # 1 Exhibits)(Jones, Sherry) (Entered: 12/14/2007)
12/14/2007	38	MOTION for leave of the court to file electronically by Robert Pickle, c/s.(Jones, Sherry) (Entered: 12/14/2007)
12/14/2007	39	AFFIDAVIT of Robert Pickle in Support re 38 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, Plainitff'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 38 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	40	MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument* by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # 1 Exhibit A - Protective Order)(Richards, J.) (Entered: 12/18/2007)
12/18/2007	41	MEMORANDUM in Support re 40 MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 12/18/2007)
12/18/2007	42	AFFIDAVIT of Jerrie Hayes in Support re 40 MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 12/18/2007)
12/18/2007	43	AFFIDAVIT of Danny Shelton in Support re 40 MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 12/18/2007)
12/18/2007	44	AFFIDAVIT of Mollie Steenson in Support re 40 MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 12/18/2007)
12/28/2007	45	Opposition re 35 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	46	AFFIDAVIT of Jerrie Hayes re 45 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	47	Opposition re 40 MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument* filed by Robert Pickle, c/s. (Jones, Sherry) (Entered: 01/02/2008)
01/02/2008	48	MEMORANDUM in Opposition re 40 MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument* filed by Robert Pickle, c/s. (Jones, Sherry) (Entered: 01/02/2008)

01/02/2008	49	AFFIDAVIT of Robert Pickle in Opposition re 40 MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument* filed by Robert Pickle. (Attachments: # 1 Exhibits)(Jones, Sherry) (Entered: 01/02/2008)
02/13/2008		Judge F. Dennis Saylor, IV: Electronic ORDER entered. REFERRING MOTION 40 MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument* filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc., and 35 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 40 MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument*, 35 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	50	Supplemental MEMORANDUM in Opposition re 40 MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument* filed by Robert Pickle. (Pickle, Robert) (Entered: 03/03/2008)
03/03/2008	51	Supplemental AFFIDAVIT of Robert Pickle in Opposition re 40 MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument* filed by Robert Pickle. (Attachments: # 1 Exhibit Ex. A, # 2 Exhibit Ex. B, # 3 Exhibit Ex. C, # 4 Exhibit Ex. D, # 5 Exhibit Ex. E, # 6 Exhibit Ex. F, # 7 Exhibit Ex. G, # 8 Exhibit Ex. H, # 9 Exhibit Ex. I, # 10 Exhibit Ex. J, # 11 Exhibit Ex. K (Ex. B-G), # 12 Exhibit Ex. K (Ex. H-J), # 13 Exhibit Ex. K (Ex. K-S), # 14 Exhibit Ex. K (Ex. T-ZZ), # 15 Exhibit Ex. K (Ex. AA-EE))(Pickle, Robert) (Entered: 03/03/2008)
03/04/2008	52	MOTION to Strike 50 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	53	MEMORANDUM in Support re 52 MOTION to Strike 50 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	54	MOTION for Leave to File *Supplemental Memorandum in Opposition to Plaintiffs' Motion for Protective Order* by Robert Pickle.(Pickle, Robert) (Entered: 03/05/2008)
03/05/2008	55	MEMORANDUM in Support re 54 MOTION for Leave to File *Supplemental Memorandum in Opposition to Plaintiffs' Motion for Protective Order* filed by Robert Pickle. (Pickle, Robert) (Entered: 03/05/2008)
03/05/2008		Judge F. Dennis Saylor, IV: Electronic ORDER entered. REFERRING MOTION 40 MOTION for Protective Order *Notice of Motion and Motion*

		for Protective Order and Request for Oral Argument filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc., 35 MOTION to Compel MOTION for Sanctions filed by Robert Pickle, 54 MOTION for Leave to File *Supplemental Memorandum in Opposition to Plaintiffs' Motion for Protective Order* filed by Robert Pickle, 52 MOTION to Strike 50 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	56	AFFIDAVIT of Robert Pickle in Support re 54 MOTION for Leave to File *Supplemental Memorandum in Opposition to Plaintiffs' Motion for Protective Order* 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 40 MOTION for Protective Order *Notice of Motion and Motion for Protective Order and Request for Oral Argument* filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc., 35 MOTION to Compel MOTION for Sanctions filed by Robert Pickle, 54 MOTION for Leave to File *Supplemental Memorandum in Opposition to Plaintiffs' Motion for Protective Order* filed by Robert Pickle, 52 MOTION to Strike 50 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 35 Motion to Compel; denying 35 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 40 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 52 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 54 Motion for Leave to File. (Roland, Lisa) (Entered: 03/10/2008)
03/20/2008	57	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	58	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	59	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	60	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	61	MOTION to Compel *3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant Pickle's Requests to Produce* by Robert Pickle.(Pickle, Robert) (Entered: 05/15/2008)
05/15/2008	62	MEMORANDUM in Support re 61 MOTION to Compel *3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant*

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

		Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Pickle, Robert) (Entered: 06/10/2008)
06/20/2008		Filing fee/payment: $ 50., receipt number BST004291 for 65 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 61 MOTION to Compel *3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant Pickle's Requests to Produce* 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 65 Motion for Leave to Appear Pro Hac Vice; Added M. Gregory Simpson for Three Angels Broadcasting Network, Inc. and Danny Lee Shelton. **Attorneys admitted Pro Hac Vice must register for electronic filing. To register go to the Court website at www.mad.uscourts.gov. Select Forms and then scroll down to CM/ECF Forms.** (Castles, Martin) (Entered: 06/23/2008)
06/24/2008	72	RESPONSE to 69 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	73	AFFIDAVIT of M. Gregory Simpson re 72 Response to Motion. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 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	74	MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument* by Three Angels Broadcasting Network, Inc., Danny Lee Shelton.(Simpson, M.) (Entered: 06/25/2008)
06/25/2008	75	MEMORANDUM in Support re 74 MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 06/25/2008)
06/25/2008	76	AFFIDAVIT in Support re 75 Memorandum in Support of Motion. (Attachments: # 1 Exhibit 1-3, # 2 Exhibit 4-16, # 3 Exhibit 17-18, # 4 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 69 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	77	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	78	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	79	Opposition re 74 MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 07/09/2008)
07/09/2008	80	MEMORANDUM in Opposition re 74 MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 07/09/2008)
07/09/2008	81	AFFIDAVIT of Robert Pickle in Opposition re 74 MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument* filed by Robert Pickle. (Attachments: # 1 Exhibit A-I, # 2 Exhibit J (A-N), # 3 Exhibit J (O-EE), # 4 Exhibit K-N, # 5 Exhibit O (A-X), # 6 Exhibit O (Y-MM), # 7 Exhibit O (NN-YY), # 8 Exhibit O (ZZ-KKK), # 9 Exhibit P-GG, # 10 Exhibit HH-UU)(Pickle, Robert) (Entered: 07/09/2008)
07/09/2008	82	MOTION for Leave to File *under Seal seven Exhibits for Affidavit in Opposition to Motion for Protective Order (Documents declared confidential by Plaintiffs and pages from personal tax returns)* by Robert Pickle.(Pickle, Robert) (Entered: 07/09/2008)
07/09/2008	83	CERTIFICATE OF SERVICE by Robert Pickle re 80 Memorandum in Opposition to Motion, 81 Affidavit in Opposition to Motion,. (Pickle, Robert) (Entered: 07/09/2008)
07/10/2008	84	MOTION for Leave to File *Amended Motion to File Under Seal* by Robert Pickle. (Attachments: # 1 Exhibit Proposed Amended Motion to File Under Seal)(Pickle, Robert) (Entered: 07/10/2008)
07/10/2008	85	MOTION for Extension of Time to 6pm EST (7pm EDT) on July 9, 2008 to File Response/Reply as to 74 MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument* 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 82 MOTION for Leave to File *under Seal seven Exhibits for Affidavit in Opposition to Motion for Protective Order (Documents declared confidential by Plaintiffs and pages from personal tax returns)*

		filed by Robert Pickle, 84 MOTION for Leave to File *Amended Motion to File Under Seal* filed by Robert Pickle, 85 MOTION for Extension of Time to 6pm EST (7pm EDT) on July 9, 2008 to File Response/Reply as to 74 MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument* MOTION for Extension of Time to 6pm EST (7pm EDT) on July 9, 2008 to File Response/Reply as to 74 MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument* filed by Robert Pickle, Gailon Arthur Joy, 74 MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument* 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 74 MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument*, 61 MOTION to Compel *3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant Pickle's Requests to Produce* : 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 82 Motion for Leave to File. (Roland, Lisa) (Entered: 07/15/2008)
07/15/2008		Magistrate Judge Timothy S. Hillman: Electronic ORDER entered granting 84 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 85 Motion for Extension of Time to File Response/Reply re 74 MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument.* Responses due by 7/16/2008 (Roland, Lisa) (Entered: 07/15/2008)
07/16/2008	86	Amended MOTION for Leave to File *under Seal* by Robert Pickle.(Pickle, Robert) (Entered: 07/16/2008)
07/16/2008	87	MOTION for 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. (Attachments: # 1)(Pucci, John) (Entered: 07/16/2008)
07/17/2008	89	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	90	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 86 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 87 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	91	REPLY to Response to 74 MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Kingsbury, Kristin) (Entered: 07/18/2008)
07/18/2008	92	AFFIDAVIT in Support re 91 Reply to Response to Motion. (Kingsbury, Kristin) (Entered: 07/18/2008)
07/21/2008	93	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 61 MOTION to Compel *3ABN and Danny Shelton to Produce Documents and Things in Response to Defendant Pickle's Requests to Produce* filed by Robert Pickle, 74 MOTION for Protective Order *Limiting Scope and Methods of Discovery and Request for Oral Argument* 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	94	MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation)* by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Text of Proposed Order)(Pickle, Robert) (Entered: 08/25/2008)
08/26/2008	95	MEMORANDUM in Support re 94 MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation)* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 08/26/2008)

08/26/2008	96	AFFIDAVIT of Robert Pickle in Support re 94 MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation)* filed by Robert Pickle. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 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	97	MEMORANDUM in Opposition re 94 MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation)* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Kingsbury, Kristin) (Entered: 09/08/2008)
09/08/2008	98	MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines)* by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Text of Proposed Order)(Pickle, Robert) (Entered: 09/08/2008)
09/08/2008	99	MEMORANDUM in Support re 98 MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines)* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 09/08/2008)
09/08/2008	100	AFFIDAVIT in Support re 98 MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines) and 104 AMENDED MOTION FOR DISCOVERY* filed by Robert Pickle. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S, # 20 Exhibit T, # 21 Exhibit U)(Pickle, Robert) Modified on 9/9/2008 (Jones, Sherry). (Entered: 09/08/2008)
09/08/2008	101	MOTION for Extension of Time to 90 days later for all deadlines to conduct discovery by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Text of Proposed Order)(Pickle, Robert) (Entered: 09/08/2008)
09/08/2008	102	MEMORANDUM in Support re 101 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	103	AFFIDAVIT in Support re 101 MOTION for Extension of Time to 90 days later for all deadlines to conduct discovery filed by Robert Pickle. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 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	104	Amended MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines)* by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Text of Proposed Order)(Pickle, Robert) (Entered: 09/09/2008)
09/09/2008	105	Amended MEMORANDUM in Support re 104 Amended MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines)* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 09/09/2008)
09/11/2008	106	Magistrate Judge Timothy S. Hillman: ORDER entered denying 61 Motion to Compel without prejudice; granting in part and denying in part 74 Motion for Protective Order as provided in order. (Roland, Lisa) (Entered: 09/11/2008)
09/11/2008	107	Magistrate Judge Timothy S. Hillman: ORDER entered Amending 106 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 98 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 94 MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation)* filed by Robert Pickle, Gailon Arthur Joy, 104 Amended MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines)* filed by Robert Pickle, Gailon Arthur Joy, 101 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	108	REPLY to Response to 94 MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation)* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 09/16/2008)
09/16/2008	109	AFFIDAVIT in Support re 108 Reply to Response to Motion *for Discovery (Leave to Cause Subpoena to Be Served Upon U.S. Attorney Courtney Cox and Upon the Fjarli Foundation)*. (Attachments: # 1 Exhibit A, # 2 Exhibit B,

		# 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P)(Pickle, Robert) (Entered: 09/16/2008)
09/22/2008	110	MEMORANDUM in Opposition re 104 Amended MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines)* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Kingsbury, Kristin) (Entered: 09/22/2008)
09/22/2008	111	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 111 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	112	MOTION to Enforce Protective Order by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # 1 Memorandum, # 2 Affidavit)(Richards, J.) (Entered: 09/30/2008)
10/01/2008	113	REPLY to Response to 98 MOTION for Discovery *(Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines)* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 10/01/2008)
10/01/2008	114	AFFIDAVIT re 113 Reply to Response to Motion *for Discovery (Leave to Cause Subpoena to Be Served Upon a Port Director and Upon Delta Airlines)*. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S, # 20 Exhibit T, # 21 Exhibit U, # 22 Exhibit V, # 23 Exhibit W, # 24 Exhibit X, # 25 Exhibit Y, # 26 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	115	MEMORANDUM in Support re 112 MOTION to Enforce Protective Order filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 10/01/2008)
10/01/2008	116	AFFIDAVIT in Support re 112 MOTION to Enforce Protective Order filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 10/01/2008)

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

		Exhibit QQ, # 44 Exhibit RR, # 45 Exhibit SS)(Pickle, Robert) (Entered: 10/30/2008)
10/30/2008	128	CERTIFICATE OF SERVICE by Robert Pickle re 127 Affidavit in Opposition to Motion,,, 126 Memorandum in Opposition to Motion *for Voluntary Dismissal.* (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 120 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	129	Judge F. Dennis Saylor, IV: ORDER entered. ORDER DISMISSING CASE.(Castles, Martin) (Entered: 11/03/2008)
11/13/2008	130	MOTION for Costs by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 11/13/2008)
11/13/2008	131	MEMORANDUM in Support re 130 MOTION for Costs filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 11/13/2008)
11/13/2008	132	AFFIDAVIT of Robert Pickle in Support re 130 MOTION for Costs filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C)(Pickle, Robert) (Entered: 11/13/2008)
11/13/2008	133	NOTICE OF APPEAL as to 129 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 http://www.ca1.uscourts.gov/clerks/transcript.htm 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	134	Certified and Transmitted Record on Appeal to US Court of Appeals re 133 Notice of Appeal # 1 docket sheet) (Hassett, Kathy). (Entered: 11/17/2008)
11/17/2008	135	NOTICE OF ATTORNEY PAYMENT OF FEES as to 133 Notice of Appeal, by Defendants Gailon Arthur Joy, Robert Pickle. Payment Type : APPEAL. (Pickle, Robert) (Entered: 11/17/2008)
11/19/2008	136	Supplemental Record on Appeal transmitted to US Court of Appeals re 133 Notice of Appeal, Documents included: 22, 28, 88, 93. (Hassett, Kathy) (Entered: 11/19/2008)

11/19/2008	137	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 133 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	138	MOTION to Unseal Document *(Docket # 22, # 28, and # 88)* by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 11/26/2008)
11/26/2008	139	MEMORANDUM in Opposition re 130 MOTION for Costs filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 11/26/2008)
11/26/2008	140	MEMORANDUM in Opposition re 130 MOTION for Costs filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 11/26/2008)
11/28/2008	141	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	142	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 133 Notice of Appeal (payment was attempted through pay.gov on 11/13/08) (Russo, Patricia) (Entered: 11/28/2008)
11/28/2008	143	Supplemental Record on Appeal transmitted to US Court of Appeals re 133 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	144	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	145	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	146	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	147	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	148	Opposition re 138 MOTION to Unseal Document *(Docket # 22, # 28, and # 88)* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Richards, J.) (Entered: 12/08/2008)
12/08/2008	149	REPLY to Response to 130 MOTION for Costs filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 12/08/2008)
12/08/2008	150	AFFIDAVIT of Lynette Rhodes in Support re 130 MOTION for Costs filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 12/08/2008)
12/08/2008	151	AFFIDAVIT of Laird Heal in Support re 130 MOTION for Costs filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Exhibit A)(Pickle, Robert) (Entered: 12/08/2008)
12/08/2008	152	AFFIDAVIT in Support re 149 Reply to Response to Motion, 130 MOTION for Costs. (Attachments: # 1 Exhibit B, # 2 Exhibit C, # 3 Exhibit D, # 4 Exhibit E, # 5 Exhibit F, # 6 Exhibit G, # 7 Exhibit H, # 8 Exhibit I, # 9 Exhibit J, # 10 Exhibit K, # 11 Exhibit L, # 12 Exhibit M, # 13 Exhibit N, # 14 Exhibit O, # 15 Exhibit P, # 16 Exhibit Q, # 17 Exhibit R, # 18 Exhibit S)(Pickle, Robert) (Entered: 12/08/2008)
12/08/2008	153	MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 12/08/2008)
12/08/2008	154	MEMORANDUM in Support re 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 12/08/2008)
12/08/2008	155	AFFIDAVIT of Robert Pickle in Support re 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Pickle, Robert) (Entered: 12/08/2008)

12/10/2008	156	NOTICE by Gailon Arthur Joy, Robert Pickle re 138 MOTION to Unseal Document *(Docket # 22, # 28, and # 88) Withdrawal of Motion* (Pickle, Robert) (Entered: 12/10/2008)
12/10/2008	157	AFFIDAVIT in Support re 156 Notice (Other) *by Gailon Arthur Joy, Robert Pickle re 138 MOTION to Unseal Document (Docket # 22, # 28, and # 88) Withdrawal of Motion*. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Pickle, Robert) (Entered: 12/10/2008)
12/16/2008	160	Receipt for Documents for In Camera Review. (Roland, Lisa) (Entered: 12/23/2008)
12/22/2008	158	MEMORANDUM in Opposition re 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 12/22/2008)
12/22/2008	159	AFFIDAVIT of M. Gregory Simpson in Opposition re 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # 1 Exhibit 1-7)(Simpson, M.) (Entered: 12/22/2008)
12/29/2008	161	REPLY to Response to 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 12/29/2008)
12/29/2008	162	AFFIDAVIT in Support re 161 Reply to Response to Motion *for Leave to File under Seal Exhibit A for Doc. # 152*. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 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 http://www.mad.uscourts.gov/caseinfo/pdf/notice-ecfprivacy1-06_000.pdf for additional information.. (Jones, Sherry) Modified on 1/9/2009 (Shattuck, Deborah). (Entered: 12/30/2008)
12/30/2008	163	EXHIBIT O re 162 Affidavit in Support, *re 161 Reply to Response to Motion for Leave to File under Seal Exhibit A for 152* . by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) Modified on 12/31/2008 (Jones, Sherry). (Entered: 12/30/2008)

01/26/2009		Judge F. Dennis Saylor, IV: Electronic ORDER entered withdrawing 138 Motion to Unseal Document. (Castles, Martin) (Entered: 01/26/2009)
02/24/2009	164	Supplemental Record on Appeal transmitted to US Court of Appeals re 133 Notice of Appeal, Documents included: 141 (Scalfani, Deborah) (Entered: 02/24/2009)
03/03/2009	165	Supplemental Record on Appeal transmitted to US Court of Appeals re 133 Notice of Appeal, Documents included: 144 and 146 (Scalfani, Deborah) (Entered: 03/03/2009)
04/13/2009		Case no longer referred to Magistrate Judge Timothy S. Hillman. (Roland, Lisa) (Entered: 04/13/2009)
04/13/2009	166	Judge F. Dennis Saylor, IV: ORDER entered denying 130 Motion for Costs. (Castles, Martin) (Entered: 04/13/2009)
04/14/2009	167	Supplemental Record on Appeal transmitted to US Court of Appeals re 133 Notice of Appeal Documents included: 166. (Jones, Sherry) (Entered: 04/14/2009)
04/15/2009		Judge F. Dennis Saylor, IV: Electronic ORDER entered denying 153 Motion for Leave to File under seal. The documents do not appear to be relevant and were not considered by the Court in connection with the underlying dispute. (Castles, Martin) (Entered: 04/15/2009)
04/15/2009	168	Supplemental Record on Appeal transmitted to US Court of Appeals re 133 Notice of Appeal, Documents included: 135, 138-140, 148-163. (Attachments: # 1 certified docket sheet)(Jones, Sherry) (Entered: 04/15/2009)
04/20/2009		Appeal Remark: receipt from USCA for Supplemental sent re 133 Notice of Appeal. (Jones, Sherry) (Entered: 04/20/2009)
04/27/2009	169	MOTION to Alter Judgment, MOTION for Reconsideration re 130 MOTION for Costs, 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152*, MOTION to Amend Order on Motion for Leave to File, 166 Order on Motion for Costs by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 04/27/2009)
04/27/2009	170	MEMORANDUM in Support re 169 MOTION to Alter Judgment MOTION for Reconsideration re 130 MOTION for Costs, 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* MOTION to Amend Order on Motion for Leave to File, 166 Order on Motion for Costs MOTION for Reconsideration re 130 MOTION for Costs, 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* MOTION to Amend Order on Motion for Leave to File, 166 Order on Motion for Costs filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 04/27/2009)
04/27/2009	171	AFFIDAVIT in Support re 169 MOTION to Alter Judgment MOTION for Reconsideration re 130 MOTION for Costs, 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* MOTION to Amend Order on Motion for Leave to File, 166 Order on Motion for Costs MOTION for Reconsideration re

		130 MOTION for Costs, 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* MOTION to Amend Order on Motion for Leave to File, 166 Order on Motion for Costs filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit I, # 9 Exhibit J, # 10 Exhibit K, # 11 Exhibit L, # 12 Exhibit M, # 13 Exhibit N, # 14 Exhibit O, # 15 Exhibit P, # 16 Exhibit S, # 17 Exhibit T, # 18 Exhibit U, # 19 Exhibit V, # 20 Exhibit W, # 21 Exhibit Z, # 22 Exhibit AA, # 23 Exhibit CC, # 24 Exhibit DD, # 25 Exhibit EE)(Pickle, Robert) (Entered: 04/27/2009)
04/27/2009	172	NOTICE OF MANUAL FILING by Gailon Arthur Joy, Robert Pickle Exhibit H (a DVD) re 171 Affidavit in Support of Motion,,,, (Pickle, Robert) (Entered: 04/27/2009)
04/27/2009	173	MOTION for Leave to File *Under Seal documents pertaining to Defendants' motions for reconsideration and motion to amend findings* by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 04/27/2009)
04/28/2009		NOTICE of filing a dvd, exhibit H by Robert Pickle re 172 Notice of Manual Filing. (Jones, Sherry) (Entered: 04/28/2009)
05/11/2009	174	Opposition re 173 MOTION for Leave to File *Under Seal documents pertaining to Defendants' motions for reconsideration and motion to amend findings* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 05/11/2009)
05/11/2009	175	MEMORANDUM in Opposition re 169 MOTION to Alter Judgment MOTION for Reconsideration re 130 MOTION for Costs, 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* MOTION to Amend Order on Motion for Leave to File, 166 Order on Motion for Costs MOTION for Reconsideration re 130 MOTION for Costs, 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* MOTION to Amend Order on Motion for Leave to File, 166 Order on Motion for Costs filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 05/11/2009)
05/20/2009	176	EXHIBIT I, RECEIVED A CD CONTAINING EXHIBIT I re 177 Reply to Response 169 MOTION to Alter Judgment MOTION for Reconsideration re 130 MOTION for Costs, 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* MOTION to Amend Order on Motion for Leave to File, 166 Order on Motion for Costs MOTION for Reconsideration re 130 MOTION for Costs, 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* MOTION to Amend Order on Motion for Leave to File, 166 Order on Motion for Costs by Robert Pickle. (Jones, Sherry) Modified on 5/20/2009 (Jones, Sherry). (Entered: 05/20/2009)
05/20/2009	177	REPLY to Response to 169 MOTION to Alter Judgment MOTION for Reconsideration re 130 MOTION for Costs, 153 MOTION for Leave to File *under Seal Exhibit A for Doc. # 152* MOTION to Amend Order on Motion for Leave to File, 166 Order on Motion for Costs MOTION for Reconsideration re 130 MOTION for Costs, 153 MOTION for Leave to File *under Seal Exhibit A*

		for Doc. # 152 MOTION to Amend Order on Motion for Leave to File, 166 Order on Motion for Costs filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 05/20/2009)
05/20/2009	178	AFFIDAVIT in Support re 177 Reply to Response to Motion,, *(Motions to Reconsider and Motion to Amend Findings)*. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit J, # 10 Exhibit K, # 11 Exhibit L, # 12 Exhibit M, # 13 Exhibit N, # 14 Exhibit O, # 15 Exhibit P, # 16 Exhibit Q)(Pickle, Robert) (Additional attachment(s) added on 5/21/2009: # 17 corrected exhibit P) (Jones, Sherry). (Entered: 05/20/2009)
05/20/2009	179	REPLY to Response to 173 MOTION for Leave to File *Under Seal documents pertaining to Defendants' motions for reconsideration and motion to amend findings* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 05/20/2009)
05/20/2009	180	AFFIDAVIT in Support re 179 Reply to Response to Motion *for Leave to File Under Seal documents pertaining to Defendants' motions for reconsideration and motion to amend findings*. (Attachments: # 1 Exhibit A)(Pickle, Robert) (Entered: 05/20/2009)
05/20/2009	181	CERTIFICATE OF SERVICE by Gailon Arthur Joy, Robert Pickle re 178 Affidavit in Support, 177 Reply to Response to Motion,, *(Motions to Reconsider and Motion to Amend Findings)*. (Pickle, Robert) (Entered: 05/20/2009)
05/21/2009		Notice of correction to docket made by Court staff. Correction: Entry #178, exhibit P, clerk made this a private entry, contained private information. Clerk to attach the corrected redacted exhibit. (Jones, Sherry) (Entered: 05/21/2009)
05/29/2009	182	AMENDED DOCUMENT by Gailon Arthur Joy, Robert Pickle. Amendment to 179 Reply to Response to Motion *(typographical error: "premarital" on p. 7 changed to "pre-divorce")*. (Pickle, Robert) (Entered: 05/29/2009)
06/24/2009	183	MOTION for Sanctions by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 06/24/2009)
06/24/2009	184	MEMORANDUM in Support re 183 MOTION for Sanctions filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 06/24/2009)
06/24/2009	185	AFFIDAVIT of Robert Pickle in Support re 183 MOTION for Sanctions filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit M, # 13 Exhibit N)(Pickle, Robert) (Entered: 06/24/2009)
06/24/2009	186	NOTICE OF MANUAL FILING by Gailon Arthur Joy, Robert Pickle Exhibit L (Recording on CD) re 185 Affidavit in Support of Motion, (Pickle, Robert) (Entered: 06/24/2009)
06/26/2009	187	EXHIBIT L, RECEIVED A CD CONTAINING EXHIBIT L re 185 Affidavit in Support of Motion, by Robert Pickle. (Burgos, Sandra) (Entered: 06/26/2009)

07/08/2009	188	MEMORANDUM in Opposition re 183 MOTION for Sanctions filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 07/08/2009)
07/08/2009	189	CERTIFICATE OF SERVICE by Three Angels Broadcasting Network, Inc., Danny Lee Shelton re 188 Memorandum in Opposition to Motion *for Sanctions*. (Simpson, M.) (Entered: 07/08/2009)
07/17/2009	190	REPLY to Response to 183 MOTION for Sanctions filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 07/17/2009)
07/17/2009	191	AFFIDAVIT in Support re 190 Reply to Response to Motion *for Sanctions filed by Gailon Arthur Joy, Robert Pickle*. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P)(Pickle, Robert) (Entered: 07/17/2009)
07/17/2009	192	CERTIFICATE OF SERVICE by Gailon Arthur Joy, Robert Pickle re 190 Reply to Response to Motion, 191 Affidavit in Support,. (Pickle, Robert) (Entered: 07/17/2009)
10/26/2009	193	Judge F. Dennis Saylor, IV: ORDER entered denying 169 Motion to Alter Judgment; denying 169 Motion for Reconsideration ; denying 169 Motion to Amend; denying 173 Motion for Leave to File; ; denying 183 Motion for Sanctions. (Castles, Martin) (Entered: 10/26/2009)
10/27/2009	194	Supplemental Record on Appeal transmitted to US Court of Appeals re 133 Notice of Appeal, Documents included: 169-193. (Attachments: # 1 Updated docket sheet)(Burgos, Sandra) (Entered: 10/27/2009)
10/30/2009	195	Appeal Remark re 133 Notice of Appeal, : Receipt from USCA regarding supplemental record. (Burgos, Sandra) (Entered: 10/30/2009)
11/23/2009	196	NOTICE OF APPEAL as to 193 Order on Motion to Alter Judgment, Order on Motion for Reconsideration, Order on Motion to Amend, Order on Motion for Leave to File, Order on Motion for Sanctions,,,,, Order on Motion for Leave to File, 166 Order on Motion for Costs 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 http://www.ca1.uscourts.gov/clerks/transcript.htm MUST be completed and submitted to the Court of Appeals. **Counsel shall register for a First Circuit CM/ECF Appellate Filer Account at http://pacer.psc.uscourts.gov/cmecf. Counsel shall also review the First Circuit requirements for electronic filing by visiting the CM/ECF Information section at http://www.ca1.uscourts.gov/efiling.htm. Appeal Record due by 12/14/2009. (Pickle, Robert) (Entered: 11/23/2009)**
11/24/2009		E-Mail Notice re 196 originally issued on 11/23/2009 returned as undeliverable. Name of Addressee: Jerrie Hayes. The ECF Help Desk has contacted the law firm on record, who advised that the attorney is no longer employed by that firm.

		The attorneys email address has been removed from the database to prevent the return of additional undeliverable email notices. (Burgos, Sandra) (Entered: 11/24/2009)
11/27/2009		Filing fee/payment: $ 455.00, receipt number BST014043 for 196 Notice of Appeal, (Russo, Patricia) (Entered: 11/27/2009)
12/01/2009	197	Certified and Transmitted Full Record on Appeal to US Court of Appeals re 196 Notice of Appeal, (Attachments: # 1 docket sheet)(Burgos, Sandra) (Entered: 12/01/2009)
12/01/2009		USCA Case Number 09-2615 for 196 Notice of Appeal, filed by Robert Pickle, Gailon Arthur Joy. (Ramos, Jeanette) (Entered: 12/01/2009)
12/03/2009	198	TRANSCRIPT ORDER FORM by Robert Pickle for proceedings held on 7/26/2007, 8/9/2007, 7/24/2008 before Judge Timothy S. Hillman, re 196 Notice of Appeal,,, Transcript due by 12/24/2009. (Pickle, Robert) (Entered: 12/03/2009)
12/04/2009	199	Transcript of Motion Hearing held on June 21, 2007, before Judge Saylor. COA Case No. 09-2615. Court Reporter: Marianne Kusa-Ryll at justicehill@aol.com. 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 12/25/2009. Redacted Transcript Deadline set for 1/4/2010. Release of Transcript Restriction set for 3/4/2010. (Scalfani, Deborah) (Entered: 12/04/2009)
12/04/2009	200	Transcript of Motion Hearing held on July 23, 2007, before Judge Saylor. COA Case No. 09-2615. Court Reporter: Marianne Kusa-Ryll at justicehill@aol.com. 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 12/25/2009. Redacted Transcript Deadline set for 1/4/2010. Release of Transcript Restriction set for 3/4/2010. (Scalfani, Deborah) (Additional attachment(s) added on 12/4/2009: # 1 Corrected Transcript-) (Scalfani, Deborah). (Entered: 12/04/2009)
12/04/2009	201	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: 12/04/2009)
12/04/2009	202	Appeal Remark re 196 Notice of Appeal: Receipt from USCA regarding record. (Burgos, Sandra) (Entered: 12/04/2009)
12/08/2009	203	Supplemental Record on Appeal transmitted to US Court of Appeals re 196 Notice of Appeal, 133 Notice of Appeal, Documents included: 93, SEALED AFFIDAVIT OF ROBERT PICKLE WITH EXHIBITS. (Jones, Sherry) (Entered: 12/08/2009)
12/09/2009	204	MOTION to Forward Part of the Record by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 12/09/2009)

12/09/2009	205	MEMORANDUM in Support re 204 MOTION to Forward Part of the Record filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 12/09/2009)
12/09/2009	206	AFFIDAVIT of Robert Pickle in Support re 204 MOTION to Forward Part of the Record filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G)(Pickle, Robert) (Entered: 12/09/2009)
12/17/2009	207	Opposition re 204 MOTION to Forward Part of the Record filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 12/17/2009)
12/17/2009	208	AFFIDAVIT in Opposition re 204 MOTION to Forward Part of the Record filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Attachments: # 1 Exhibit A and B, # 2 Exhibit C-F)(Simpson, M.) (Entered: 12/17/2009)
12/17/2009	209	CERTIFICATE OF SERVICE by Three Angels Broadcasting Network, Inc., Danny Lee Shelton re 208 Affidavit in Opposition to Motion *to Forward Part of the Record*. (Simpson, M.) (Entered: 12/17/2009)
12/18/2009	210	MOTION to Compel *Plaintiffs' Counsel to Return the MidCountry Records* by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 12/18/2009)
12/18/2009	211	MEMORANDUM in Support re 210 MOTION to Compel *Plaintiffs' Counsel to Return the MidCountry Records* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 12/18/2009)
12/18/2009	212	AFFIDAVIT of Robert Pickle in Support re 210 MOTION to Compel *Plaintiffs' Counsel to Return the MidCountry Records* filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E)(Pickle, Robert) (Entered: 12/18/2009)
12/18/2009		Judge F. Dennis Saylor, IV: Electronic ORDER entered. REFERRING CASE to Magistrate Judge Timothy S. Hillman Referred for: ruliings Motions referred: 204 MOTION to Forward Part of the Record, 210 MOTION to Compel *Plaintiffs' Counsel to Return the MidCountry Records* (Castles, Martin) Motions referred to Timothy S. Hillman. (Entered: 12/18/2009)
12/24/2009	213	REPLY to Response to 204 MOTION to Forward Part of the Record filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 12/24/2009)
12/24/2009	214	AFFIDAVIT in Support re 213 Reply to Response to Motion *to Forward Part of the Record*. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L)(Pickle, Robert) (Entered: 12/24/2009)
12/24/2009	215	CERTIFICATE OF SERVICE by Gailon Arthur Joy, Robert Pickle re 214 Affidavit in Support, 213 Reply to Response to Motion *to Forward Part of the Record*. (Pickle, Robert) (Entered: 12/24/2009)

01/04/2010	216	Opposition re 210 MOTION to Compel *Plaintiffs' Counsel to Return the MidCountry Records* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 01/04/2010)
01/04/2010	217	CERTIFICATE OF SERVICE by Three Angels Broadcasting Network, Inc., Danny Lee Shelton re 216 Opposition to Motion *to Compel Plaintiffs' Counsel to Return the MidCountry Records*. (Simpson, M.) (Entered: 01/04/2010)
01/05/2010	218	Transcript of Telephonic Conference held on July 26, 2007, before Judge Hillman. Court Reporter: None. Transcribed by Maryann Young 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 1/26/2010. Redacted Transcript Deadline set for 2/5/2010. Release of Transcript Restriction set for 4/5/2010. (Scalfani, Deborah) (Entered: 01/05/2010)
01/05/2010	219	Transcript of Motion Hearing held on August 9, 2007, before Judge Hillman. Court Reporter: None. Transcribed by Maryann Young 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 1/26/2010. Redacted Transcript Deadline set for 2/5/2010. Release of Transcript Restriction set for 4/5/2010. (Scalfani, Deborah) (Entered: 01/05/2010)
01/05/2010	220	Transcript of Motion Hearing held on July 24, 2008, before Judge Hillman. Court Reporter: None. Transcribed by Maryann Young 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 1/26/2010. Redacted Transcript Deadline set for 2/5/2010. Release of Transcript Restriction set for 4/5/2010. (Scalfani, Deborah) (Entered: 01/05/2010)
01/05/2010	221	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: 01/05/2010)
01/11/2010	222	Supplemental Record on Appeal transmitted to US Court of Appeals re 196 Notice of Appeal,,, 133 Notice of Appeal, Documents included: 204 - 217 and updated docket sheet. (Burgos, Sandra) (Entered: 01/11/2010)
01/11/2010	223	REPLY to Response to 210 MOTION to Compel *Plaintiffs' Counsel to Return the MidCountry Records* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 01/11/2010)
01/11/2010	224	AFFIDAVIT in Support re 223 Reply to Response to Motion *to Compel Plaintiffs' Counsel to Return the MidCountry Records*. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M, # 14 Exhibit N, # 15 Exhibit O, # 16 Exhibit P, # 17 Exhibit Q, # 18 Exhibit R, # 19 Exhibit S)(Pickle, Robert) (Entered: 01/11/2010)

01/11/2010	225	CERTIFICATE OF SERVICE by Gailon Arthur Joy, Robert Pickle re 223 Reply to Response to Motion, 224 Affidavit in Support,. (Pickle, Robert) (Entered: 01/12/2010)
01/15/2010	226	Judge F. Dennis Saylor, IV: ORDER entered. ORDER OF RECUSAL.(Castles, Martin) (Entered: 01/15/2010)
01/15/2010	227	Supplemental Record on Appeal transmitted to US Court of Appeals re 196 Notice of Appeal and 133 Notice of Appeal, Documents included: 223-226, updated docket sheet. (Burgos, Sandra) (Entered: 01/15/2010)
01/15/2010		ELECTRONIC NOTICE of Reassignment. Judge Rya W. Zobel added. Judge F. Dennis Saylor, IV no longer assigned to case. (Abaid, Kimberly) (Entered: 01/15/2010)
01/26/2010	228	Appeal Remark re 196 Notice of Appeal,,, 133 Notice of Appeal, : Receipt from USCA regarding supplemental records. (Burgos, Sandra) (Entered: 01/26/2010)
01/29/2010		Magistrate Judge Timothy S. Hillman: Electronic ORDER entered denying 204 Motion to Forward Part of the Record by Gailon Arthur Joy, Robert Pickle. (Belpedio, Lisa) (Entered: 01/29/2010)
01/29/2010		Magistrate Judge Timothy S. Hillman: Electronic ORDER entered denying 210 Motion to Compel Plaintiffs' Counsel to Return the MidCountry Records by Gailon Arthur Joy, Robert Pickle. (Belpedio, Lisa) (Entered: 01/29/2010)
01/29/2010		Case no longer referred to Magistrate Judge Timothy S. Hillman. (Belpedio, Lisa) (Entered: 01/29/2010)
02/03/2010	229	Objection by Gailon Arthur Joy, Robert Pickle *to Magistrate Judge's January 29, 2010, electronic orders*. (Pickle, Robert) (Entered: 02/03/2010)
02/03/2010	230	AFFIDAVIT in Support re 229 Objection *by Gailon Arthur Joy, Robert Pickle to Magistrate Judge's January 29, 2010, electronic orders*. (Pickle, Robert) (Entered: 02/03/2010)
02/18/2010	231	Response by Three Angels Broadcasting Network, Inc., Danny Lee Shelton to 229 Objection *by Defendants to Magistrate Judge's Orders*. (Simpson, M.) (Entered: 02/18/2010)
02/18/2010	232	CERTIFICATE OF SERVICE by Three Angels Broadcasting Network, Inc., Danny Lee Shelton re 231 Response *to Objection by Defendants to Magistrate Judge's Orders*. (Simpson, M.) (Entered: 02/18/2010)
02/26/2010	233	Response by Gailon Arthur Joy, Robert Pickle to 229 Objection *(Defendants' Reply to Plaintiffs' Response to Defendants' Objections to Magistrate Judge's Orders)*. (Pickle, Robert) (Entered: 02/26/2010)
02/26/2010	234	AFFIDAVIT in Support re 233 Response *(Defendants' Reply to Plaintiffs' Response to Defendants' Objections to Magistrate Judge's Orders)*. (Attachments: # 1 Exhibit C, # 2 Exhibit D, # 3 Exhibit E, # 4 Exhibit F, # 5 Exhibit G)(Pickle, Robert) (Entered: 02/26/2010)

02/26/2010	235	CERTIFICATE OF SERVICE by Gailon Arthur Joy, Robert Pickle re 233 Response, 234 Affidavit in Support,. (Pickle, Robert) (Entered: 02/26/2010)
02/26/2010	236	MOTION for Leave to File *under Seal Exhibits A & B for Doc. #234* by Gailon Arthur Joy, Robert Pickle.(Pickle, Robert) (Entered: 02/26/2010)
02/26/2010	237	MEMORANDUM in Support re 236 MOTION for Leave to File *under Seal Exhibits A & B for Doc. #234* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 02/26/2010)
03/11/2010	238	RESPONSE to Motion re 236 MOTION for Leave to File *under Seal Exhibits A & B for Doc. #234* filed by Three Angels Broadcasting Network, Inc., Danny Lee Shelton. (Simpson, M.) (Entered: 03/11/2010)
03/11/2010	239	CERTIFICATE OF SERVICE by Three Angels Broadcasting Network, Inc., Danny Lee Shelton re 238 Response to Motion *for Leave to File Under Seal Exhibits A & B for Doc. 234*. (Simpson, M.) (Entered: 03/11/2010)
03/12/2010	240	Transcript of Conference held on November 13,2007, before Judge Hillman. Court Reporter: None. Transcribed by Maryann Young 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 4/2/2010. Redacted Transcript Deadline set for 4/12/2010. Release of Transcript Restriction set for 6/10/2010. (Scalfani, Deborah) (Entered: 03/12/2010)
03/12/2010	241	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: 03/12/2010)
03/16/2010	242	REPLY to Response to 236 MOTION for Leave to File *under Seal Exhibits A & B for Doc. #234* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 03/16/2010)
03/16/2010	243	AFFIDAVIT in Support re 242 Reply to Response to Motion *for Leave to File under Seal Exhibits A & B for Doc. #234*. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Pickle, Robert) (Entered: 03/16/2010)
03/18/2010	244	Letter/request (non-motion) from Bob Pickle w/attachment. (Johnson, Jay) (Entered: 03/18/2010)
04/01/2010	245	MOTION for Leave to File *Two Supplemental Exhibits: (a) Warrants for the Arrest of Tommy Shelton, and (b) Press Release Issued by Fairfax County Police Department* by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Exhibit H, # 2 Exhibit I)(Pickle, Robert) (Entered: 04/01/2010)
04/01/2010	246	MEMORANDUM in Support re 245 MOTION for Leave to File *Two Supplemental Exhibits: (a) Warrants for the Arrest of Tommy Shelton, and (b) Press Release Issued by Fairfax County Police Department* MOTION for Leave to File *Two Supplemental Exhibits: (a) Warrants for the Arrest of Tommy Shelton, and (b) Press Release Issued by Fairfax County Police Department* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered:

		04/01/2010)
04/01/2010	247	AFFIDAVIT of Robert Pickle in Support re 245 MOTION for Leave to File *Two Supplemental Exhibits: (a) Warrants for the Arrest of Tommy Shelton, and (b) Press Release Issued by Fairfax County Police Department* MOTION for Leave to File *Two Supplemental Exhibits: (a) Warrants for the Arrest of Tommy Shelton, and (b) Press Release Issued by Fairfax County Police Department* filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Exhibit H, # 2 Exhibit I, # 3 Exhibit J)(Pickle, Robert) (Entered: 04/01/2010)
04/15/2010	248	Supplemental Record on Appeal transmitted to US Court of Appeals re 196 Notice of Appeal, Documents included: 218-222, 227-239, 242-247 (Ramos, Jeanette) (Entered: 04/15/2010)
04/15/2010	249	MEMORANDUM in Opposition re 245 MOTION for Leave to File *Two Supplemental Exhibits: (a) Warrants for the Arrest of Tommy Shelton, and (b) Press Release Issued by Fairfax County Police Department* MOTION for Leave to File *Two Supplemental Exhibits: (a) Warrants for the Arrest of Tommy Shelton, and (b) Press Release Issued by Fairfax County Police Department* filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc.. (Simpson, M.) (Entered: 04/15/2010)
04/15/2010	250	CERTIFICATE OF SERVICE pursuant to LR 5.2 by Danny Lee Shelton, Three Angels Broadcasting Network, Inc. re 249 Memorandum in Opposition to Motion, *for leave to file two supplemental exhibits*. (Simpson, M.) (Entered: 04/15/2010)
04/19/2010	251	MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)* by Danny Lee Shelton, Three Angels Broadcasting Network, Inc..(Simpson, M.) (Entered: 04/19/2010)
04/19/2010	252	MEMORANDUM in Support re 251 MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)* MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)* filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc.. (Simpson, M.) (Entered: 04/19/2010)
04/19/2010	253	AFFIDAVIT of M. Gregory Simpson in Support re 251 MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)* MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)* filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc.. (Attachments: # 1 Exhibit 1)(Simpson, M.) Modified on 4/20/2010 (Johnson, Jay).(PLEASE DISREGARD THIS FILING AS IT IS INCORRECT. SEE #254 FOR CORRECTED PLEADING) (Entered: 04/19/2010)

04/19/2010	254	AFFIDAVIT in Support re 251 MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)* MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)* filed by Danny Lee Shelton, Three Angels Broadcasting Network, Inc.. (Attachments: # 1 Exhibit 1)(Simpson, M.) (Entered: 04/19/2010)
04/19/2010	255	CERTIFICATE OF SERVICE pursuant to LR 5.2 by Danny Lee Shelton, Three Angels Broadcasting Network, Inc. re 252 Memorandum in Support of Motion, 251 MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)* MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)*, 254 Affidavit in Support of Motion,. (Simpson, M.) (Entered: 04/19/2010)
04/26/2010	256	RESPONSE to Motion re 251 MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)* MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 04/26/2010)
04/26/2010	257	AFFIDAVIT of Robert Pickle in Opposition re 251 MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)* MOTION for Extension of Time to April 16, 2010 to File *Plaintiffs' Response to Defendants' Motion for Leave to File Two Supplemental Exhibits (Doc. No. 249)* filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # 1 Exhibit A)(Pickle, Robert) (Entered: 04/26/2010)
04/26/2010	258	REPLY to Response to 245 MOTION for Leave to File *Two Supplemental Exhibits: (a) Warrants for the Arrest of Tommy Shelton, and (b) Press Release Issued by Fairfax County Police Department* MOTION for Leave to File *Two Supplemental Exhibits: (a) Warrants for the Arrest of Tommy Shelton, and (b) Press Release Issued by Fairfax County Police Department* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert) (Entered: 04/26/2010)
04/26/2010	259	AFFIDAVIT in Support re 258 Reply to Response to Motion, *for Leave to File Two Supplemental Exhibits: (a) Warrants for the Arrest of Tommy Shelton, and (b) Press Release Issued by Fairfax County Police Department.* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Pickle, Robert) (Entered: 04/26/2010)
04/26/2010	260	CERTIFICATE OF SERVICE pursuant to LR 5.2 by Gailon Arthur Joy, Robert Pickle re 258 Reply to Response to Motion, 259 Affidavit in Support,. (Pickle, Robert) (Entered: 04/26/2010)

05/10/2010		Judge Rya W. Zobel: ENDORSED ORDER entered denying 236 Motion for Leave to File Document ; denying 245 Motion for Leave to File Document, these documents are irrelevant to the issues on appeal ; granting 251 Motion for Extension of Time to File, because plaintiffs missed the deadline by less than 1 and 1/2 hours, a de miniums failure (Urso, Lisa) (Entered: 05/10/2010)
10/19/2010	261	Judge Rya W. Zobel: ORDER entered. Order On Objection To Magistrate Judge Ruling re 229 Objection filed by Robert Pickle, Gailon Arthur Joy. OVERRULED.(Urso, Lisa) (Entered: 10/19/2010)
10/19/2010	262	Supplemental Record on Appeal transmitted to US Court of Appeals re 196 Notice of Appeal, 133 Notice of Appeal, Documents included: 261 (Ramos, Jeanette) (Entered: 10/19/2010)

PACER Service Center

Transaction Receipt

09/20/2010 12:37:00

PACER Login:		**Client Code:**	
Description:	Docket Report	**Search Criteria:**	4:07-cv-40098-RWZ Start date: 1/1/2007 End date: 1/1/2011
Billable Pages:	25	**Cost:**	2.00

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. 07-40098FDS

PLAINTIFFS' COMPLAINT

Three Angels Broadcasting Network, Inc. (hereinafter "3ABN") and Danny Lee Shelton (hereinafter "Shelton") (hereineafter 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 # 40057
AMOUNT $ 350.00
SUMMONS ISSUED ✓
LOCAL RULE 4.1 ✓
WAIVER FORM ✓
MCF ISSUED ✓
BY DPTY. CLK
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, Massachusettes. 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 deceivingly 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.blacksda.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 incorporates 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: _____

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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

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

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 rallys 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

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 massages 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,"

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 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

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

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

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.

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.

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. In fact, Defendant Joy stated in a post at www.maritime.com sometime on our 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 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[1] on May 1, 2007, directly cites to www.save3ABN.org (which directs the user to 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 if 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

[1] 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, and regularly publishes an electronic newsletter called "ATNewsbreak," which it distributes via e-mail.

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, 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)[1]

+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

[1] 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 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 website.

10. If the Defendants are not prohibited from posting the legal documents filed and/or served in this proceeding on 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.

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

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

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

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

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

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

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

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

MR. PUCCI: Thank you, your Honor.

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

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

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

Thank you very much, your Honor.

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

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

MR. PUCCI: Two weeks, your Honor.

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

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

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

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 DEFENDANT ROBERT PICKLE IN SUPPORT OF DEFENDANT ROBERT PICKLE'S MOTION TO COMPEL PLAINTIFFS TO PRODUCE RULE 26(a)(1) DOCUMENTS AND FOR SANCTIONS

NOW COMES Robert Pickle of 1354 County Highway 21, Halstad, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury:

1. The Plaintiffs made the initial disclosures required by Federal Rule 26(a)(1) on August 3, 2007. See Exhibit A. These disclosures included a listing of eleven general categories of Rule 26(a)(1) materials, six of which were located at an unspecified "Office of Plaintiff's Counsel," and five of which were located at "3ABN Offices." See pages 4 and 5 of Exhibit A. Of the six located at "Office of Plaintiff's Counsel," three are identified as publicly accessible on the internet, a fourth is identified as at least partly accessible on the internet, and the remaining two are stated as being correspondence to or from the Defendants. Presumably, therefore, the remaining five categories held at "3ABN Offices" would consist of materials not already accessible,

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 11for 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,

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

Case No. 07-40098-FDS

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.

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 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 hoc vice* to the Federal District Court of the District of Massachusetts. I represent Plantiffs Three Angels Broadcasting and Danny Shelton in the above-entitled matter and I make this affidavit based upon my knowledge and information.

2. On April 6, 2007, Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Shelton (collectively "Plaintiffs") filed a complaint against Gailon Arthur Joy and Robert Pickle (collectively "Defendants") alleging that Defendants' maintenance and operation of the websites "www.Save3ABN.com" and "www.Save3ABN.org" constitutes

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[1] 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.**

[1] 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. 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,
General Manager and Secretary for
3ABN, Inc.

Subscribed and sworn to me
this 12th day of December, 2007.

Notary Public

Notary Public State of Florida
Aaron C Yarbrough
My Commission DD615054
Expires 11/15/2010

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. No counsel for the Plaintiffs has ever conferred with me regarding donor names, donation information, financial statements, auditor's reports, documents produced to the Federal Communications Commission or the Department of Justice, airtime rates, or Plaintiff Shelton's tax returns. No requests were made to me for a discovery conference regarding any of these documents or information.

2. I have examined 3ABN's Form 990's for 1998 through 2006. The only year in which 3ABN reported a decline in donations over the previous year was in 2003, a decline reported at being $3,154,670. See Exhibits A–I at line 1. An article in *Adventist Today* in early 2004 suggested that the decline in donations was due to public dissatisfaction about the Plaintiffs' use of corporate jets. See Exhibit J. Donation and total revenue in 2006 reached an all-

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 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.

Notary Public

DEANNA M. ZIMMERMAN
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,

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

Case No. 07-40098-FDS

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

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 encompasses 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

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,

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. 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.**

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

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. The Defendants turned over thousands of documents to the Plaintiffs as part of their initial disclosures, but the Plaintiffs refused to produce their Rule 26(a)(1) materials.

2. I filed a motion to compel on December 14, 2007, which resulted in an electronic order of the court dated March 10, 2008, that the Plaintiffs serve their non-confidential, non-privileged Rule 26(a)(1) materials by March 28, 2007.

3. The Plaintiffs ultimately produced 12,825 pages of such materials comprising 583 documents, of which about 11% of the total pages was duplicative. More than 12,730 pages were publicly available, easily downloadable from the internet, and already in the Defendants' possession.

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

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.

NOTICE OF MOTION AND MOTION FOR PROTECTIVE ORDER LIMITING SCOPE AND METHODS OF DISCOVERY AND REQUEST FOR ORAL ARGUMENT

TO: DEFENDANT GAILON ARTHUR JOY, P.O. BOX 1425 STERLING, MA 01564

DEFENDANT ROBERT PICKLE, 1354 COUNTY HIGHWAY 21, HALSTAD, MN 56548

NOTICE

PLEASE TAKE NOTICE that on a day and time to be determined by the Court, the undersigned counsel for Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Shelton will bring a Motion for Protective Order Limiting Scope and Methods of Discovery against Defendants Gailon Arthur Joy and Robert Pickle pursuant to Fed. R. Civ. P. 26(c) and Local Rules 7.1 and 37.1 of the District of Massachusetts, at the United States Court House (Donohue Federal Building), 595 Main Street, Worcester, Massachusetts, 01608.

MOTION

Plaintiffs Three Angels Broadcasting Network, Inc. and Danny Shelton hereby move the Court for an Order as follows:

1. Limiting the scope of discovery to relevant subject matters according to the claims and defenses of the parties;

2. Denying all discovery requests that are overbroad, or that seek discovery that is irrelevant, privileged, unreasonably cumulative or duplicative, that can be obtained from other sources that is more convenient, less burdensome or less expensive, or where the burden or expense of the proposed discovery outweigh its likely benefit;

3. Directing that all future discovery requests identify with particularity the transactions and events of which Defendants seek discovery, including the approximate date, the individuals involved in that transaction, and the assets / items / persons affected by that transaction or event, and that when such specificity is not possible, that Defendants' requests be narrowed to a relevant and reasonable time-frame of January 2001 through January 2007;

4. Denying Defendants' requests for identifying information of donors and church leaders;

5. Directing both parties to submit proposals to Magistrate Hillman for review to facilitate a discovery plan that will allow discovery to proceed while removing irrelevant donor and church leader identifying information;

6. Ordering that Defendants seek leave of this Court prior to issuing any further subpoenas for discovery conducted in this case;

7. Appointing Magistrate Judge Hillman or a special master or a neutral third party to conduct in camera review of all non-party documents produced in this case prior to disclosure to Defendants for relevance, confidentiality, and privilege, and to ensure all documents produced by third parties comply with all discovery orders in this matter; and

8. For such other relief as the Court would deem just and equitable.

This Motion is based upon Plaintiffs' Notice of Motion and Motion for Protective Order Limiting the Scope and Methods of Discovery, Plaintiffs' Memorandum in Support of the same, any Affidavits filed herewith, the Arguments of Counsel and all other files, record 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.

(A) that "3ABN and its President Danny Shelton have committed financial improprieties with donated ministry funds";

(B) 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"; and that

(C) "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 Sheltons' divorce and Danny Shelton's remarriage." [*Id.*].

B. **DEFENDANTS SERVE DOCUMENT REQUESTS ON PLAINTIFFS.**

Defendant Pickle served written Requests for Production of Documents upon 3ABN and Danny Shelton and November 29, 2007 and December 7, 2007, respectively. [Exhibits 1-2, attached to the Affidavit of Kristin L. Kingsbury at ¶¶ 2-3 (hereinafter "Kingsbury Aff. Ex. ___")]. Both sets of written discovery are identical, although the Request served on Shelton contain additional requests. [*See id.*] Both requests ("Requests") seek information that (1) is not relevant to the parties' claims or defenses and/or is privileged; and/or (2) is overly broad, burdensome, expensive, and/or intended to harass and embarrass the recipient and/or Plaintiff(s).

C. **DEFENDANTS SERVE SUBPOENAS ON SIX NON-PARTIES.**

Defendants have caused at least six non-party subpoenas to issue in this litigation, all of which seek similarly irrelevant and overly broad classes of information. [Kingsbury Aff. Exs. 3 through 8]. Specifically, Defendants have served the following:

NON-PARTY	DATED	VENUE
Remnant Publications	11/28/2007 01/11/2008	W.D. Mich.
Gray Hunter Stenn LLP	11/30/2007 12/28/2007	S. D. Illinois
MidCountry Bank	12/06/2007 12/12/2007	D. Minn.
Century Bank & Trust	12/06/2007	C.D. Mass.
Kathi Bottomley	03/10/2008	C.D. Cal.
Glenn Dryden	05/07/2008	W.Va.

[*Id.*]. Each subpoena has an attached Exhibit A, which sets forth the subpoenaed documents. [*Id.*].

Plaintiffs contacted third parties set forth above and/or their attorneys to advise them of Plaintiffs' objections to Defendants' subpoenas. [ECF # 68, Hayes Aff. at ¶ 29]. In one instance, Plaintiffs filed a Motion to Quash in the District Court in Minnesota. [Kingsbury Aff. Ex. 9]. There, the Honorable Magistrate Judge Arthur Boylan ordered production of the subpoenaed documents to Magistrate Judge Hillman for review. [*Id.* Ex. 10].[2] At least two other subpoenaed non-parties, Remnant Publications and Gray Hunter Stenn, objected to their respective subpoenas on the ground(s) that the information sought was overbroad in scope, overly burdensome and expensive, irrelevant, and/or that the subpoenas called for the disclosure of confidential financial business records of a proprietary nature. [*Id.* Exs. 13-14]. The Southern District Court of Illinois ordered production of the Gray Hunter Stenn documents, under seal, to the

[2] Defendant Pickle has since filed a "motion to amend" the Order of Magistrate Judge Boylan to seek production of documents directly to Defendant Pickle instead of to Magistrate Judge Hillman. Plaintiffs responded to Mr. Pickle's improper motion to reconsider and put the Magistrate Judge Boylan on notice that Plaintiffs would seek this Court's intervention by the present Motion. [*See* Motions, Kingsbury Aff. Ex. 11-12].

something helpful will turn up," *Mack*, 871 F.2d at 187, and Defendants' fishing excursion here should likewise not be allowed. In the absence of relevance, permissible discovery in this case should be restricted to the 24 subject areas that Plaintiffs have put in issue. Anything more would be an abuse of the discovery process.

To rectify the irrelevant subject matters contained in Defendants' discovery requests, Plaintiffs respectfully request that the Court order that

1. Defendants' Discovery Requests for irrelevant or privileged information are denied.

2. That all future discovery requests identify with particularity the transactions and events of which Defendants seek discovery, including the approximate date, the individuals involved in that transaction, and the assets / items / persons affected by that transaction or event; and

3. That when such specificity is not possible, that Defendants' requests be narrowed to a relevant and reasonable time-frame– e.g., January 2001 through January 2007.

B. "Plaintiff-related Issues."

Contributing to the overbreadth and/or irrelevance of information sought by the subject Requests, is Defendants' definition of "***Plaintiff-related Issues,***" which contains 32 subject matters (numbered paragraphs 16 (a) through (ff) in Pickle's definitions contained in his First Set of Document Requests). By referring to irrelevant subject matters within this definition and issuing discovery requests that refer to these so-called "Plaintiff-related issues," Defendants seek to gain access to a multitude of topics that have no relevance to the claims and defenses in this action. Such irrelevant subject matters include

- Allegations of sexual conduct by Tommy Shelton (¶¶ 16(k)-(m)),
- Internal "damage control" undertaken by 3ABN in response to Defendants' activities (¶¶ 16(p)-(r)),
- Use of the 3ABN Sound Center and 3ABN music issues (¶¶ 16(y)-(z)),
- Governmental investigation issues to the degree and breadth defined by Defendants (¶¶ 16(aa)), and
- Any "administration, board and theological issues" (¶¶ 16(bb)-(ff)).

All of the above subject matters step far beyond what is alleged in Plaintiffs' complaint, and implicates, at a minimum, Document Requests 2-4, 6, 21, 26, 29, 31, 34 and 44.

To rectify the Defendants' definition of "Plaintiff-related Issues," Plaintiffs respectfully request the Court to order that:

1. Defendants' Discovery Requests pertaining to "Plaintiff-related Issues" be denied; or
2. In the alternative, that Defendants remove irrelevant subject matters from this definition and any similar definition in Defendants' subpoenas,

C. Overbroad and Overly Burdensome Requests.

Federal Rule of Civil Procedure 26(b)(2) directs that "discovery shall be limited by the court if it determines that (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; . . . (iii) the burden or expense of the proposed discovery outweighs its likely benefit . . . ." There are three manners in which Defendants' Discovery Responses are overly broad and/or burdensome.

members' names and addresses were not relevant under the discovery rules because the information had no bearing on issues in the case).

There are numerous manners in which Defendants could obtain the information they need relating to *donations* without gaining the identification of the *donors*. One proposal Plaintiff has explored is the assignment of a number to each donor, which would becomes that donor's "identity" throughout discovery and trial. This way, Plaintiffs could still produce relevant documents pertaining to the donations with only partial redactions of individuals' names and identifiers.

To rectify Defendants' seeking of irrelevant donor information, Plaintiffs respectfully request that the Court order

1. That Defendants requests for identifying information of donors and church leaders are denied; and

2. Directing both parties to submit proposals to Magistrate Hillman for his review to facilitate a discovery plan that will allow discovery to proceed while removing irrelevant donor and church leader identifying information.

See e.g., state court opinion *In the Matter of the Enforcement of a Subpoena,* 436 Mass. 784, 767 N.E.2d 566, 577 n. 9 (2002) (listing various alternatives to preserve interests).

III. Plaintiffs Are Entitled to an Order Governing The Manner and Means in which Defendants Seek and Obtain Non-Party Discovery.

Plaintiffs seek two forms of relief from Defendants' third party discovery practice: (A) that Defendants be required to seek leave of court prior to the issuance of any future subpoenas, to assure compliance with scope, relevance and confidentiality and to weigh the need for such discovery against the countervailing burden and expense to additional non-parties; and (B) that Magistrate Judge Hillman or some other third party be

appointed to review *in camera* those documents produced to Magistrate Judge Hillman pursuant to the orders governing the MidCountry Bank, Gray Hunter Stenn and Remnant Publications subpoenas, prior to production to Defendants.

A. Plaintiffs Request Leave of Court For Future Subpoenas.

Rules 26(b) and 26(c) contain specific limitations to prevent over-discovery in the event of undue burden. *Ameristar Jet Charter, Inc. v. Signal Composites, Inc.*, 244 F.3d at 192 (1st Cir. 2001) (citing *Mack*, 871 F.2d at 186 (1st Cir. 1989)). Protective orders are especially appropriate when discovery is intended to harass or annoy. *Digital Equip. Corp. v. System Indus., Inc.*, 108 F.R.D. 742, 744 (D. Mass. 1986).

Defendants caused to issue six non-party subpoenas that seek irrelevant and overbroad discovery, in spite of Defendants' awareness that Plaintiffs objected to the scope of Defendants' discovery. Both Plaintiffs and/or the subpoenaed non-parties had to expend time and resources objecting or responding to Defendants' overreaching subpoenas. The additional motion practice churned by Defendants' subpoenas evidences the confusion and burden placed upon the subpoenaed non-parties and the Plaintiffs, as well as a burden on affected Federal District Courts. In addition, Defendants have made no secret of their intent to "expand the case," and their subpoenas not only reflect this intent, but also annoy, embarrass and oppress the recipients.

To alleviate the inefficient and uneconomical effect of subpoenas undergoing independent review in each jurisdiction, as well as the undue burden and expense upon Plaintiffs and non-parties to respond to and challenge such subpoenas, Plaintiffs respectfully request that Defendants be required to seek leave of Court prior to issuance

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTES

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 KRISTIN L. KINGSBURY

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Kristin L. Kingsbury, 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 in the above-captioned action. I make this affidavit based upon my knowledge and information.

2. A true and correct copy of Defendant Robert Pickle's Requests for Production of Documents and Things to Plaintiff Three Angels Broadcasting Network, Inc. (First Set), dated November 29, 2007, is attached hereto as **Exhibit**

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

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

MS. HAYES: Yes, your Honor. Pointing directly to the discovery matters, discovery has been proceeding. We did have, I would say, not an instrumental delay, but a considerable delay in receiving an order on the motion for a protective order that plaintiffs submitted to the Court in early December of last year. We did receive that order almost four months to the day after the motion was made.

THE COURT: Was that my fault? Did I -- you can say yes.

MS. HAYES: I really don't know, your Honor. I think it took two, maybe three months for it to be assigned to Magistrate Judge Hillman --

THE COURT: All right.

MS. HAYES: -- at that point.

THE COURT: That's -- every now and then, and I apologize, it's unfortunate, things fall through the cracks for no good reason. If that happens, you shouldn't be shy about pestering the Court, more specifically the clerk, about where things stand, okay, because we are -- we are managing a lot of planes that take off and land here, and sometimes some of them crash, to stick with my unfortunate metaphor. So I apologize.

MS. HAYES: Well, your Honor, the Court was very responsive. We did eventually call. It was just a matter of a few days when the matter was assigned to Magistrate Hillman. We got a hearing fairly quickly, and he took a few weeks, which

Pickle go -- are grossly overbroad, almost indecipherably overbroad, and that they go to issues not relevant to the very narrow claims of financial and administrative impropriety that were -- that are at issue in the underlying defamation case.

So we believe that further discussion and actual negotiations concerning that dispute will probably take place over the next week or two. Given the difficulty of negotiations in this case with the pro se litigants on other issues, I don't foresee that those disputes will be resolved; however, much to my apparent chagrin, I remain Pollyanna, and will give it our best try, but at least from our perspective, I want to be candid with the Court that what we anticipate are two discovery motions probably coming up within the next month: One, a motion for a protective order not relating to confidentiality, but instead relating to the scope of discovery and what we believe are irrelevant and ancillary and undiscoverable issues; and then a second motion, a motion to compel for information identifying the person or persons who provided Mr. Pickle and/or Mr. Joy with the statement that they now allege they did not make up on their own accord, but simply republished. They were defamatory, now claiming in defense that those were statements made by others. They have to date refused to disclose those persons. We have engaged in some negotiation concerning that. I don't believe we've reached an absolute impasse. I think there's still some room to talk on

those issues, but if it does turn out that the quote/unquote confidential informant defense that Mr. Pickle and Mr. Joy are continuing to put forth does not get resolved then we would likely be making a motion to compel on that ground.

At this point, the discovery schedule from plaintiffs' perspective is still very workable. We don't have expert disclosures until following the July 30th fact discovery deadline, and I don't foresee making requests at least at this time for just a blanket extension of the discovery schedule or the case schedule. What I would probably be doing on behalf of the plaintiffs is submitting, and at the same time resubmit one or both of these motions, a request for an extension of the case calendar to go only as long as it takes to get a decision from the Court on those pending motions.

I don't want to put the Court in a position of giving us a five-month extension when it's something that's going to be resolved in six to eight weeks. On the other hand, I want to make sure to have enough time for the Court to take a look at those motions and give us a decision. So, from a discovery perspective, that's sort of how I see things going, and the schedule seems fine with me.

THE COURT: Okay. All right. Mr. Joy, do you have anything you wish to say in that regard?

MR. JOY: Yes, your Honor. Let me point out at the discussion that we had on December 14th, the Court had made it

very clear that they did not want the confidentiality issue to end up in stopping this process; and, in fact, at every turn we found that as we proceeded, particularly with third-party discoveries, we ran into this confidentiality issue that each of the respondents maintained came from the people defending Three ABM, or representing Three ABM. So it effectively did indeed bring the discovery process to a halt until we can work out this confidentiality agreement.

The second thing I would like to point out, your Honor, is that you had made it very clear to these people that they needed to come up with a narrowly-defined confidentiality agreement; and, in fact, we got this ridiculously overbroad agreement that practically put the entire case under seal again. And, of course, the issue finally went forward to the magistrate, at which point both sides produced proposals. The magistrate came up with what I felt was a reasonable confidentiality agreement. He didn't cover some things, but on the other hand, it certainly -- from our standpoint, it's certainly workable.

The other thing I would like to point out is the issue of obstruction in this case is becoming a serious one. These people repeatedly claim that we're the ones that are uncooperative. Your Honor, we have produced everything under the sun to them. We have produced thousands of e-mails. We have produced about everything you could possibly ask for, and

if it's -- if the answers to their questions are not in those things then they're probably not readily available.

THE COURT: Well --

MR. JOY: The amazing --

THE COURT: -- I don't mean to cut you off, but two points. In terms of what has happened in terms of the protective order, that issue has been resolved, as I understand it. Again, I'm sorry it took so long, but as the -- I think it's Vince Gill has a song that goes, "there ain't no future in the past." Let's not rehash things that have already been discussed.

On a going-forward basis, I can't decide anything in the abstract. I'm not going to try to work through any issues. It's both parties, all three parties, have responsibility to -- to confer and to see if you can either work it out or narrow the field of disputes; and things that can't be resolved are going to be brought to the attention of the Court, and you know, beyond that, there's not really much I can say.

MR. JOY: Well, your Honor, the -- the representation has been made that we have been unwilling to work with them on those conference calls. One date, and frankly, I arranged the conference call from my own phone lines, so I assume they have documentation of it. We took several hours to go over these issues related to relevancy and privilege and all the other things that they allege, and we specifically answered case

after case after case why they were relevant, why they were not privileged, and on and on and on. The problem is that these people filed a lawsuit, your Honor. They allege specifics in that lawsuit; and when we go to attempt to produce evidence that supports the defense of this claim, they suddenly determine that it's not relevant. Now, we need that information in order to defend ourselves, and what we're finding is that these people are constantly being obstructive. They haven't produced a thing that's worth ten cents in terms of their disclosures they were supposed to -- well, that they were compelled to disclose.

In addition to that, the confidentiality agreement has now been completed for what, almost three weeks. And your Honor, we haven't seen document one covered even by confidentiality that they took that they have claimed. We have got a serious problem of obstruction here is what we really have, and I think the Court needs to address that and issue that --

THE COURT: Let me -- here's the way this works. If you can't work it out with the other side -- and you have an obligation to confer in good faith -- you should file a motion, some sort of motion to compel discovery, a motion for sanctions, if you think they engaged in improper behavior. We'll take it up. But, again, I'm not going to decide any issue in the abstract.

MR. JOY: I understand that, your Honor, and we'll do that. The thing is we did file a motion to compel, and now they're rearguing the motion to compel is what we're dealing with here.

Let's see. We are in the process of finally proceeding on, but again as I pointed out, what has happened here is that particular third party parties, who are -- third-party subpoenas that we have actually requested the information from have also decided to be obstructive, and so that is taking the process of us having to go and file appropriate motions to compel in the appropriate state courts. That -- the point of that is, your Honor, that is going to take a substantial period of time to resolve those one at a time and will obviously require additional time for discovery, because at this point we are still trying to discover documents. We're trying to get production of documents here, not to mention any depositions that would have to be had after the fact to clarify whatever needs to be clarified.

THE COURT: If I am convinced that the parties are attempting to move forward in good faith and notwithstanding whatever disputes you have and the deadlines are not workable, because, you know, the work simply can't be done in the time allowed given all the circumstances, I'm willing to entertain a motion for a reasonable extension of time, but that's -- right now, the discovery deadline is July 30th. That's still a

better part of three months away. Let's see how this goes; and if we need to file a motion, I'll hear you.

MR. JOY: Thank you, your Honor.

THE COURT: All right. Mr. Pickle.

MR. PICKLE: Yes, your Honor, I believe the deadline for requests to produce such is the end of this month, and I think at this point that is not going to be workable. So, that's one point I would like to make.

THE COURT: Hold on. Let me pull my scheduling order here.

MS. HAYES: Your Honor, if I may speak to it.

THE COURT: Yes.

MS. HAYES: The scheduling order states that RFA's and RPD's need to be served by May the 28th.

THE COURT: May 28th, all right, as amended.

MS. HAYES: Correct, under the amended scheduling order, and both parties have served -- well, I take that back. Plaintiffs have served their requests for production of documents on both defendants. Mr. Pickle has served RFA's or RPD's on the plaintiffs. We have received no written discovery independently from Defendant Joy, but again, that's a deadline for service only, and I don't think, at least from the plaintiffs' perspective, it won't be an issue with that deadline.

THE COURT: Mr. Pickle, this is simply a request.

It's not necessarily a response.

What is the reason you can't get your request on file by May 28th?

MR. PICKLE: Well, for one thing, your Honor, I haven't had any response. I haven't had any responsive documents served upon me yet from these requests to produce that I served at the end of November and early December.

In order to know what to ask further, we really need to have responsive documents from each.

THE COURT: All right. Ms. Hayes, what's your response to that?

MS. HAYES: Your Honor, my response to that is that the RPD's were served on the plaintiffs in December, and Mr. Pickle has made no effort whatsoever to move forward with any kind of -- the good faith effort to resolve the dispute broke down. There has been no follow-up on that from Mr. Pickle maybe for four or five months.

THE COURT: Well, surely, if he has asked for documents from the plaintiff, even if those requests are overbroad, it seems to me that clearly there must be a core of documents you think are relevant that could be produced to get the process rolling. In other words, if he asks for A through Z, and you believe that only A through G are relevant, I don't know why you couldn't produce A through G and preserve your rights about H through Z and fight about that.

production of the nonconfidential information. We would expect that that would be done by the end of the month. I don't have any issue moving that deadline back by another two weeks or a month, if that's -- if Mr. Pickle feels that's necessary. I -- I don't know that that would be an issue in any event, as again these discovery motions are likely to be filed.

THE COURT: Here's what I'm going to do in that regard. Just to allow a little more breathing room here, I'm going to extend the deadline for service or request for production of documents, requests for admissions, by two weeks to June the 11th, but I do expect that this matter, one way or another, needs -- will get resolved shortly, that is, either a motion to compel or a motion for a protective order or some formalized way of bringing this issue to closure. It can't simply dangle forever. This has got to be resolved, and --

MR. PICKLE: Your Honor, I have a question.

THE COURT: Yes.

MR. PICKLE: As far as the discovery deadlines go and third-party subpoenas, would that be, you know, as part of the schedule would that fall within the May 28th deadline or the July deadline?

THE COURT: The July deadline. That is a third-party subpoena for -- it's either going to be a deposition or a subpoena duces tecum that requires the parties to produce records, but that's -- I would deem that to be within the

July 30th deadline.

MR. PICKLE: Another matter I have. I guess once I get -- finally get the material that, you know, the rest of the initial disclosures, I guess I'll be able to see how substantial those are and whether they indeed have given us all their initial disclosures. I'll look forward to receiving that.

What we did get, she mentioned that 12,000 pages on two CDs, and there really wasn't much in there, but a matter that is important, of importance to us. We served a subpoena on Mid Country Bank, a third-party subpoena duces tecum in mid-January, and the bank was going to comply with that, and the plaintiff or plaintiff Shelton opened up a miscellaneous case in the District of Minnesota to quash that subpoena on February 6th and 7th. And in part, part of the rational for halting this is that subpoena was because there was this pending motion for a protective order. Okay. So the -- the magistrate in Minnesota issued an order enforcing the subpoena. He did that prior to Magistrate Hillman issuing the confidentiality order, and so what the terms of his order were that upon payment to the bank of nearly $3,700 they would produce the bank statements. That wouldn't include any checks or deposit slips. He gets the bank statements, which is all that subpoena asks for. Upon payment by us through the bank, the bank would produce those bank statements under seal

to Magistrate Hillman.

Well, now we have the confidentiality order, and we would like to see -- we would like to have those -- those bank statements produced directly to us. It wouldn't make much sense to me to spend $3,700 to get bank statements if I don't know I can even see them. The bank has had no problem producing these documents to us.

THE COURT: Is this -- I can't modify an order entered by a judge in Minnesota, if that's the question.

MR. PICKLE: Okay.

THE COURT: You can go maybe back in front of that judge and seek modification there, but I don't have any authority over that judge.

MR. PICKLE: Okay.

THE COURT: And again, this is -- that sounds to me like a -- like a -- an issue which in the normal course, the parties would confer and agree on whatever makes the most sense in terms of logistics and economics; and again, I would expect all the parties to confer in good faith on any issue of that sort. The magistrate judge is much more likely to be receptive to a joint request for a modification than one that's unilateral or disputed. So, why don't you see if you can't come to some common ground there.

MR. PICKLE: Okay. We'll see what we can do on that. Given the track record thus far, I don't know, but we'll give

it a try.

THE COURT: All right. Anything further we ought to talk about?

Ms. Hayes?

MS. HAYES: No, I don't believe so, your Honor.

THE COURT: Mr. Joy.

MR. JOY: I think that will do it, your Honor.

THE COURT: Mr. Pickle.

MR. PICKLE: I can't think of anything, your Honor.

THE COURT: All right. When -- what is the next event that we have scheduled? Do I have another status conference? Why don't I set it for a status conference the end of July, beginning of August. The week of July 28th.

July the 31st at two o'clock, does that work for everyone?

MS. HAYES: Yes, your Honor.

THE COURT: All right. July the 31st at two o'clock for a further status conference.

In the event that the -- if we wind up moving that July 30th discovery deadline, for example, suppose that were to be pushed back 30 or 60 days, it might make sense to push that status conference back as well, but we can talk about that if and when the time comes. Okay.

All right. Thank you. We'll stand in recess.

(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	BlackSDA.com 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	Save-3ABN.com 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	*Adventist Today* Tommy Article Posted on Yahoo	1	12			Publicly Avail., Already Had
CD #2	Other *Adventist Today* 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
Totals		**583**	**12,825**	**45**	**1385**	

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

Doc. #	Topics Covered or Content	Pages	Defts' Posts
4	Link to Save3ABN.com	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
Totals		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
Total Pages in Plaintiffs' Rule 26(a)(1) Mtrls			**1152**

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

Description of Document	Pages	Designation Discrepancies
2006 Issue of *Catch the Vision*	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 Save-3ABN.com 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	
Total Pages	**207**	

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 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

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:

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Court Reporter:

Proceedings recorded by digital sound recording, transcript produced by transcription service.

MARYANN V. YOUNG
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THE COURT: Good. We're having a little trouble getting you, hearing you clearly, although I can hear you so if I ask you to speak up it's because of that reason. I'm going to start with, Mr. Pickle, I'm going to start with your motion to compel plaintiffs to produce Rule 26(a)(1) documents and for sanctions. And then when you finish your pitch I'm going to hear from either Ms. Hayes or Ms. Richards with their opposition to that. So why don't you go ahead please.

MR. PICKLE: Well initial disclosures were made on August 3rd and Attorney Heal made an attempt to secure the documents and was not able to. And then in November after I made my appearance, I negotiated with Attorney Hayes about how much notice they needed before I could inspect and copy those documents. And I was told one week would be adequate for coming by the, her law office and two weeks for coming by 3ABN. And so then I did give her notice and then was told that I could not see those documents without entering into a confidentiality agreement. And it just doesn't make any sense to me to say that every last document in those initial disclosures is confidential.

THE COURT: Well with respect to, and I have no idea exactly what documents are being referred to but assuming for the moment there may be some documents that have a confidential quality to them, what is the situation with respect to a - what's your position with respect to a confidentiality

agreement to those documents?

MR. PICKLE: I had since negotiated with Attorney Hayes regarding, Judge Saylor had indicated that confidentiality agreement or protective order need to be narrowly tailored and so I did negotiate with Attorney Hayes regarding the collection of donor, donor information, information that could identify a particular donor which could potentially raise privacy concerns. And so I suggested to her that the donor information that we need, the donation information that we need could have the donor names, the identifying information that would identify the particular donor redacted out with an accompanying confidential list and that would tie the codes, the donor codes with the donor information. And that would enable us to verify their claims regarding the decline of donations and the reasons why the donations have declined. And then the donor information, the donor identity, you know, would not be disclosed unless the donors themselves didn't mind that. And I feel that's a reasonable proposal but plaintiff's counsel did not, and plaintiffs I assume, did not want to do that.

So I'm willing to consider the possibility that some things should not be out there for public consumption and I think I'm willing to be reasonable about it.

THE COURT: All right. Let me hear from Ms. Hayes - is it Ms. Hayes, are you the one that's going to--

was an exhaustive three week period where Mr. Pickle, Mr. Joy and myself exchanged emails, participated in telephone conversations, tried to resolve the issue of the motion for the protective order. The reason that that didn't get resolved was because after the plaintiffs produced not only one but then a second version of a proposed protective order, neither of which met with Mr. Pickle or Mr. Joy's approval, we then said we can't go any further. We don't know what you want. We need to see something that you would agree to.

THE COURT: What was the protective - what documents or classes of documents was the protective order addressing?

MS. HAYES: The protective order, Your Honor, again, and I'll get to more detail later if you'd like, but the protective order, the motion for a protective order is designed basically narrowly tailored to address a specific kind of document, that being the proprietary trade secret, confidential financial information of 3ABN as a company and Mr. Danny Shelton's personal and private financial information.

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. It took money from the donors or we

MS. HAYES: Sure.

THE COURT: --at the moment. I might sometime but what other categories of documents are you claiming the confidentiality agreement would pertain to?

MS. HAYES: Again, we're talking about bookkeeping--

THE COURT: Yep.

MS. HAYES: --accounting and auditing records. The only exception to that would be those materials that have to be open to the public.

THE COURT: So financial records and donor--

MS. HAYES: Yeah.

THE COURT: And donor.

MS. HAYES: Financial records, both commercial for 3ABN and also private ones for Danny Shelton.

One of the matters, and I've been asked specifically by the magistrate judge in the District of Minnesota to raise this to the Court's attention, but Mr. Pickle caused to issue a subpoena in the District of Minnesota seeking bank records, personal bank records for Danny Shelton. We objected to that subpoena on the grounds that it sought information that was not relevant to the claims in this litigation. We also made a motion simultaneous with the motion to quash enforcement of that subpoena asking that the court in the District of Minnesota, that that Honorable magistrate judge stay the enforcement and remit the matter to this Honorable Court for

consideration, this Court which has had jurisdiction over a number of discovery related disputes in this matter and who is certainly more familiar with the case. That Honorable magistrate judge is waiting to hear what happens with the motion for a protective order and the motion to compel.

THE COURT: What's the magistrate judge's name?

MS. HAYES: The magistrate judge is Judge Arthur Boylan, Your Honor. And Magistrate Boylan as I said has taken that matter under advisement, sort of staying the stay, if you will, in order to sort of see what happens here because the arguments that we've made in the motion to quash, again, are very relevant to the issues of the confidentiality, the donor information, the financial information that needs to be, we believe, kept confidential.

The motion to compel, Your Honor, we--

THE COURT: No, I'm not there yet.

MS. HAYES: Oh, I'm sorry.

THE COURT: I want to do these one at a time.

MS. HAYES: Absolutely. The motion to compel--

THE COURT: No, I'm not ready yet.

MS. HAYES: Okay.

THE COURT: Thank you.

MS. HAYES: Not the motion for the protective order. The motion to compel.

THE COURT: Oh, I'm sorry. I am on the motion to--

MS. HAYES: Okay. I just don't want to - I apologize if I misspoke.

THE COURT: I apologize.

MS. HAYES: We, contrary to the briefing that Mr. Pickle has submitted to this Court, we never agreed to produced the 26(a)(1) disclosures at any point without a protective order being in place, either a mutually agreed upon one or at least having had the opportunity to come to this Court and seek a protective order governing those financial documents.

As to the, I'll quickly go into my own little issues here. As to the motion for sanctions, we have already indicated that we will produce whatever documents are relevant and subject to production without cost to Mr. Pickle and Mr. Joy as far as the 26(a)(1) disclosures are concerned. Any other costs, Your Honor, we would believe to be punitive and unwarranted under the facts of this. 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. And Mr. Pickle hasn't challenged that those documents are proprietary and trade secret materials. And I'll talk about that a little more on the issue of the motion for a protective order.

THE COURT: Do you have a copy of the latest proposed

what you all need to do in the future when you file a pleading you should put both names on it so that--

MR. JOY: Yes, Your Honor.

THE COURT: --we don't have this issue.

MR. JOY: Okay. Yes, Your Honor.

THE COURT: Now--

MR. JOY: It's my error.

THE COURT: --what I'm going to do, one of the rules that we have is that we party gets to speak on behalf of everybody. So even though Mr. Pickle has already kind of crystallized your position, I will hear a few minutes from you but I want to keep moving as well. So if you wanted to go to the merits of this, why wouldn't, and I'm going to ask Mr. Pickle the same question, why wouldn't their financial situation be subject to a confidentiality agreement?

MR. JOY: The key reason that the financial information shouldn't be subject to their blanket protective order, and that's the problem with this particular case, three times now they have tried the blanket approach to trying to get, number one, get the case impounded. Number two, they approached the issue of a protective during the course of the 26(f) hearing that we had before Judge Saylor. And then number three, once again the issue came up before Judge Saylor in the status conference on December the 14th before, three days before they filed their motion.

Judge Saylor made it very clear in every single one of those cases that these people were to provide a narrowly tailored order. Furthermore, this Court has already spoken on the issue of some of the financial documents they're talking about. For example, accounting records, there is a case that went from this court under Judge Saylor to the First District Court of Appeals and was upheld that very clearly says that the accounting records are not privilege. And we--

THE COURT: Well, I'm going to, we're to get to that in a minute. What about their donor list?

MR. JOY: Well, Your Honor, if there are donors in there who have clearly said they're not interested in donating anymore for whatever purpose, and so far we've only seen one, okay, which by the way that donor contacted us directly all right, and told us what the real story was. We can't see where anybody who has said they're not going to contribute to these people would ever be confidential. They clearly have a position. There would be no reason why they would be confidential. We have the right to examine those people under the rules and it's critical to our case of defamation per se. And the fact is that a big part of this issue is the whole question of did we or did we not make allegations that were in fact, that would in fact carry the test of whether or not there was defamation per se. In other words were the accounting processes that occurred and were the transfer of real estates

that actually occurred, did they pass the smell test? Were they acceptable under the generally acceptable accounting principles?

THE COURT: Well the point is that that--

MR. JOY: And the fact is we're prepared to prove that they're not.

THE COURT: That may, you may be - that stuff, not may, probably is subject to discovery, however don't the plaintiffs have an interest in it not being disseminated to the world at large without a further court order? What they're saying is you get to look at it subject to a confidentiality agreement that, you know, you can negotiate and then if you wanted to apply to the Court for an order that it would be further divulged upon a showing of good cause, that's usually the way those things work.

MR. JOY: But you see, Your Honor, the problem with that premise is that it violates the premise that this Court has laid out in Rule 7.2(e). It should not be on us to prove that these documents are not privileged or not confidential. It should be on them to prove that those documents are confidential and privileged.

THE COURT: I agree with that.

MR. JOY: Okay.

THE COURT: And we're going to get to that. Okay. Thank you. That helps. All right, now here's what we're going

to do. I'm going to go to the plaintiff's motion for a protective order and, Mr. Joy and/or Mr. Pickle, I'm going to let one of you respond. So you guys can think about who's going to do that. And Ms. Hayes is this you or is it Ms. Richards?

MS. HAYES: This is mine, Your Honor.

THE COURT: I'll hear you.

MS. HAYES: Thank you. Your Honor, let me begin by talking about Local Rule 7.2(e). The rule governs the issues of filed documents and whether or not the court case as a whole and the filed pleadings in that case are going to be subject to impoundment, meaning that the filed materials are not going to be disclosed to the public and are going to be instead kept under seal. 7.2 does not address the issue of discovery, what is or isn't kept confidential as part of discovery, and we would argue that aside from this being a very common custom and practice, when issues of confidential or sensitive material is involved having the parties come together with a mutually agreeable protective order. Since we were unable to do that the motion for a protective order had to be brought to this Court and there are strong rationale in favor of having one here. We made the motion specifically seeking to protect from disclosure or dissemination the trade secret donor and confidential commercial and private financial information. That was made in specific response to requests for production

of documents that were served on us by Mr. Pickle, both on 3ABN and on Mr. Shelton. It was also served in response to informal, to the informal request for the 26(a)(1) disclosures that Mr. Pickle had made and it was also made in response to these four subpoenas that Mr. Pickle, not Pickle and Joy, caused issue from various courts.

The only subpoena of those four that has survived, Your Honor, is one which was issued from the District of Minnesota as I've discussed earlier, that it was where a motion to quash was heard before the Honorable Magistrate Judge Boylan where that subpoena was issued from the proper jurisdiction, had the proper scope and had a proper amount of time. The other subpoenas have all been objected to by the third party recipients and the issue of whether or not first of all that provides standing to Mr. Joy is another matter. But second of all, the motion for a protective order was never brought to this Court as this blanket request that everything in the case be either impounded or subject to seal. Instead it was brought in specific response to very particular discovery requests that had been made of us for material we felt we could not in good conscious allow to be distributed to the public or to third parties.

Second of all, the idea is to seek a proactive solution. The reason that we have included the entire category of financial and business records is because we believe that if

we don't have at least that category, 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. And the reason that we're talking about that category instead of individual documents is because we'd be here 700 times before the trial. It makes more sense to have a single protective order that the parties can work with, having a living document that governs the entire scope of discovery rather than being back on this court step five, 10, 15, 20 times every time a new request for production of document, a new deposition is taken or there's some additional discovery request that is made that would get to these exact same kinds of materials.

In perfect--

THE COURT: What is the protocol that the, and I apologize, I read this material on it and I missed it. What is the protocol that your proposed protective order employs for the identification of confidential documents as opposed to non?

MS. HAYES: Your Honor, we have followed the federally sanctioned IBM Microsoft protocol for the confidentiality of materials. What will happen is if the document is a, it is part of that category of financial auditing, accounting or bookkeeping documents it is not subject

to one of the exceptions we've already carved out for them in the protective order but it falls within this narrow range of documents, we would then ascribe each document as being confidential prior to production. That's if the document comes from us. Once the document is received by the defendants, if they take umbrage with our classification as confidential they're entitled to come to the court and seek relief as they would be with any protective order even one that was mutually agreed upon by the parties.

THE COURT: And what are their, what uses can they make of the document and to whom can they share it?

MS. HAYES: Absolutely again, per IBM--

THE COURT: With whom can they share it?

MS. HAYES: I understand. Per IBM Microsoft protocol, Your Honor, they are allowed to share the document. As long as the recipient has signed a similar confidentiality agreement, they are allowed to share it with expert witnesses, with deposition witnesses and with other consultants that they use in order to prepare for trial. That's all set out in the protective order and we again have carved that out for their use.

Now in alignment with the purposes we did narrowly re-tailor the request. And there are voluminous fields of documents that we didn't address. It is only related to these varied, pardon the pun, sacrosanct business and commercial

financial records that are at issue. It only contains one outright prohibition on disclosure, that being related to the donor identifying information. If donors want to walk up to Mr. Joy's house, knock on the door and say I donated to 3ABN and I don't want to do it anymore, that's their prerogative. But it's not coming from 3ABN. We believe very strongly that our donors give to our ministry with the assumption of confidentiality.

THE COURT: And so are you proposing a redaction on those or what's the proposal on donors?

MS. HAYES: Yes, Your Honor. As - in the reply brief that was filed, Mr. Pickle claims - there are three claims, three defenses that they want to be able to prove with the donor information. The first, these are the only three justifications mind you that Mr. Pickle provides this Court with why a protective order shouldn't be imposed here. The first one being that they want to be able to segregate income that 3ABN received from donors first as income 3ABN received from product sales and speaking engagements and that sort of thing. That can readily be done without having to disclose the individual financial donor information.

The second issue that Mr. Pickle claims that they need to be able to prove and so have to have this specific donor identifying information is that they have to identify the reasons that the donors have stopped donating. Again, this

we take umbrage with is the publication of this material particularly given the history of these defendants, their posting of publications, information, affidavits and court documents on the internet, the publication of information which could not have come from any source other than either a former counsel of 3ABN, which is a problem in and of itself, or Linda Shelton who is subject to an agreement that she won't disclose information about the company.

Mr. Pickle argues we have lots of information that's sensitive that we haven't disclosed. We have good judgment and we're not going to release that stuff. Your Honor, the only reason that they haven't released that information is, again, because if they show that they have that in possession it's going to put a couple of people in trouble. The issue of the motion for the protective order breaks down in a couple of other ways as well. Mr. Pickle argues that without intent to publish or disseminate the information there's no reason that we have to preclude its disclosure. Whether or not Mr. Pickle and Joy in this instance intend to publish all this information is not relevant. They 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.

Now, Mr. Pickle claims that counsel didn't confer in

only buying out the remainder of 3ABN, the company's interest in the land.

There is absolutely no reason to believe that this transaction was incorrect or improperly reported to the IRS. There's been no finding by the IRS. There's been no criminal investigation, no complaint. There's been absolutely no finding by any determinative body from the Illinois Attorney General to the Department of Revenue that any of these documents contain any errors of fact whatsoever. If anybody could walk up and make broad allegations that it might be the case that they probably possibly committed a factual error, everyone's books would be turned inside out upon the whim of individuals eager to have a look at the inside books of various companies.

Related to this Mr. Pickle claims that broadly, again without any authority, the public has a right to know how the donations at 3ABN are being used. But this is not a publicly traded corporation, Your Honor. This is not a company with shareholder investors who are waiting for their money back plus a gain. These are people who have made a gift. If donors are concerned about what their money is used for they are entitled to earmark their donations and under Illinois charitable law we are required to adhere to that request. If donors are further concerned about the use of their donations, they can stop donating and as this lawsuit alleges they have indeed done so.

THE COURT: But public scrutiny doesn't necessarily mean that their financial information is available to the public. It's available to the IRS and whatever appropriate Illinois tax authority looks at their status.

MR. PICKLE: Well, I understand that not every single thing needs to be available. You've got the 990's. Then you have the audited financial statements which Illinois statute requires be open to public inspection. Oregon does as well. I've got a printout that I received from the Oregon Department of Justice with documents that 3ABN has been sending its financial, audited financial statements to the Department of Justice there in Oregon from `96 onward, 1996 onward and they're required to be open to public inspection.

Now in discussions I've had with Attorney Hayes, I have, you know, the source documents I had acknowledged that the public doesn't necessarily need to have access to the source document. But, you know, what you're going to have in this broad briefing protective order, proposed protective order is that even the conclusions that - okay like what is the true donation that came in in a particular year? Since 2004 sales revenue has been lumped in with donations. So what were really the donations for 2004, 2005, 2006? If the IRS, if the legislature had determined that the public has a right to know how much donations have come in, then I don't see why that figure, what the figure ought to have been can't be disclosed.

THE COURT: Well, they're not saying--

MR. PICKLE: But the underlying source documents I don't have--

THE COURT: They're not, Mr. Pickle, they're not saying that it can't be disclosed to you. They agree that it should be disclosed to you. They just don't want you turning around and making it public without a court order.

MR. PICKLE: If the public has a right to know how much donations, the gross figure of donations that a ministry brought in and their gross sales revenue minus cost of goods sold, those are figures on the 990, then the public has a right to know those figures is my position.

Now as far as this lot 6 goes, on the 1998 990 3ABN reported the sale of that house to the IRS at a loss. And so it wasn't just like Attorney Hayes is trying to say that it wasn't just the purchasing of a remainder of interest in a life estate. There was an actual transfer of an asset from 3ABN to plaintiff Shelton that he did not pay full consideration for. And the publicly available documents bear that out.

Attorney Hayes said that there's no IRS criminal investigation going on. That's simply not true. There's been an IRS criminal investigation going on for more than a year. Attorney Nick Miller I guess is the - back in September, around mid-September, he was a board member for ABN at one time and he told me personally that the IRS had contacted him. Now when we

bring up Attorney Nick Miller's name, former board member, he became concerned beginning of January 2005 with some of the things that were going on at 3ABN, and so he's tried to bring, put into place some reforms that would provide some accountability for plaintiff Shelton. And he worked with a few other board members to that end and plaintiff Shelton ended up threatening him, figured out who was behind it, ended up threatening him and said we're going, if you don't back off I'm going to investigate your, the legal representation will be investigated. And Attorney Miller said, well he's not that kind of an attorney. He didn't back off. And what Attorney Miller said is that his, that plaintiff Shelton's first wife, which would be his wife before Linda that passed away, first wife's brother altered Nick Miller's billing records without his knowledge and then sent those billing records out to all the board members and made him look kind of shady. And the end result was that he was forced to resign from his position in the board.

Well, that's not the only allegation we have of document fraud. And so whatever documents 3ABN does produce, that plaintiff Shelton does produce for us we need to be able to adequately challenge those documents that they are genuine. And for any, and that I guess would go for any information. So if they tell us that, well they had these donors and they quit for this reason or that reason, we really do need to verify

that that really was the case.

This protective order, proposed protective order, I believe Ms. Hayes said that it was not a blanket protective order. My understanding is that by definition a blanket protective order is one in which the counsel for the parties can determine themselves what's going to be confidential or not. And this protective order does do that. It allows either the parties, their counsel to declare anything they want, not just financial information, but anything that they want to be trade secret, they consider trade secret confidential, and then it is immediately under seal and requires a court order to reverse that designation. If it was - Judge Saylor said on December 14th that any protective order would have to be narrowly tailored. And I don't think we would have such a big issue if this thing was really narrowly tailored, was confined to specific documents, specific types of documents but it allows them - even things that we received from third parties prior to the filing of this suit that we've turned over to them thousands and thousands and thousands of documents. Mr. Joy feels that the conglomerate of documents between the two of us is around 7,000, and I think that's a realistic figure. Even those documents could be declared to be confidential by the plaintiff and we'd have to turn them over to them upon the completion of this case even though, you know, people freely gave these things before this suit was even filed.

I have seen some cases where it's given me the impression that the plaintiff should provide a privilege log, you know, describing in detail the documents that they want to have declared confidential or under seal. And I think that's something, if that is the case, if something like that is necessary or advisable that's something that we don't have in this situation.

I would beg to differ with Ms. Hayes saying that we never agreed. I asked her, as far as the producing the initial disclosures, I asked her how much notice she needs and she said seven days. She did not say in that letter that there needed to be a confidentiality agreement. That didn't come up until I gave her the notice of, the seven days notice.

Another issue, Judge Saylor explicitly said in our December 14th status conference that there would be no stay of discovery until this motion for a protective order was heard. Attorney Hayes had asked for a stay of discovery and he explicitly denied that request. And so I think it highly inappropriate that plaintiff Shelton and his counsel asked the District of Minnesota to stay their subpoena until this motion that we're considering right now was heard, especially since the plaintiff never requested a hearing for this. Defendant Joy had to ask for the hearing in order for this hearing to be scheduled, and it didn't take so long to get it scheduled. It was immediately scheduled.

Let's see.

PAUSE

MR. PICKLE: But I do believe that I can be reasonable about this and there are certain things that, yeah, shouldn't be out there for public consumption and I'm willing to consider that, but I do believe that we need to prepare an adequate defense and that involves identifying donors that have actually quit donating. And there are cases out there where we could have one individual writing under multiple aliases and complaining to 3ABN about what's going on and saying they quit giving. But we actually need to identify the person. Is that person, you know, each email is that coming from a distinct individual? We need to verify the identity.

I think maybe that covers the gist of my concern.

THE COURT: Great. All right, thank you everybody. Under advisement.

MS. HAYES: Thank you, Your Honor.

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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. 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.

3. On April 21, 2004, Shelton emailed Abrahamsen claiming that he could monitor every phone call Abrahamsen made or received. Shelton also claimed that he could monitor every number Linda Shelton called, and how long each conversation lasted. Besides claiming that Dr. Arild Abrahamsen had determined that Shelton was psychotic, and that Linda Shelton had talked negative about Shelton, Shelton also made multiple references to planned vacations in Florida and elsewhere, and cited Walsh as a key witness to what was transpiring between Linda Shelton and Abrahamsen. This email is attached hereto as **Exhibit B.**

4. On March 4, 2004, Walsh wrote Dee Hilderbrand, a 3ABN employee, informing Ms. Hilderbrand that Walsh had made reservations with Delta Airlines for tickets to Florida, that the confirmation number was RV163S, and that the tickets needed to be purchased within 24 hours. Walsh's email is attached hereto as **Exhibit C.**

5. On March 5, 2008, tickets pertaining to confirmation number RV163S for Walsh (ticket # 00621930502970, SkyMiles # 2207208956) and Linda Shelton (ticket # 00621930502981, SkyMiles # 2075843512) were purchased with an American Express credit card ending in 3209. These tickets are for flights from St. Louis, Missouri to Tampa, Florida via Atlanta, Georgia, on April 4, 2004, and returning on April 9, 2004. The receipts were printed out on March 8, 2004, from a computer account attributed to Mollie Steenson, according to the URL printed at the bottom of each receipt. These receipts are attached hereto as **Exhibits D–E.**

6. Inasmuch as Walsh told Dee Hilderbrand that the tickets needed to be purchased within 24 hours, that the same credit card was used for both tickets, and that the receipts were printed out from Mollie Steenson's computer account, the conclusion can be drawn that 3ABN paid for these tickets.

7. On October 27, 2004, Shelton wrote Gregory Matthews and asserted that he had foiled a planned trip to Florida, but that Abrahamsen had traveled to the United States at least

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 Sheltons' 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 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.

22. On April 14, 2004, Shelton wrote Abrahamsen, accusing him of committing "spiritual adultery," a term foreign to the theology of Seventh-day Adventists. That email is attached hereto as **Exhibit R.** Shelton included a link to a web page describing "spiritual adultery" (http://jmm.aaa.net.au/articles/8207.htm), which defined the term by a quotation from a book entitled *Why Some Christians Commit Adultery*. That web page is attached hereto as **Exhibit S.** The quotation on the web page defined spiritual adultery as occurring when "married persons share with someone else what ought to have been shared first or only with their own spouses."

23. On April 23, 2004, an email was sent from Shelton's email account, purportedly from Linda Shelton, and forwarded to Abrahamsen the next day. The email is attached hereto as **Exhibit T.** The email purports to be a confession by Linda Shelton after Shelton had brought home the book, *Why Christians Commit Adultery*, on April 23, a confession that admits to "spiritual adultery" but denies that physical adultery had occurred. Since this email originated from Shelton's email account, it is likely that its contents were either written, dictated, or approved by Shelton himself.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 2nd day of September, 2008.

/s/ Bob Pickle
Bob Pickle
Halstad, MN 56548
Tel: (218) 456-2568

Subscribed and sworn to me
this 2nd day of September, 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, 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, tithe, 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.

Subject: Activity in Case 4:07-cv-40098-FDS Three Angels Broadcasting v Joy, et al., Order on Motion to Compel
From: ECFnotice@mad.uscourts.gov
Date: Thu, 11 Sep 2008 10:52:02 -0400
To: CourtCopy@mad.uscourts.gov

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.
*****NOTE TO PUBLIC ACCESS USERS*** Judicial Conference of the United States policy permits attorneys of record and parties in a case (including pro se litigants) to receive one free electronic copy of all documents filed electronically, if receipt is required by law or directed by the filer. PACER access fees apply to all other users. To avoid later charges, download a copy each document during this first viewing. However, if the referenced document is a transcript, the free copy and 30 page limit do not apply.**

United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was entered on 9/11/2008 at 10:52 AM EDT and filed on 9/11/2008

Case Name: Three Angels Broadcasting v Joy, et al.,
Case Number: 4:07-cv-40098
Filer:
Document Number: 106

Docket Text:
Magistrate Judge Timothy S. Hillman: ORDER entered denying [61] Motion to Compel without prejudice; granting in part and denying in part [74] Motion for Protective Order as provided in order. (Roland, Lisa)

4:07-cv-40098 Notice has been electronically mailed to:

John P. Pucci pucci@fierstpucci.com, christine@fierstpucci.com, richards@fierstpucci.com

J. Lizette Richards richards@fierstpucci.com

Gerald Duffy gerryduffy@sbgdf.com

William Christopher Penwell chrispenwell@sbgdf.com

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Kristin L. Kingsbury kristinkingsbury@sbgdf.com

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THREE ANGELS BROADCASTING NETWORK, INC, DANNY LEE SHELTON, Plaintiffs,	)	
vs.	)	**CIVIL ACTION NO. 07-40098-FDS**
GAILON ARTHUR JOY, ROBERT PICKLE, Defendants.	)	

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[1], 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

[1]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

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. I appeared by telephone at the Rule 2004 examination of Gailon Arthur Joy (hereafter "Joy") held at Springfield, Massachusetts on September 9, 2008. Lizette Richards (hereafter "Richards"), George Roumeliotis (hereafter "Roumeliotis"), and Gregory Simpson (hereafter "Simpson") appeared on behalf of Three Angels Broadcasting Network, Inc. (hereafter "3ABN"), Danny Lee Shelton (hereafter "Shelton"), John Pucci (hereafter "Pucci"), or Fierst, Pucci & Kane, LLP (hereafter "FPK").

2. Simpson stated up front that he would not be asking questions during the Rule 2004 examination, and that he would be entering an appearance in the case in the near future.

3. Once the Rule 2004 examination began, it became clear that a Rule 7030 adversary proceeding deposition was also being conducted, even though the subpoena issued by

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 ÷ 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.

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. 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 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 Hulsey, 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 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 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 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'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's article on this topic can be found at page 430 on CD #2 of the Plaintiffs' Rule 26(a)(1) materials.

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 M. GREGORY SIMPSON

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

M. Gregory Simpson, 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 in the above-captioned action. I make this affidavit based upon my knowledge and information. On June 27, 2008, Plaintiffs produced a set of documents to the Defendants which included a two-page document authored by Dr. Walter Thompson, Chairman of the Board of Plaintiff Three Angels Broadcasting Network, Inc. ("3ABN"), which was labeled

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
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-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
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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,

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

Case No. 07-40098-FDS

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, 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 (1st 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 (1st 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

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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

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 M. GREGORY SIMPSON

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

M. Gregory Simpson, 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 in the above-captioned action. I make this affidavit based upon my knowledge and information.

2. Plaintiffs commenced the above-captioned lawsuit on or about April 5, 2007. The case is in the document discovery phase. No depositions have been

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

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

DEFENDANTS' EMERGENCY MOTION FOR HEARING

Pursuant to an order of the Honorable Philip Frazier of the Southern District of Illinois issued on October 22, 2008, the Defendants seek a hearing on the question of their subpoena *duces tecum* of Gray Hunter Stenn LLP (heareafter "GHS"). (Doc. 76-3 pp. 5–7).

A hearing was held on October 22, 2008, before Magistrate Judge Philip Frazier in the Southern District of Illinois (Case No. 08-MC-16-JPG-PMF) concerning the Plaintiffs' Motion to Quash the Defendants' subpoena, which was served upon GHS on March 17, 2008. (Affidavit of Robert Pickle (hereafter "Pickle Aff.") ¶¶ 1–4). The court determined during that hearing:

> The Court continues the subpoena served on Gray Hunter Stenn LLP, and directs that Gray Hunter Stenn LLP and Three Angels Broadcasting Network, Inc. make every effort to preserve any documents or records of any kind, electronic or otherwise, which might be produced under the subpoena. **Any further litigation concerning the subpoena is transferred to the District of Massachusetts.**

(Pickle Aff. Ex. A).

The Plaintiffs and Defendants have already filed with this Court documents pertaining to

the aforementioned matter in the Southern District of Illinois. The Defendants' documents, with citations to the record of the instant case, are as follows:

- Defendant Robert Pickle's Motion to Compel Alan Lovejoy and Gray Hunter Stenn LLP. (Doc. 81-5 at pp. 8–12).
- Defendant Robert Pickle's Memorandum in Support of His Motion to Compel and His Response to the Court's Order to Show Cause. (Doc. 81-5 at pp. 13–22).
- Affidavit of Robert Pickle. (Doc. 81-5 at pp. 23–34).
- Exhibits A–Q, T–X. (Doc. 81-6).
- Exhibits R–S. (Associated with Sealed Doc. 93).
- Exhibits Y–DD, HH–MM. (Doc. 81-7).
- Exhibits EE–GG. (Associated with Sealed Doc. 93).
- Exhibits NN–YY. (Doc. 81-8).
- Exhibits ZZ–GGG, III–KKK. (Doc. 81-9).
- Exhibits HHH. (Associated with Sealed Doc. 93).

The Defendants seek to resolve the issues as judiciously as possible for the following reasons: Inasmuch as the compliance date upon the subpoena was April 17, 2008, the requested discovery has already been delayed by six months. The harshness of winter in the Midwest approaches, making it more difficult for the Defendants and their experts to come from as many as six states to review the documents in question. While the Defendants not being able to expeditiously obtain the documents requested from GHS will suit the Plaintiffs' obstructionism just fine, further delay may necessitate that discovery deadlines be extended yet again.

There are currently outstanding issues before this Court pertaining to four discovery motions and the extension of deadlines for discovery. The Defendants and their experts need to review the documents sought from GHS in preparation for the Defendants' interrogatories and/or

depositions, which must be served and conducted prior to extended discovery deadlines. As it is, more than half of the pending requested extension for serving written discovery requests has already passed.

WHEREFORE, the Defendants pray the Court to schedule a hearing in the matter of the subpoena *duces tecum* served upon GHS, preferably simultaneously with the status conference scheduled for October 30, 2008, or in the alternative, to rule upon the motion(s) in question on the basis of the pleadings and/or the record memorialized in the Southern District of Illinois; and to grant whatever further relief the Court deems fair and just.

Respectfully submitted,

Dated: October 23, 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

AFFIDAVIT OF SERVICE

Under penalty of perjury, I, Bob Pickle, hereby certify that this document, with accompanying affidavit and exhibit, 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 by U.S. Mail to Jennifer White (attorney for plaintiffs) and Deeana Litzenburg (attorney for Gray Hunter Stenn LLP) on October 23, 2007.

Dated: October 23, 2008

/s/ Bob Pickle
Bob Pickle

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

Subject: Activity in Case 4:07-cv-40098-FDS Three Angels Broadcasting v Joy, et al., Memorandum in Opposition to Motion
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Date: Thu, 30 Oct 2008 13:55:06 -0400
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United States District Court

District of Massachusetts

Notice of Electronic Filing

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Case Name:	Three Angels Broadcasting v Joy, et al.,
Case Number:	4:07-cv-40098
Filer:	Gailon Arthur Joy Robert Pickle
Document Number:	126

Docket Text:
MEMORANDUM in Opposition re [120] MOTION to Dismiss *voluntary* filed by Gailon Arthur Joy, Robert Pickle. (Pickle, Robert)

4:07-cv-40098 Notice has been electronically mailed to:

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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

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).[1] 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

1 *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 and 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 Enslen 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 refiling, 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 incompacitated 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 incompacitated 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

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and

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Subject: Activity in Case 4:07-cv-40098-FDS Three Angels Broadcasting v Joy, et al., Affidavit in Opposition to Motion
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District of Massachusetts

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Case Name:	Three Angels Broadcasting v Joy, et al.,
Case Number:	4:07-cv-40098
Filer:	Gailon Arthur Joy Robert Pickle
Document Number:	127

Docket Text:
AFFIDAVIT in Opposition re [120] MOTION to Dismiss *voluntary* filed by Gailon Arthur Joy, Robert Pickle. (Attachments: # (1) Exhibit, # (2) Exhibit B, # (3) Exhibit C, # (4) Exhibit D, # (5) Exhibit E, # (6) Exhibit F, # (7) Exhibit G, # (8) Exhibit H, # (9) Exhibit I, # (10) Exhibit J, # (11) Exhibit K, # (12) Exhibit L, # (13) Exhibit M, # (14) Exhibit N, # (15) Exhibit O, # (16) Exhibit P, # (17) Exhibit Q, # (18) Exhibit R, # (19) Exhibit S, # (20) Exhibit T, # (21) Exhibit U, # (22) Exhibit V, # (23) Exhibit W, # (24) Exhibit X, # (25) Exhibit Y, # (26) Exhibit Z, # (27) Exhibit AA, # (28) Exhibit BB, # (29) Exhibit CC, # (30) Exhibit DD, # (31) Exhibit EE, # (32) Exhibit FF, # (33) Exhibit GG, # (34) Exhibit HH, # (35) Exhibit II, # (36) Exhibit JJ, # (37) Exhibit KK, # (38) Exhibit LL, # (39) Exhibit MM, # (40) Exhibit NN, # (41) Exhibit OO, # (42) Exhibit PP, # (43) Exhibit QQ, # (44) Exhibit RR, # (45) Exhibit SS)(Pickle, Robert)

4:07-cv-40098 Notice has been electronically mailed to:

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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. Attached hereto as **Exhibit A** is correspondence with Walter Thompson (hereafter "Thompson") from October 2007. Thompson's timeline is garbled since he indicates that I contacted him about my concerns about the child molestation allegations against Tommy Shelton ("serious allegations about 3ABN employees") prior to Three Angels Broadcasting Network, Inc. (hereafter "3ABN") asking ASI for assistance. In reality, 3ABN asked ASI for assistance on September 24, 2006, and I did not contact Thompson about my concerns until November 23, 2006. Thompson repeatedly demonstrates the unreliability of his statements.

2. Attached hereto as **Exhibit B** is Harold Lance's surprise announcement of January 5, 2007, that ASI had pulled out of negotiations the previous evening.

3. I have on more than one occasion questioned why the Plaintiffs have never served

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. 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 incompacitation.

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

DEFENDANTS' MOTION TO IMPOSE COSTS

Pursuant to this Court's statements during the status conference of October 30, 2008, the Defendants move the Court to impose upon the Plaintiffs some or all of the costs incurred during the instant litigation, in order to alleviate to a degree the substantial prejudice resulting to the Defendants by the granting of the Plaintiffs' motion for voluntary dismissal.

1. Mileage attributable to two fact-finding trips by Defendant Pickle: $993.62.
2. Various miscellaneous expenditures by Defendant Pickle over the course of this litigation: $4,614.90.
3. Costs for copies made on Defendant Pickle's equipment for filings where ECF filing was not permitted: $206.70.
4. Cost of time invested in research, motion preparation, etc. by Defendant Pickle: $30,114.75.
5. Invoices from an expert retained by the Defendants, sent to Defendant Pickle:

$20,342.32.

6. Invoices from an attorney pertaining to the Defendants' defense: $54,266.94.

WHEREFORE, the Defendants pray the Court to impose some or all of these costs, expenses, and fees upon the Plaintiffs, and to grant whatever further relief the Court deems fair and just, in order to alleviate to a degree the substantial prejudice the Defendants now find themselves in.

Respectfully submitted,

Dated: November 13, 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

LOCAL RULE 7.1 CERTIFICATE

The undersigned hereby attests that the Defendants have complied with the requirements of Local Rule 7.1 by having, in good faith, through counsel conferred with Plaintiffs, and Plaintiffs' counsel represented that he would oppose this motion in its entirety.

Dated: November 13, 2008

/s/ Bob Pickle
Bob Pickle

AFFIDAVIT OF SERVICE

Under penalty of perjury, I, Bob Pickle, hereby certify that this document, with accompanying memorandum, 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).

Dated: November 13, 2008

/s/ Bob Pickle
Bob Pickle

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. I have traveled to the Franklin County area on two occasions in order to conduct research pertaining to the instant case, and to gather documents. The mileage pertaining to the lawsuit that is associated with those trips appears in Table 1 below, along with a cost based on the IRS standard mileage rate for the years 2007 and 2008.

TABLE 1: Mileage from Fact-finding Trips

Destination(s)	Dates	Mileage	Standard Mi. Rate	Cost
Marion, Benton	June 6-7, 2008	819	$0.485	$397.22
Marion, Benton, Thompsonville, Mt. Vernon, Springfield, Madison	April 21-25, 2008	1181	$0.505	$596.41
Total				**$993.62**

2. Various miscellaneous expenses I have paid for in the course of this litigation are listed in Table 2 below. The list does not cover every expense of these sorts that was paid. Note the high cost of obtaining the records of MidCountry Bank, which the Defendants never

received.

TABLE 2: Various Miscellaneous Expenditures over the Course of the Litigation

Date	Item	Payee	Purpose	Cost
10/23/07	*Mending Broken People* (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.	-$8.19
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	-$147.91
	Charges through Oct. 28, 2008	PACER (D.MA only)	Charges through October 28, 2008	$9.92
Total				**$4,614.90**

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

Date	Documents	Copies	Rate	Cost
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
Total				**$206.70**

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

Time Period	Hours Recorded	Rate	Cost
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
Total			**$30,114.75**

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

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

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO IMPOSE COSTS

INTRODUCTION

Plaintiffs Three Angels Broadcasting, Inc. ("3ABN") and Danny Lee Shelton ("Shelton") submit this memorandum in opposition to Defendants' Motion to Impose Costs [Docket # 130]. Plaintiffs oppose the motion because their claimed litigation expenses are not recoverable under the "American Rule" that each party pay its own legal fees and litigation expense, absent express statutory or contractual authority otherwise.

The only legal basis for an award of costs would be the Court's discretion under Fed. R. Civ. P. 41(a)(2) to condition dismissal on terms that protect the Defendants from legal prejudice arising from the dismissal. This discretion permits the Court to impose conditions only to the extent they are necessary to alleviate prejudice arising from the

dismissal. But under the American Rule, Defendants' litigation expenses would have been unreimbursable no matter what the outcome of the litigation was – even if they had prevailed by obtaining a dismissal on the merits. They are no worse off with respect to their litigation costs because of the dismissal.

The only way their position with respect to litigation expense is worsened because of the dismissal is that they will not be eligible for the very narrow list of "costs" that are awardable to the prevailing party under 28 U.S.C. § 1920, which Defendants will not have an opportunity to recover because the dismissal without prejudice means that they are not the "prevailing party." These potentially recoverable costs may have been what the Court had in mind when it allowed the Defendants to file a motion for costs. But Defendants' claim reveals that they have not incurred any § 1920 costs to this point.

In short, the Defendants have suffered no form of legal prejudice arising from the dismissal that could be addressed by an award of their litigation expenses. From the standpoint of litigation expense, the dismissal is to their benefit. Their petition for litigation expenses is simply an effort at an end-run around the American Rule, and must be denied in its entirety.

FACTS

Plaintiffs' Complaint sought relief based on allegations that the Defendants owned and operated internet websites that published defamatory statements about the Plaintiffs, which drove away potential supporters and deterred donations. Defendants consider themselves "ecclesiastical journalists" whose primary focus is the doings of the Plaintiffs and their associates. The Complaint identified 24 specific defamatory statements made

by the Defendants on their web sites and demanded that they be retracted. (Complaint ¶¶ 46-50, Doc. 1).

Although Defendants claimed to have proof of the truth of their defamatory statements about Plaintiffs, the sources turned out to be anonymous informants whose identities the Defendants refused to reveal on grounds of a claimed reporter's privilege. (*E.g.,* Answer to Complaint ¶¶ 46a through 46j, Doc. 9 at pp. 25-29). Their answers to Interrogatories continued the pattern of refusing to reveal the sources of their challenged statements. This matter would have come before the Court had the case not been dismissed.

Unable or unwilling to offer proof of the defamatory statements that was supposedly in their possession, Defendants purported to seek information proving the truth of their assertions directly from the Plaintiffs. They were given thousands of pages of records in discovery including virtually all of 3ABN's corporate records and tax filings, and the internet postings that contained the defamatory statements.

Finding little help among the Plaintiffs' *relevant* documents, the Defendants adopted a strategy of seeking oppressively large amounts of irrelevant information that they hoped would contain at least *something* that would show the Plaintiffs in a bad light. In an email to a confidante, Defendant Gailon Arthur Joy explained the Defendants' plan to expand the scope of the case beyond the complaint:

> Unfortunately, because of the very narrow charges pressed by 3ABN and Danny Lee Shelton, we must substantially expand the case to bring in the most damaging and certain to sway the jury details. I have deliberately dragged my feet hoping the IRS would move a bit quicker and finish their investigation before we would have to

> become extremely aggressive. It also conserved badly needed cash, but D-day H-hour is just ahead and we cannot afford to delay further.

(Affidavit of Kristin Kingsbury, Doc. 76 Exhibit 21).

True to their word, the Defendants set about to use the tools of discovery to gather every scrap of information about the Plaintiffs since 1991, and in some cases even earlier. (*E.g.*, Defendant Robert Pickle's Requests for Production of Documents, Exhibits 1 and 2 to Affidavit of Kristin Kingsbury, Doc. 76). But Defendants were unable to gain full access to Plaintiffs' records because the Plaintiffs sought to restrict the scope of permissible discovery to issues raised by the pleadings, and to protect their financial information from being made public. (*See* Motion for Protective Order, Doc. 40 and Motion for Protective Order Limiting Scope and Methods of Discovery, Doc. 74).

The Defendants adopted as a litigation theme the position that the Plaintiffs' efforts to restrict discovery to potentially relevant matters, and to keep their records private, was stonewalling or, what became their catch-phrase, "a fraud on the court." The only judicial finding on this topic, however, is Magistrate Judge Hillman's finding that the Defendants' "production requests and Rule 45 subpoenas appear to be overbroad and far-reaching," and 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 the scope of discoverable information under Federal Rule of Civil Procedure 26(b)(1)." (ECF Doc. 106 at pp. 2-3). In other words, Plaintiffs' efforts to narrow the scope of discovery were justified.

To circumvent the discovery delays and limitations they encountered in this forum as these issues worked their way to a conclusion, Defendants served at least six third-party subpoenas seeking more or less the same information as was requested from the Plaintiffs. (*See* Mag. Judge Hillman's order , Doc. 106 at p. 2). The information they sought in other courts was largely information that they could have obtained directly from the Plaintiffs. For example, they sought Plaintiff Shelton's personal bank records dating back to 1998 from his bank. (See Subpoena on Mid-Country Bank, attached as Exhibit 6 to Kingsbury Affidavit, Doc. 76). They sought information on Shelton's royalties from the publication of his books directly from the publisher. (See Subpoena on Remnant Publications, attached as Exhibit 3 to Kingsbury Affidavit, Doc. 76). They sought all financial and accounting records for *both* 3ABN and Shelton from their accountants. (See Subpoena on Gray, Hunter, Stenn, LLP, attached as Exhibit 4 to Kingsbury Affidavit, Doc. 76). They sought records regarding an employee who had filed a charge of discrimination against 3ABN, which was later dismissed, directly from the employee. (See Subpoena on Kathi Bottomley, attached as Exhibit 7, Doc. 76).

All of this information could have been obtained directly from the Plaintiffs by use of authorization forms or otherwise, but Defendants sought to circumvent any limitations that this Court might place on their factual foraging by using third party subpoenas issued by other courts. Plaintiffs resisted the end-run around this Court, and participated in motions to quash or limit the scope of the subpoenas in Minnesota and Illinois, in which they persuaded the courts to transfer the issue of relevance to this Court for resolution. (*See* Kingsbury Aff. ¶¶ 11, 16 and 17). The Defendants thus greatly increased the

expense of the litigation for everybody, which was manifestly not necessary to the litigation but rather to investigate every aspect of Plaintiffs' activities throughout 3ABN's existence for purposes of reporting negative information to the public.

Magistrate Judge Hillman put a stop to Defendants' indiscriminate use of discovery tools to satisfy their journalistic curiosity about the Plaintiffs when he nullified their document requests and ordered them to obtain leave of the Court before using third party subpoenas. (Doc. 106). Judge Hillman concluded that "Pickle's production requests and Rule 45 subpoenas appear to be overbroad and far-reaching." (ECF Doc. 106 at p. 2). He therefore ordered them to serve new document requests "tailored to comply with this Court's rules governing discoverable information." (*Id.* at p. 4). He ordered that they henceforth submit third party subpoenas to the Court for preapproval. (*Id.*) In other words, Judge Hillman agreed with the Plaintiffs' position that the Defendants were seeking information well beyond even the liberal boundaries of permissible discovery.

For the reasons set forth in their motion for voluntary dismissal and the accompanying legal memorandum (ECF Doc. 120 & 121), Plaintiffs made the decision to dismiss the lawsuit. The primary reasons were that the goals of the lawsuit had been met by means outside the lawsuit, namely by purchasing the offending web sites from Defendant Joy's bankruptcy trustee and by obtaining favorable rulings from the governmental agencies that had been investigating the Plaintiffs' conduct. (See Affidavit of Walt Thompson ¶ 8, Doc. 123). It had been apparent from the start that the Defendants would be unable to pay any appreciable damage award, and the desire for an

award of money damages had never been a significant motivation for the lawsuit. When it became apparent that the Defendants' incessant badmouthing of the Plaintiffs had ceased to be a major concern within Plaintiffs' community, and donations were restored, it became obvious that nothing more could be gained by way of this lawsuit. Plaintiffs then moved to dismiss it.

Defendants opposed the motion to dismiss the lawsuit on the grounds that it was merely an "attempt to obstruct discovery." (Defendants Mem. in Opp. to Plaintiffs Mot. for Voluntary Dismissal, p. 1, Doc. 126). In reviewing their opposition memo, it is clear that Defendants did not want the litigation to end because they had not yet received the information they hoped to obtain via discovery. They were refreshingly oblivious to the fact that they would not *need* the information once the lawsuit was over, apparently unaware that pressing their demands for the discovery information after the suit was over proved beyond doubt that their true motive for seeking the information was unrelated to the litigation.

On October 30, 2008, this Court heard Plaintiffs' motion for voluntary dismissal. The rule authorizing voluntary dismissal permits the Court in its discretion to impose conditions that it deems necessary to avert legal prejudice to the Defendants arising from the dismissal. *See* Fed. R. Civ. P. 41(a)(2). A discussion ensued regarding what conditions would be necessary to avert prejudice to the Defendants from the dismissal. The only legal prejudice that Defendants identified was the possibility that the Plaintiffs would refile the litigation in another forum. The Court addressed this issue by conditioning the dismissal on the Plaintiffs' agreement to refile any related litigation only

in the same Court. Plaintiffs readily agreed to that stipulation, since forum shopping was the last thing on their mind.

Discussion also occurred on the issue of whether dismissal should be with or without prejudice. The Court heard argument that despite its chronological age of more than a year, the progress of the case had been delayed by Defendant Joy's bankruptcy and by several motions regarding discovery such that it was still in the document discovery phase. Since no dispositive or substantive motions had been heard or filed, and no counterclaims were on file, in the exercise of its discretion the Court dismissed the case without prejudice.

The significance of the dismissal without prejudice was twofold: (1) it meant that there would be no award of costs under Fed. R. Civ. P. 54(d) because there was no prevailing party; and (2) it meant that if the Defendants commenced a suit against the Plaintiffs, as they often have threatened to do since the lawsuit started, Plaintiffs would be able to resurrect their claims defensively or as counterclaims because the claims would not be *res judicata*.

Defendants then brought up the issue of their litigation costs. The Court verbally advised the parties that the Defendants may file a motion for costs, that the Plaintiffs would have an opportunity to respond to it, and that costs might or might not be awarded. The Court advised the parties that its allowance of a motion for costs did not indicate that it had determined costs were awardable. Notably, the Court did *not* authorize a motion for reimbursement of attorneys' fees and general litigation expenses. The order that

ensued stated that "any motion for costs … be filed by 11/21/2008." [Electronic Clerk's Notes for Proceeding entered on 10/31/2008].

On November 13, 2008, the Defendants filed the present motion ostensibly for "costs," but in substance seeking recovery of $110,000 of claimed expenses which are clearly not recoverable as costs. Half of the claimed amount is for attorneys fees; $20,000 is for an undisclosed expert whose services were never used in any court filing; and $30,000 is for Defendant Pickle's "cost of time." None of the items claimed would qualify as costs under 28 U.S.C. § 1920.

Not only are the claimed expenses not recoverable because they are not necessary to avert legal prejudice to the Defendants arising from the dismissal and are not "costs," there is insufficient justification provided to determine whether the amounts claimed are justified – that is, whether the expenses were reasonable and necessary. The entire claim must be rejected for these reasons.

ARGUMENT

Defendants do not claim a right to costs under Fed. R. Civ. P. 54(d), which allows costs to the "prevailing party." A dismissal without prejudice does not make the defendant a prevailing party. *Szabo Food Serv. v. Canteen Corp.*, 823 F.3d 1073 (7th Cir. 1987), *cert.* dismissed, 485 U.S. 901 (1988). The ordinary rule regarding attorneys fees, the so-called "American Rule," is that fees are not recoverable absent express authorization in a statute or contract. *Fleischmann Distilling Corp. v. Maier Brewing Co.*, 386 U.S. 714, 717, 87 S. Ct. 1404, 1407, 18 L. Ed. 2d 475 (1967). The Defendants are not entitled by contract, common law or statute to an award of costs and fees.

The only authority for an award of costs in this case would therefore be the authority in Fed. R. Civ. P. 41(a)(2) to dismiss an action at the plaintiff's request "on terms that the court considers proper." This authority, reviewable only for abuse of discretion, allows the court to fashion terms that will safeguard the defendant against "legal prejudice" resulting from the dismissal. *Puerto Rico Maritime Shipping Authority v. Leith*, 668 F.2d 46, 51 (1st Cir. 1981). Thus, Rule 41(a)(2) does not compel the imposition of costs or fees as a condition of voluntary dismissal. *Id.* at p. 51. Where legal prejudice does not result from the dismissal, the district court does not abuse its discretion in granting dismissal without award of costs or fees. *Id.* at p. 51.

A. Defendants' Motion Should be Denied in its Entirety Because an Award of Costs and Fees is Not Necessary to Avert Legal Prejudice.

The Defendants' memorandum complains that the voluntary dismissal causes them prejudice "due to the current impossibility to reuse most discovery in future litigation, the likely future spoliation of evidence by the Plaintiffs, the risk of incompacitation [sic], death or removal of key witnesses, and other factors." (Doc. 131 at p. 1). Defendants' argument appears to be that if they bring another lawsuit against the Plaintiffs, they will have to do some of the things over again that they did in this lawsuit, although they don't explain what those things are or how much of their claim for fees and costs relates to them. They suggest that the future lawsuit might be a civil RICO action, but openly express doubt that they have facts to support such a lawsuit. (Doc. 131 at p. 2). What Defendants are asking for, in substance, is an award of their otherwise unawardable costs and fees incurred in *this* lawsuit so that they can bring a completely

new lawsuit seeking damages consisting of, presumably, their costs and fees incurred in the first lawsuit.

But the terms that this Court may impose under Rule 41(a)(2) are supposed to address prejudice in *this* litigation, not in some hypothetical future litigation. The issue here is whether an award of costs and fees is necessary to avert prejudice as things stand today, not how things would stand if the Defendants decided to bring a new lawsuit in the future. Defendants cannot identify any form of legal prejudice that would result from dismissal without an award of costs and fees. Their claims of prejudice due to loss of evidence through spoliation, incapacitation of witnesses or otherwise would not be mitigated by an award of costs and fees. The Court should not impose fees or costs as a condition of dismissal because such a condition is not necessary to address legal prejudice to the Defendants.

Defendants' legal authority is primarily a district court decision from Texas, *Radiant Tech. Corp. v. Electrovert USA Corp.*, 122 F.R.D. 201, 204 (N.D. Tex. 1988), which actually stands for the proposition that *duplicative* legal fees may be awarded in order to avert prejudice to the defendants. That case involved "virtually identical" litigation in two different courts, one of which the plaintiff sought to dismiss. 122 F.R.D. at 201. The Texas district court awarded fees and costs for work that would have to be re-done in the surviving lawsuit, but declined to order "reimbursement for work that need not be duplicated or abandoned." 122 F.R.D. at 205. Thus, the Texas court recognized that fees which are *not* duplicative of another identical lawsuit would *not* be awarded as a condition of voluntary dismissal. The *Radiant Tech.* case does not support Defendants'

position that they should be awarded fees and costs incurred in this lawsuit that might be duplicative of an as-yet unfiled and undefined lawsuit that they may or may not file in the future.

The Court may award fees and costs in this case only as an exercise of its discretion under Fed. R. Civ. P. 41(a)(2) to impose terms that alleviate legal prejudice to the Defendants. Defendants are unable to identify any form of legal prejudice that would be lessened by an award of costs and fees. Therefore, costs and fees should not be imposed.

B. Defendants' Motion Should be Denied Because the Claimed Costs and Fees Were Not Reasonably and Necessarily Incurred.

Defendants' claim for costs and fees should be denied for the additional reason that Plaintiffs have not met their burden of showing that the fees and costs were necessarily incurred. They have not presented evidence that would permit this Court to ascertain what the expenses were for, and how they advanced the litigation. Instead, Defendants have simply presented, in effect, all the expenses they incurred and left it to the Court to divine which ones were reasonable and necessary. The Court should deny the request based on the complete absence of evidentiary justification.

1. The Claim for Attorneys Fees Must be Denied Because it is Factually Insufficient.

Defendants claim a right of reimbursement for invoices submitted by their former attorney, Laird Heal. The claim consists of two invoices totaling $54,266.94. As argued above, an award of this item of the claim would do nothing to alleviate legal prejudice to the Defendants resulting from the dismissal, and therefore would be an unwarranted

exercise of the discretion granted by Fed. R. Civ. P. 41(a)(2). A second reason that this part of the claim must be denied is because it is factually unsupported. There is no evidence in the record showing that these fees would need to be duplicated in a second lawsuit, nor is there even an affidavit from the attorney supporting the reasonableness of his invoices.

Motions for attorneys fees are governed by Fed. R. Civ. P. 54(d)(2). The party seeking fees bears the burden of establishing the right to a fee, as well as the hours claimed and the appropriate hourly rate, and must carry that burden by submitting adequate evidentiary proof. *In re Central Ice Cream Co.*, 836 F.2d 1068, 1074 (7th Cir. 1987); *Hensley v. Eckerhart*, 461 U.S. 424, 437, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) ("the fee applicant bears the burden of establishing entitlement to an award and documenting the appropriate hours expended and hourly rates.").

Defendants have not submitted any evidence supporting the invoices for attorneys fees. The invoices are simply attached to the Affidavit of Robert Pickle, Doc. 132, as Exhibits B and C. There is no evidence in the record indicating that the $175/hour rate is justified, nor is there any evidence that the hours expended were reasonable and necessary. Since all of the invoices are dated November 10, 2008, it is apparent that the invoices were created after-the-fact, for the sole purpose of this motion. Failure to keep contemporaneous records typically results in a substantial reduction in the fee claim. *Tennessee Gas Pipeline Co. v. 104 Acres of Land,* 32 F. 3d 632, 634 (1st Cir. 1994); *Grendel's Den, Inc. v. Larkin*, 749 F.2d 945, 952 (1st Cir. 1984).

If Defendants eventually are permitted to submit evidentiary support for their fee petition, it would not only have to support the hourly rate and the hours and tasks reflected on the invoices, but would also have to explain how reimbursement of each billing entry would alleviate prejudice from the dismissal of this lawsuit. Since there is no prejudice to the Defendants from the dismissal of the lawsuit, that would be an impossible task.

If Defendants hereafter submit evidence supporting their fee petition, Plaintiffs would request first that the evidence be disregarded and stricken from the record as untimely and contrary to the rules of civil procedure. If the Court determines to consider such evidence, Plaintiffs request their rights under Fed. R. Civ. P. 54(d)(2)(C), including the right of an opportunity for adversary submissions on the motion. Plaintiffs would request an opportunity to take evidence from the witnesses on the reasonableness and necessity of the attorneys' fee petition.

For the reasons stated above, Defendants' petition for attorneys fees should be denied because it is legally and factually unsupported.

2. The Claim for Pickle's "Cost of Time" Must be Denied.

Defendants submits a novel request for the value of Defendant Pickle's time, in the amount of $30,114.75. Defendants have the burden of demonstrating a legal and factual basis for their claimed costs, and none is shown for this item. This part of the claim must be denied.

3. The Claim for Expert Witness Fees Must be Denied.

Defendants submit a claim for invoices submitted by a supposed expert witness, Lynette Rhodes, in the amount of $20,342.32. Again, the claim does not provide a legal or factual basis for payment of this invoice. The invoice is simply attached to Pickle's affidavit, with no verification of the reasonableness and necessity of the services performed. There is also no information supplied that would permit the Court to ascertain which of Ms. Rhodes' accounting services should be reimbursed in order to avoid legal prejudice to the Defendants that would otherwise result from the dismissal of this action.

In any case, expert witness fees are tightly limited by statute even when there is a prevailing party. When there is a prevailing party, the daily attendance fee established by 28 U.S.C. § 1821(b) may be taxed as costs under 28 U.S.C. § 1920(3). Where Defendants are not a prevailing party, there is no authority to grant them even the daily witness fee, let alone their full invoice. There is simply no legal or factual basis to award the Rhodes invoices as costs.

If the Court is inclined to consider Defendants request for an award of the Rhodes invoices, Plaintiffs request their rights under Fed. R. Civ. P. 54(d)(2)(C), including an opportunity for adversary submissions on the motion.

4. The Claim for Mileage Must be Denied.

Defendants seek $993.62 as reimbursement for two "fact-finding" trips to locations in Illinois and Wisconsin. Defendants do not supply any authority for the award of a party's transportation expense, which is not on the exclusive list of recoverable costs found at 28 U.S.C. § 1920. Further, Defendants do not show how

reimbursement of these expenses would mitigate legal prejudice arising from the voluntary dismissal of the case. The claim for mileage must be denied.

5. The Claim for Miscellaneous Expenses Must be Denied.

Defendants seek $4,614.90 as reimbursement of "miscellaneous" expenses incurred that are listed in the Pickle Affidavit at Table 2. None of these items is a recoverable cost. None of them need be reimbursed in order to avert prejudice arising from the dismissal. Some extreme examples of Defendants' overreaching can be found on Table 2, for example, where Pickle seeks $6.00 for a shower he took on April 25, 2008 at the North Lisbon Travel Center. In the annals of jurisprudence, it is doubtful that anybody ever sought reimbursement for a shower as a litigation cost. More to the point, it is hard to see how reimbursing Pickle for his shower will alleviate prejudice resulting from dismissal of this lawsuit. Presumably he would have showered anyway. The same is true of each expense on the list – they would have been incurred and would not have been recoverable no matter what the outcome of the litigation was, and reimbursing Defendants for them will not alleviate any legal prejudice arising from the dismissal.

6. The Claim for Copy Costs Must be Denied.

Defendants seek $206.70 as reimbursement for copying costs. Copying costs are recoverable in the circumstances authorized by 28 U.S.C. § 1920(4), namely where "necessarily obtained for use in the case." Defendants do not supply evidence supporting their copying costs, or explain how they were "necessarily obtained for use in the case." Since there were no substantive motions filed in this case, the copying costs were not

necessary in the sense contemplated by § 1920(4). The motion for copying costs should be denied.

CONCLUSION

For the reasons stated above, Plaintiffs oppose the motion of the Defendants for an award of their costs and attorneys fees.

Respectfully Submitted:

Dated: November 26, 2008

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

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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 November 26, 2008.

Dated: November 26, 2008

/s/ M. Gregory Simpson
M. Gregory Simpson

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

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

magistrate judge.

MS. HAYES: Okay.

THE COURT: All right. Where do matters stand?

Ms. Hayes, do you want to take the lead.

MS. HAYES: Sure, your Honor. Obviously, the case is in discovery, and the primary issue, I think, in front of us today is discovery, and a number of issues that have sort of come up around that.

The first one, I think, the most important is the filing of personal bankruptcy by Defendant Joy. There has been a number of proceedings and things back and forth concerning the bankruptcy. The plaintiff's bankruptcy counsel is not participating in this call today, but we have been in contact with that counsel to kind of keep updated on what's happening with that.

Mr. Joy filed for bankruptcy on August the 14th. He did not provide plaintiffs with notice of that bankruptcy and did not list either the save3ABN.com or the save3ABN.org domains as assets on that petition. He did, however, list the -- the electronic office equipment, which would include computers as assets on that bankruptcy.

Again, we didn't -- we didn't receive notice of that when it was filed. We then subsequently served on August 20th written discovery on both Mr. Pickle and Mr. Joy, and we did not receive any objections to that discovery by Mr. Joy; so, we

motion was filed today, but the motion for -- the motion to compel the 26(a)(1) documents and some sanctions. A little bit of background there.

I did receive an informal request for the 26(a)(1) documents from Defendant Pickle. Obviously, under the rules, we have no obligation to provide that, unless the request is made formally through written discovery; but despite that, knowing that Mr. Pickle was pro se, I volunteered to provide a time and date for inspection of those materials. I gave him a notice schedule of how much time we would need, either if he wanted to inspect in person, or if he just wanted us to send copies, and then I also brought to Mr. Pickle's attention that the bulk of the information that would be responsive and relevant from our 26(a)(1), you know, assessment of the case were very, very confidential and sensitive trade secret and business information and private financial information on Danny Shelton's part and that we were very concerned about releasing that information to either Mr. Pickle or Mr. Joy knowing they're both pro se counsel. In light of the history in this case of court documents and other public records being put out on the Internet and not just published baldly, but published with fairly colorful and what we believe is mischaracterizing commentary on those documents, and both plaintiffs feel very concerned about releasing any of that information without a protective order in place.

We exchanged a number of emails and written communication, Mr. Pickle and myself, trying to -- sort of trying to hammer out the issues on the 26(a)(1) documents, and we just were not successful in doing so. It -- it was sort of a beat-us-to-the-courthouse kind of thing. We have a motion for a protective order that we plan to file as well, and I'm assuming that will be also referred to Magistrate Hillman and likely heard about the same time.

Our position, frankly, is that both Mr. Joy and Mr. Pickle should have conferred to the truth of the statements that they made about 3ABN and Danny Shelton or literally satisfied themselves that the statements weren't false, and so they should already have in their possession whatever documents, statements, materials, and other information that they used in order to allay their own concerns about the truth or falsity of those statements. There's nothing, as far as we're concerned, that they would need more to prove a defensive truth at least, and we feel that it's really nothing more than a blatant attempt to harass and abuse the plaintiffs by trying to dig up some scrap of fact that provides post hoc verification of the statements they've made.

They've asserted no counterclaim, despite having repeatedly represented to this Court and on the Internet, that they intended to do so. So what facts they might need to mount a defense to a trademark and a defamation allegation is

certainly not going to become by rifling through 3ABN and Danny Shelton's private financial, accounting, and auditing information.

Basically, the upshot of that is that we are planning again to make a motion for a protective order, and I would assume that will go to Magistrate Hillman for determination; but we would like to -- to -- to have discovery stayed at least until that motion for a protective order can be heard and decided.

A couple of smaller matters related to discovery, I guess, that I'll throw in while I'm here. (Telephone) There has been somewhat of a failure to respond to written discovery and to Magistrate Hillman's order by Defendant Joy. The written discovery was served on him, as I indicated earlier, on August the 29th, or the 20th. We still have not received any written answers to those interrogatories or requests for production of documents. If -- even not counting the nine days of service before our constructive notice of the discharge, 30 days following the listing of the automatic stay would be December 21, and we would just ask that those materials be provided to us on or before the 21st.

Last, but unfortunately, this is certainly not the least. There has been, we believe, some improper discovery happening here. We are doing our very best to be patient with the fact that both Mr. Pickle and Mr. Joy are representing

themselves pro se. That said, however, both must still follow the rules concerning discovery, subpoenas, and concerning the contact of party witnesses.

We have been informed that there have been contacts made and attempts to depose, without having ever received formal deposition notices or any kind of communication through us, counsel, our client representatives, members of the 3ABN Board of Directors, and employees that definitely should not be contacted.

We have also been notified that four subpoenas have issued, at least two of which are improper, and were not issued from the correct court. I know one -- a third one, has already been objected to by the recipient, and -- and all of this sort of behind-the-scenes discovery is happening, but no formal discovery has yet been served on either of the plaintiffs.

And I guess we -- we just want to take this opportunity to make it very clear on the record that we expect Mr. Pickle and Mr. Joy, who are, you know, I guess, admirably trying to represent themselves pro se, that they are still obligated to follow the rules of procedure; that they are not allowed to contact party witness -- witnesses or party representatives without contacting counsel; and that we are to receive notice of subpoenas at the time they are issued and served, not sometime thereafter and not when the subpoenas have been improper.

Second, it's just now we're getting kind of close to, you know, the proper amount of time of notice. If it is like towards the end of January, we're running out of time to give the proper notification. And their next board meeting would be in May, and I just hate to see it drag on longer than is necessary. So, that's a concern I have.

I'd hate to see discovery stayed while there is an order -- when they're going to, you know, file this order for the -- or file a motion for -- asking for a protective order. Yeah, this commercial and business -- the bulk of their materials have to do with commercial and business, sensitive confidential information. I just have a hard time imagining that it's that -- if the bulk of their material is really of that nature, and it's that top-secret how they really have a case against us.

THE COURT: All right. I'm not going to prejudge that.

MR. PICKLE: Yes.

THE COURT: Let -- let me -- let me take that issue up as well at the risk of hopping around unduly. I'm not going to stay discovery. If counsel wants to file a motion for a protective order, they should file a motion. It ought to be narrowly tailored, and counsel should consider alternatives to blanket protections, things such as redactions and so forth, but I'm not going to impose a blanket stay of discovery. If a

motion for protective order is appropriate, the thing to do is to get the motion on file, and that will be referred to the magistrate judge as well.

And I -- I will offer only the general view. It's going to be the magistrate judge's issue to decide, but things do tend to be overdesignated as confidential, which is a constant plague in civil litigation, and so I just ask counsel to be -- to pick your spots and to tailor things as narrowly as you think appropriate under the circumstances.

All right. Unless there's anything further, let me -- I've addressed the motion for a protective order, number one.

I think I've addressed the issue of contacts with represented parties. I think I've addressed the issue of the requirement of notification of opposing counsel on things, such as depositions, and other events.

The motion to compel will be referred, as I indicated, in due course to the magistrate judge. My understanding, plaintiffs have indicated that written discovery responses are due December 21st, and I believe that counsel have indicated that -- or I'm sorry -- Mr. Joy, I think, indicated that he could respond in a timely fashion, given that that's only one week away; and given the holidays, I will assume either that Mr. Joy can respond on time, or that counsel will grant a week or two extension, if reasonably necessary, under the

circumstances, without further intervention from the Court.

I do think some extension of deadlines is appropriate given what sounds like a somewhat chaotic situation ensuing, because of the bankruptcy and because the defendants are pro se, and some slack obviously needs to be given to them under the circumstances.

What I think I will do is I will add 90 days to all the current deadlines and the scheduling order, although I'm going to hold the status conference of May the 6th so that this matter doesn't slip away unduly.

And then lastly, I think this issue of depositions at the time of the board meeting, the basic rule, Mr. Pickle and Mr. Joy, is that depositions may occur either where a witness lives or has his usual place of residence. As I sit here, I don't remember whether that rule is different for the directors of a plaintiff corporation or not. You might want to look that up.

Certainly what you say sounds practical, but I'm not sure that counsel is required to assent to it, and it may be that these individuals have a sufficiently busy schedule at the time of their board meeting that this is not going to work out, but I'm going to leave that where it is for the time being. I'm not -- there's no motion in front of me, and I'm not going to compel anyone to do anything at this stage.

You also should be aware that there's a presumptive

limit in terms of the number of depositions, which is ten.

Is that right, Mr. Pucci?

MR. PUCCI: I believe so.

MS. HAYES: Yes.

THE COURT: And you'll need leave of court to take more than ten depositions; so you'll want -- you're going to want to pick your spots.

MR. PUCCI: And there's also a time limit, your Honor.

THE COURT: And there's a presumptive one day or seven-hour limit, and I'm -- this will probably wind up in front of Magistrate Judge Hillman. I am reasonably flexible in that regard. You know, it's a one-size-fits-all rule that doesn't apply to every case, but I think you'll find, Mr. Pickle and Mr. Joy, most judges will probably look askance on an attempt to simply depose everyone, and you will probably want to try to at least do some sort of triage there and make sure that you are focusing on the people who you think will have significant evidence and will move the ball forward.

Have I missed an issue?

Ms. Hayes.

MS. HAYES: Well, no, your Honor. I believe that's everything I had on my list.

THE COURT: Okay. Mr. Joy or Mr. Pickle, have I missed any issues that you wish to raise?

MR. PICKLE: Yeah, I've got one here. The

conference -- the Rule 26(a) conference report said that plaintiffs propose 20 depositions for each party; defendants propose no limits for factual depositions.

So, in that kind of scenario, is that ten something that's still limited?

THE COURT: Well, it's -- I don't think there has been any ruling. I would look equally askance, but if plaintiffs want to -- I'm going to make no ruling here. I just simply don't have a good enough handle on the case, particularly in its current posture, to make a ruling in the abstract. If plaintiffs want to file a motion for leave to take more than ten, I'll either rule on it or refer it to the magistrate judge.

MS. HAYES: Your Honor, may I speak to that briefly?

THE COURT: Yes.

MS. HAYES: We were not -- the parties were not able to agree to their recommendations as part of the 26(f) report that went to the Court in advance of the scheduling order. I don't remember -- I don't know if you recall us standing in front of you, but we had somewhat disparaging suggestions in terms of many of the deadlines, and I believe what happened --

THE COURT: I think they were disparate, not disparaging. They may have been disparaging, too.

MS. HAYES: Sorry. They were very far apart in some cases and a little closer in others, but one of the things that

did happen was there were situations where neither of the parties' recommendations were accepted, and we have been operating at least to date under the assumption that the Court's scheduling order is what's going to bind all parties on this.

THE COURT: Yes, it is an order of the Court.

MS. HAYES: Okay.

THE COURT: Yes.

MS. HAYES: All right.

THE COURT: But I don't think there's anything in there about the number of depositions.

MS. HAYES: I -- I thought there was, actually, but I -- I apologize, because I'm speaking frankly to the scheduling order.

THE COURT: Yeah. Hold on. Let me see if there's something on the docket. I don't remember off the top of my head.

I don't see anything in the docket, and I don't have my notes in front of me; so, again, I don't -- I'm not a fanatic on this issue. One size does not fit all. There are lots of cases where 11 depositions are appropriate or 15 or 20, but whether this is one of those cases, I don't know, and I think probably if you want to go beyond ten, you ought to file a motion. It's like so many other things, it's just a question of reasonable -- reasonableness under all the circumstances.

MR. PICKLE: Your Honor, I could use a little clarification on this, how this ten is calculated.

THE COURT: It's just in the rule. It's more or less an arbitrary number, but it's ten. I don't know -- it's ten per side, or is it --

LAW CLERK: I think it's ten per side.

THE COURT: I think it's ten per side, but hold on. Let's see if we can get ahold of the rule.

Where are we?

Mr. Pucci, do you have it handy?

MR. PUCCI: I don't, but I recall it being ten per side.

THE COURT: That's what I think it is.

MR. PICKLE: Ten per side, not ten per party?

THE COURT: Yes, ten per side in the sense that -- well, you mean whether Joy and Pickle each have ten or Shelton and 3ABN?

MR. PICKLE: Yes.

THE COURT: I think it's ten per side.

And anyway, the rule is what it is; and if you need relief from the rule, however it's framed, you can file a motion; and my own view is, you know, if you want to take an extra deposition or ten extra depositions, my question will be why. And if you convince me you need it, I'll let you have it; and if I think it's overkill, I'll put a limit on it. Okay.

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

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

trouble.

MR. SIMPSON: That's fine. Just let me know, Judge.

THE COURT: All right. Let me begin with there are some motions pending, which I think the time for response has not yet run, and I have quickly reviewed an order from Magistrate Judge Hillman, which was issued today.

What I'm going to do is to -- the motion for discovery that was filed on September 8th, Docket entry 98, appears to be moot, because an amended motion for discovery was filed on September the 9th, Docket No. 104.

Docket -- motions -- the motion for discovery, leave to cause subpoena to be served on U.S. Attorney Courtney Cox and upon the Fjarli Foundation, if I'm pronouncing that right, No. 94, and the amended motion for discovery, leave to cause subpoena to be served upon a port director and upon Delta Airlines, will be referred to the magistrate judge for resolution once a response from plaintiffs has been filed.

And as an aside, I didn't realize Courtney Cox was a U.S. Attorney.

Is Jennifer Aniston now a United States Attorney?

MR. SIMPSON: I wondered that.

THE COURT: Don't answer that.

The motion for extension of time filed by defendants, No. 101, to extend the deadlines for discovery of 90 days, what I'm going to do is this: I'm going to also refer that to the

magistrate judge and -- and grant him authority to extend discovery from zero to 90 days, such as he thinks is appropriate. It's hard for me to answer that in the abstract without having a handle really on where matters stand and -- and without really having time to digest this order. So, if he does extend discovery, we will -- I will have Mr. Castles adjust the remainder of the calendar as well, but he -- he will have plenary authority to enter such orders as he sees fit up to an extension of 90 days on all discovery deadlines. And I think that takes care of the pending motions.

Counsel for the Plaintiff, Mr. Simpson, have I hit all the motions that are pending? I think it's just those three at this point.

MR. SIMPSON: The only thing that you didn't mention, Judge, is the request for sanctions to Pickle's motion -- Mr. Pickle's motion to extend discovery, and that was briefed in document -- ECF documents 72 and 73.

What that relates to, Judge, is the fact that Mr. Pickle, Mr. Joy, and I spent several days -- several hours over several days, hashing out a resolution to the discovery dispute that we believed we had reached an agreement that called for them to withdraw the motion without prejudice. We would then admit -- well, we were in the process of reviewing and Bates stamping and screening for privilege and confidentiality thousands of documents, which we ultimately

And then, Mr. Joy and Mr. Pickle, you'll have the usual amount of time in which to respond and submit affidavits or exhibits or whatever it is you think you need to do in response, okay?

MR. PICKLE: Thank you, your Honor.

MR. JOY: Thank you, sir.

THE COURT: All right. Is there anything else that we can attend to here?

I think what I'm going to do is I'm going to set it for a further status conference, really as a place holder. I don't quite know what Magistrate Judge Hillman is going to do in terms of the timetable, but I would like to set it for a status conference, even expecting that it may be moved just so that I'm -- I have something in the calendar where I'll see you, and that we can talk about the timetable.

Putting that aside for the moment, is there anything else that we ought to talk about now?

Mr. Simpson?

MR. SIMPSON: I think you covered everything, Judge. That was what my agenda was.

THE COURT: Mr. Joy.

MR. JOY: I think relatively our problem, of course, is that we still have very reluctant discovery, and every time we make a move, they oppose, and we get hung up in waiting for Judge Hillman to respond; and you know, it just becomes

problematic, we not being able to proceed, but the bottom line is we will leave that, I guess, for Judge Hillman.

THE COURT: Okay. Mr. Pickle.

MR. PICKLE: I think that's about it, your Honor.

THE COURT: All right. What I'm going to do then is I'm going to set it for a status conference in -- I think, late October sounds about right at this stage; and again, it's a place holder. It doesn't need to be that far out. If I need to see you sooner, and it can be moved back if, for example, discovery is extended into November, we probably ought to wait until the close of discovery before further status.

All right. Let me get something on the calendar.

(The Court conferred with the clerk.)

THE CLERK: Three o'clock on October the 30th, will that work?

MR. SIMPSON: I'm checking my calendar, Judge. This is Greg Simpson. October 30th looks fine.

THE COURT: Is that all right with you, Mr. Joy and Mr. Pickle?

MR. PICKLE: I believe so, your Honor.

THE COURT: Okay.

MR. JOY: Yes, sir, your Honor.

THE COURT: All right. October 30th then, status conference again. Nothing magic about the date, but I want -- ideally I would see you very shortly after the close of

discovery, so I'm not sure there's much point to me seeing you if discovery is still ongoing at this point and you still have matters before the magistrate judge.

So, I'll leave the ball in your court, particularly yours, Mr. Simpson, as representing the plaintiff to -- to come up with a more appropriate date, if it looks like that ought to be put off or moved up. All right.

MR. SIMPSON: Judge, this is Greg Simpson. If -- if Magistrate Hillman moves the discovery deadline zero to 90 days such that -- what -- what procedure should we follow to get the status conference moved out again?

THE COURT: Well, let me give you some scenarios. What I don't want is for the case to simply sit there with nothing happening. If -- if he says, for example, that discovery will be cut off on October 29th, I'll see you October 30th. That would work out nicely. If he says discovery should continue until November 15th, let's put it out until November 16th or 18th, or somewhere in that time frame; and probably the easiest thing to do would be for you to contact Mr. Joy and Mr. Pickle, agree on a date that's convenient to all of you, and then contact Mr. Castles, and -- and move the date.

MR. SIMPSON: Sounds good.

THE COURT: All right. And again, these are kind of -- obviously, the case could take different twists and

discovery from this point forward, whatever deadlines are set, Mr. Pickle and Mr. Joy will -- the plaintiffs will have an opportunity to depose them; and if -- if you all can work that out so that it happens before Magistrate Judge Hillman has issued a ruling on the motion to extend the deadline, that's fine, as far as I'm concerned.

If you feel you need to file a motion to compel, or a motion for a protective order, we'll take that up in due course.

MR. SIMPSON: Fair enough.

THE COURT: Okay.

MR. JOY: Your Honor.

THE COURT: Certainly, there's no possibility that I will let this case go forward much longer without the key players being deposed.

Yes, sir.

MR. JOY: Your Honor, frankly, we did not -- we did not say we were not going to be deposed. We suggested that we schedule the deposition following the current scope and relevance motion responses from the judge.

THE COURT: Again, this is not a dispute I need to resolve. If you -- if you think the matters are resolved, and you can come up with a convenient date, that's great. If the matters are not resolved, and you have a dispute, the aggrieved party is going to have to file a motion.

MR. PICKLE: Your Honor, just to finish up with the concern I was kind of thinking of when I was starting to ask the question. Yes, our position has been, and I guess we relayed this in the status conference in May. You know, we raised it at different times that we really feel we need to get the documents that we've requested before we can do -- effectively do depositions, so that we know what -- what questions, you know, we can make sure that our questions really deal with the evidence we're looking at.

And I'm just a little concerned that it's that we might -- you know, depending on how long it takes for some of these decisions to be handed down and how long it takes for us to get the documents that we may have trouble getting the depositions scheduled after getting the documents we've requested.

THE COURT: Again, I'm going to leave this for the time being in the hands of the magistrate judge. If it comes back to me in some form or another, my response is going to be you -- you have the right to depose Mr. Joy and Mr. Pickle, as they have a right to depose Mr. Shelton, or whoever it is, you know, are the key players on the other side. You have the right to do so with a full document, or reasonably full document production in hand; and I would like, you know, this case to move, but I -- because I am not immersed in the ins and outs of the disputes, I'm going to leave that in his hands, and

we'll take it from there, okay.

MR. PICKLE: Thank you, your Honor.

THE COURT: I -- I'm -- at the end of the day, I'm going to try to do the rational thing, and the rational thing is to have both sides exchange documents and then take the depositions of the key people once they have the documents in hand. And I would like that to happen in some reasonably prompt time frame, but I'm going to leave that to him in the first instance.

MR. PICKLE: Thank you, your Honor.

MR. SIMPSON: From the plaintiffs' perspective, that sounds like a good resolution. I think Magistrate Hillman has a good grasp of the case, so...

THE COURT: All right. And again to state the obvious, no matter how tempers may flare or disputes -- whatever disputes may come up, everyone needs to be reasonably professional and -- and attempt to work together to -- to accommodate one another's schedules and so forth, and -- and to be as reasonable as you can under the circumstances.

MR. SIMPSON: We'll take that to heart, Judge.

THE COURT: Okay.

MR. SIMPSON: All right.

THE COURT: All right. Anything further?

MR. SIMPSON: Nothing from the plaintiffs' side,

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

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO IMPOSE COSTS UPON THE PLAINTIFFS

INTRODUCTION

The Plaintiffs and their counsel endeavor to revise history in their opposition to the Defendants' motion to impose costs. Their historical revisionism appears to be an attempt to convince this Court to confine the question of imposing costs to merely Fed. R. Civ. P. 41(a)(2), and not to consider the invocation of 28 U.S.C. § 1927 or the court's inherent powers as an additional basis for imposing costs. But the facts are what they are, and cannot be changed.

The Plaintiffs, not the Defendants, asked this Court to order the return of most of the non-public documents that are evidence either of the extremely frivolous nature of the instant case, or of the flagrant abuse of the confidentiality order perpetrated by the Plaintiffs and their counsel. Such a return necessitates duplicative discovery expense if either the Plaintiffs or the Defendants file a future suit, and puts key evidence at risk of spoliation. But beyond the question of alleviating prejudice is the simple fact that "voluntary dismissals are often conditioned on the

payment of the defendant's costs," which may include attorney fees. *Puerto Rico Maritime Shipping Authority v. Leith* 668 F.2d 46, 51 (1st Cir. 1981).

FACTS

The Tightening Noose

In September and October 2008, the Plaintiffs found the noose tightening as discovery issues were steadily being initiated and resolved:

- Magistrate Judge Hillman's order of September 11, 2008, gave the Plaintiffs a bit of a tongue lashing:

> 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. ... 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 which they could be entitled should they prevail.

  (Doc. 107 pp. 3–4).

- Magistrate Judge Hillman's order of September 11, 2008, also denied the Plaintiffs' request to conduct *in camera* review of the records of MidCountry Bank (hereafter "MidCountry"), Gray Hunter Stenn LLP (hereafter "GHS"), Remnant Publications, Inc. (hereafter "Remnant"), and all other third parties, thus opening the way for the Defendants to obtain these documents. (Doc. 74 ¶ 7; Doc. 75 pp. 16–17; Doc. 107 p. 5).
- Magistrate Judge Hillman's order of September 11, 2008, also required the Plaintiffs, not just the Defendants, to seek leave of the court before issuing any new subpoenas upon non-parties. (Doc. 107 p. 5). Given the ability of the Defendants to document their

assertions and the inability of the Plaintiffs to do the same, this provision of Magistrate Judge Hillman's order gave the Defendants a distinct and considerable advantage. It also helped curb the Plaintiffs' own abuse of discovery. (Doc. 108 pp. 1–2; Doc. 80 pp. 6–7).

- On September 22, 2008, Remnant produced subpoenaed documents which went directly to the question of whether Shelton had engaged in private inurement by laundering 3ABN revenue through Remnant. (Affidavit of Robert Pickle (hereafter "Pickle Aff.") ¶ 1).
- Plaintiffs and their counsel claimed that Plaintiffs' counsel had long ago conducted a thorough review of Plaintiffs' finances. (Doc. 96-2; Doc. 123 ¶ 5; Doc. 127-6). Thus the Remnant documents constituted *prima facie* evidence of abuse of process and misuse of civil proceedings by Plaintiffs' counsel as well as the Plaintiffs. (Pickle Aff. ¶ 2, Ex. A).
- Pending in this Court were motions requesting subpoenas *duces tecum* seeking documents that would, *inter alia*, verify or refute the Plaintiffs' claims that the IRS had vindicated the Plaintiffs, demonstrate the extent to which Shelton falsified information on his July 2006 financial affidavit regarding his alleged mortgage loan from the Fjarli Foundation, help verify or refute the Plaintiffs' claims regarding alleged rendezvous between Arild Abrahamsen and Linda Shelton, and verify whether 3ABN knowingly paid for private vacation travel actually taken by Linda Shelton and/or Brenda Walsh. (Doc. 94–96; Doc. 104–105; Doc. 100).
- The Plaintiffs failed to provide proof of reimbursement for Delta Airlines tickets for private vacation travel when invited to do so. (Doc. 113 p. 9).
- The Plaintiffs declared that alleged rendezvous between Arild Abrahamsen and Linda Shelton were irrelevant, reversing their long-held position that these alleged rendezvous went to the question of whether Shelton had biblical grounds for divorce and remarriage. (Doc. 110 p. 3; Doc. 113 pp. 6–7).

- Brenda Walsh, the Plaintiffs' star, stealth witness, lied about who had arranged for or bought the tickets for the planned trip to Florida, and whether Linda Shelton had used her ticket. (Doc. 100 ¶¶ 4–6, 8; Doc. 100-4 to Doc. 100-6; Pickle Aff. ¶ 3, Ex. B).
- The Defendants were preparing a motion seeking leave to issue a subpoena *duces tecum* upon the EEOC to determine whether the Plaintiffs had tainted the EEOC's investigation by withholding evidence of 3ABN's administrative conspiracy to terminate the Trust Services Department whistleblowers. (Pickle Aff. ¶¶ 4–6).
- Magistrate Judge Hillman's order of September 11, 2008, had ordered the Plaintiffs to respond to Defendant Pickle's revised requests to produce by October 27, 2008. (Doc. 107 p. 4).

With the noose tightening, the Plaintiffs decided to dismiss the instant case, a case they had known for some time that they could never win.

Deposition Difficulties

The above were not the only difficulties facing the Plaintiffs. Another soon-to-be-met obstacle was the depositions of the Defendants.

Defendant Pickle had informed Attorney Gregory Simpson (hereafter "Simpson") that Simpson needed to demonstrate that Defendant Pickle had actually written the alleged defamatory statements. Given the length of time since the statements were allegedly written, Defendant Pickle needed to review the actual statements before testifying under oath that he had actually written those statements. (Pickle Aff. ¶¶ 7, 13).

Defendant Pickle specifically brought to Simpson's attention the statements found at ¶¶ 46b–d, 46j of the Plaintiffs' complaint, and challenged him to find anywhere prior to the filing of the instant case where Defendant Pickle had ever made such statements as fact. (*Id.*).

The article at Save-3ABN.com states that the allegations found at ¶¶ 46b–d are the

allegations of sources, not that those incidents actually occurred. (Doc. 8-2 pp. 58–59). However, since the source of those allegations was Derrell Mundall, and since he claims to have been the Shelton family member who was the recipient of the van and furniture of ¶¶ 46b and 46d, the allegations are credible. (Pickle Aff. ¶ 9). Further, the Plaintiffs' refusal and failure to produce documentation for the sales price of the van of ¶ 46b suggests that the allegation is in fact true. (Pickle Aff. ¶ 11).

Regarding the allegation of ¶ 46j, the Defendants have located an internet posting by Defendant Pickle in which he quotes the January 28, 2004, decision of Administrative Law Judge Barbara Rowe, in which she says that 3ABN provides a corporate jet to the Sheltons for weekend travel. (Pickle Aff. Ex. C–D). Defendant Pickle's post was followed by a post by Gregory Matthews in which he pretty much asserts that Shelton used the jet for honeymoon travel. (Pickle Aff. Ex. C). Since the Plaintiffs never joined Barbara Rowe or Gregory Matthews as defendants in the instant case, ¶ 46j should never have been in the complaint.

Deceit and Contradictions

Sometime during the week of October 12, 2008, the 3ABN Board "promptly voted" to dismiss the instant case, according to Walter Thompson's sworn testimony dated October 22, 2008. (Doc. 123 ¶ 8).

On October 17, 2008, Attorney Gregory Simpson contacted Defendant Pickle and orally, not in writing, proposed terms for settlement. (Doc. 127 ¶¶ 3–4). In that conversation Simpson gave as the reason for needing to settle now the avoidance of *expense* regarding *discovery* over the following three months. (Doc. 127 ¶ 5). Thus the dismissal was a ploy to avoid discovery. In passing, Simpson stated that the Plaintiffs could simply file a motion to dismiss, and there wouldn't be anything that could be done about it. (Doc. 127 ¶ 6). Yet in that same conversation, Simpson explicitly denied that a motion to dismiss would be filed. (Doc. 127 ¶ 7).

On October 18, 2008, Defendant Joy memorialized Simpson's conversation with Defendant Pickle in a private message, including Simpson's statement that he would not be filing a motion to dismiss. (Pickle Aff. Ex. E).

On October 22, 2008, the same date as the date of Walter Thompson's affidavit, Simpson told the court in the Southern District of Illinois:

> And we are not yet, the time to respond to their narrow document request has not yet expired, but ... in the next production we will either identify where we've already produced it or produce additional records that pertain to the specific transactions that they identified.

(Pickle Aff. Ex. F at p. 35). Thus Simpson made it clear to that court that he would be responding to Defendant Pickle's revised requests to produce on or by October 27, 2008, in compliance with the September 11, 2008, order of the Honorable Timothy S. Hillman. (Doc. 107 p. 4).

Simpson filed his motion to dismiss on October 23, 2008, along with Thompson's affidavit of October 22, and informed the Defendants that very day that he would not be complying with Magistrate Judge Hillman's order on October 27. (Pickle Aff. Ex. G).

It should be no surprise that Simpson also lied to this Court in the status conference of October 30, 2008, when he stated, "[The Defendants] are no worse off than they were before the lawsuit began." He knew otherwise, as demonstrated by his threats of October 30 and 31, 2008.

The Threat of October 30, 2008

Not 90 minutes after the conclusion of the October 30 status conference during which the instant case was dismissed, Simpson fired off a new threat:

> Plaintiffs have previously designated, and hereby reaffirm their desigation [*sic.*] of, the following materials as Confidential: ...
>
> 3. Any other documents produced to Defendants pursuant to third party subpoenas issued by Defendants in this case.
>
> ... If I become aware of any evidence that Confidential material has been retained by you or released to others by you, or if I become aware of internet postings that reflect or imply the contents of Confidential

> materials, my instructions are to immediately seek relief from the Court.

(Pickle Aff. Ex. H).

Simpson's reference to documents obtained by way of third-party subpoenas can refer to but two groups of documents. The first group pertains to the wrongful termination of Three Angels Broadcasting Network, Inc. (hereafter "3ABN") Trust Services Department whistleblowers due to their reporting of the misconduct of Leonard Westphal, and to unethical or illegal activity in that department. (Doc. 76-3 pp. 14–15). The second group pertains to the child molestation allegations against Tommy Shelton stemming from alleged misconduct while he served as pastor at the Ezra Church of God in West Frankfort, Illinois, and the Community Church of God in Dunn Loring, Virginia, and to Tommy Shelton's ownership and use in the latter church of a grand piano that he had allegedly purchased from 3ABN at below fair market value. (Doc. 76-3 pp. 16–17).

The Defendants never received notice from Plaintiffs' counsel prior to the email of October 30, 2008, that the Plaintiffs wished to designate these documents as "confidential." (Pickle Aff. ¶ 18). Plaintiffs' counsel previously denied that they were seeking to make "employment related information" confidential. (Doc. 89 pp. 24–25).

¶ 1 of the confidentiality order allowed the Plaintiffs to designate as confidential

> matters that [the Plaintiffs] believe[] in good faith are not generally known or readily available to the public, and that [the Plaintiffs] deem[] to constitute proprietary information, confidential business or commercial information, and/or trade secrets relating to its business ....

(Doc. 60 ¶ 1). The child molestation allegations against Tommy Shelton are hardly a trade secret of 3ABN, and a videotaped public piano concert in Tommy Shelton's then church in Virginia (Doc. 76-3 p. 17 at ¶ 1) is hardly propriety business information of Danny Lee Shelton (hereafter "Shelton") that is not generally known to the public.

While the Defendants have submitted documents to this Court to substantiate their

assertion that the instant suit was conceived in retaliation for and to silence the Defendants' story that Shelton covered up the child molestation allegations against Tommy Shelton (Doc. 63-15 to Doc. 63-17; Doc. 63-18 p. 2; Doc. 63-19 p. 2), the Plaintiffs have instead represented to this Court that the child molestation allegations against Tommy Shelton were irrelevant to the instant case. (Doc. 75 pp. 12–13). Yet as soon as Plaintiffs' motion for voluntary dismissal had been granted, Plaintiffs and their counsel appear to have conspired to misuse the confidentiality order in order to cover up those very same child molestation allegations.

The Threat of October 31, 2008

What Simpson in his October 30 email meant by the words "if I become aware of internet postings that reflect or imply the contents of Confidential materials, my instructions are to immediately seek relief from the Court," became readily apparent in a new threat he issued on October 31, 2008:

> I have received the blog posting by you pasted in this email below. I will be bringing a motion to enforce the Confidentiality Order unless you provide a satisfactory explanation TODAY of why your reference to net receipts from book deals does not reveal confidental information that you obtained from Remnant Publications.
>
> > Well, here we are!!! When do I get my own world-wide television ministry to go along with the rest of the hypocricy??? I would like a jet, my own personal secretary and a barn full of horses and a cute little filly to go with the new sports car. And I need to be able to do book deals that will net $300,000 annually, minimum!!! A new house with a tarred driveway and a gate would be nice!!! 4,300 sq feet of living space would be ok, as long as the grandchildren get to live with us!!! But I also need one of those disappearing mortgages from a foundation somewhere!!! I also need complete discretion to hire, fire and ridicule people regardless of due process. I would clearly need "kingly authority"!!!

(Pickle Aff. Ex. I, red in original).

The confidentiality order clearly states, "This Agreement shall not preclude any party from using or disclosing any of its own documents or materials for any lawful purpose." (Doc. 60

¶ 8). Thus, since the above $300,000 figure is derived from Nicholas Miller's email of September 19, 2006 (Doc. 63-32 p. 32), a reference to such a figure is permissible, regardless of what the "confidential" documents from Remnant Publications, Inc. (hereafter "Remnant") received more than two years later say.

Further, since Remnant's publicly available IRS Form 990's suggest that Shelton's royalties and kickbacks received from Remnant in 2005, 2006, and 2007 were more like $90,378, $482,589, and $176,739 respectively (amount that "royalty" payments from 2005 through 2007 exceeded that of 2004 in Doc. 81-7 pp. 25–26, in ln. 43 of Doc. 81-4 at pp. 35, 38, and 42, and in ln. 43 of Pickle Aff. Ex. J), it is practically impossible that the Remnant documents would substantiate Miller's $300,000 figure. According to these publicly available Form 990's, the royalties paid to Shelton for the 2006 *Ten Commandments Twice Removed* campaign should have been closer to $482,589, minus whatever payments Shelton may have received as kickbacks for sales by Remnant to 3ABN of Shelton's booklets published by Pacific Press Publishing Association. (*Id.*; Doc. 96-11 p. 54).

Yet the Plaintiffs and their counsel appear to be conspiring to find every possible similarity between "confidential" documents and the Defendants' public statements, regardless of whether the Defendants obtained the same information or documents from other sources, and regardless of whether any confidential information was actually disclosed.

"[The Defendants] Are No Worse Off Than They Were Before the Lawsuit Began"

Clearly, because the case was dismissed without prejudice, because the various issues never were resolved under the full light of public scrutiny in an American courtroom, the Defendants are worse off now than before the lawsuit began. As Simpson's threats of October 30–31, 2008, make clear, the Defendants are at risk of repeatedly being hounded, harassed, and dragged back into court over the supposed violation of the confidentiality order when all they are

doing is reporting facts available from their own sources and documents.

One individual described the vindictive and spiteful Shelton in the following way:

> ... with Danny they are dealing with someone who doesn't walk away. They are dealing with someone for whom a fight is a fight to the finish. When this one is over someone will walk out of the ring and someone won't. I think Duane knows that when in a fight with Danny a person doesn't ever just bite the bullet and walk away. They will not be allowed to walk away. One battle may be closing, but the war is no where near done. Look at the Linda thing. Years later Danny and his minions still pursue her and they will continue until she is irreversably [*sic.*] crushed and has no chance of standing again.

(Pickle Aff. ¶ 21, Ex. K, Ex. L at p. 2).

PLAINTIFFS' "FACTS" REBUTTED

"The Complaint Identified 24 Specific Defamatory Statements ...." *(Doc. 140 pp. 2–3)*

Of the alleged statements cited in the complaint, ¶¶ 46a, 46e, 46g, 48a, 48c, 50d, and 50i are quite broad, opening the door to extensive discovery. (Doc. 1).

In the Southern District of Illinois on October 22, 2008, after Defendant Pickle quoted ¶ 46g, the Honorable Philip M. Frazier asked Simpson to confirm whether ¶ 46g was really that broad, and Simpson acknowledged that Defendant Pickle had correctly quoted that paragraph. (Pickle Aff. Ex. F at pp. 9–10). Magistrate Judge Frazier then made the following comments:

> But it seems to me that if you are going to be successful in proving these, in proving defamation, you are going to have to narrow it down to some specific statements. Instead, you just can't go in at a trial, for example, and say, "Well, they generally implied that we were benefiting personally in violation of IRS rules." That's not going to get to a jury. You're going to have to come up with specifics. ...
>
> You know, I kind of think Three Angels probably should have thought this through a little bit. My guess is that Three Angels probably thought that these guys had probably backed down pretty quick when this defamation lawsuit was filed. ... these kinds of little nasty bits such as of the revelation involving Mr. Shelton's brother tend to or any impropriety on behalf of Mr. Shelton himself would probably tend to erode some of those. And so a nice public way of refuting those statements is by filing a defamation action, and, you know, saying it ain't so, Joe.

> But the problem is, is now Three Angels has opened up a very large can of worms here. And it's a very large can of worms.

(Pickle Aff. Ex. F at pp. 11, 23).

"Answers to Interrogatories Continued the Pattern of Refusing to Reveal the Sources of Their Challenged Statements." *(Doc. 140 p. 3).*

To the contrary, the Defendants in their Rule 26(a)(1) disclosures and in their answer to the interrogatories served upon them on August 20, 2007, listed at least 163 different individuals or entities as being potential witnesses. (Pickle Aff. ¶¶ 22–24, Ex. M at pp 3–44, Ex. N at pp. 1–7, Ex. O). The answers to the interrogatories broke down the names into at least 11 categories of information the witnesses' testimony would pertain to. (Pickle Aff. Ex. M at pp 3–44).

It does not take much intelligence to figure out that the Defendants' witness list included the Defendants' sources, and that the Plaintiffs should have deposed some of those individuals.

Further, since all email communications between sources and the Defendants had been turned over to the Plaintiffs as part of the Defendants' Rule 26(a)(1) disclosures (Doc. 103 ¶ 1; Doc. 77 pp. 8–9; Doc. 89 p. 40; Pickle Aff. Ex. P), the Plaintiffs have had in their possession all the material they could possibly hope for to incriminate the Defendants and their sources, if there was the remotest possibility to incriminate.

"... Thousands of Pages of Records in Discovery Including Virtually All Of ...." *(Doc. 140 p. 3).*

> [Defendants] were given thousands of pages of records in discovery including virtually all of 3ABN's corporate records and tax filings, and the internet postings that contained the defamatory statements.

(Doc. 140 p. 3).

The Defendants were not given a single document until the Plaintiffs were compelled by order of this Court. (Electronic order of March 10, 2008). All documents produced were entirely unindexed, and incapable of being searched using Adobe Acrobat features. (Doc. 81 ¶ 2; Doc. 107 p. 4; Pickle Aff. ¶ 26). A considerable number of hours was spent by the Defendants in

indexing these documents, something the Plaintiffs were required to do. (Pickle Aff. ¶ 26). To all appearances, the huge mass of unsearchable internet postings the Plaintiffs produced suggested that the Plaintiffs considered a wide range of issues to be fair game for discovery. (Doc. 81 ¶¶ 7–8, 10–11, Table 2–3).

Shelton never produced his tax filings, nor any corporate records for non-3ABN companies he controls, such as DLS Publishing, Inc. (Pickle Aff. ¶ 27).

Except for 3ABN's tax filings filed in the state of California, and perhaps an Oregon return or two, the Defendants already had the other tax filings the Plaintiffs produced. (Pickle Aff. ¶ 28). So while 3ABN's production enabled these documents' entry into evidence to be unchallenged, it did little else. 3ABN didn't even produce its 2006 returns!

"Adopted a Strategy ... Oppressively Large Amounts of Irrelevant Information" *(Doc. 140 p. 3).*

> Finding little help among the Plaintiffs' *relevant* documents, the Defendants adopted a strategy of seeking oppressively large amounts of irrelevant information that they hoped would contain at least *something* that would show the Plaintiffs in a bad light. In an email to a confidante, Defendant Gailon Arthur Joy explained the Defendants' plan to expand the scope of the case beyond the complaint: ....

(Doc. 140 p. 3). Simpson then quotes from an email dated January 22, 2008, to prove what strategy the Defendants adopted *after* the Plaintiffs first produced documents on March 28, 2008! (Doc. 76-5 p. 33). Simpson's reckless disregard for truth and accuracy is inexcusable.

On January 3, 2008, the Defendants served upon Plaintiffs' counsel and Tommy Shelton a motion to amend the pleadings that would have made 3ABN's officers and directors, and Tommy Shelton named plaintiffs in the instant case. (Pickle Aff. Ex. Q). On the same day the Defendants served upon Nicholas Miller, Linda Shelton's counsel, and Derrell Mundall a motion to amend the pleadings that would have named them third-party defendants in the instant case on the grounds of detrimental reliance. (Pickle Aff. Ex. R). Defendant Joy's "email to a confidante"

dated January 22, 2008, is thus referring to expanding the case *by adding parties,* not by "seeking oppressively large amounts of irrelevant information." Since Plaintiffs' counsel was served at least one of these motions, Simpson knew or should have known this fact at the time he wrote the above words.

And besides, GHS's "oppressively large amounts" of documents were confined to but 10 banker's boxes. (Doc. 81-5 p. 24 at ¶ 7).

"... 'A Substantial Number of Documents ... Would Be Irrelevant to Any Claims or Defenses ....' " *(Doc. 140 p. 4).*

Simpson omits from this quotation Magistrate Judge Hillman's explanation that the perceived difficulty was due to "the broad definitions utilized by Pickle." (Doc. 107 p. 3). Magistrate Judge Hillman's accompanying footnote references the Defendants' claim that Defendant Pickle's definitions were modeled after those of the Plaintiffs. (Doc. 107 p. 3 at fn. 1).

"... Plaintiffs' Efforts to Narrow the Scope of Discovery Were Justified." *(Doc. 140 p. 4).*

The portion Simpson quoted from Magistrate Judge Hillman's order of September 11, 2008, to make such a claim was immediately followed by Magistrate Judge Hillman's taking the Plaintiffs to task for those very efforts. (*supra* p. 2; Doc. 107 pp. 3–4).

"To Circumvent the Discovery Delays and Limitations ... in This Forum ...." *(Doc. 140 p. 5).*

> To circumvent the discovery delays and limitations they encountered in this forum as these issues worked their way to a conclusion, Defendants served at least six third-party subpoenas seeking more or less the same information as was requested from the Plaintiffs.

(Doc. 140 p. 5). Yet this bogus accusation was already refuted in the District of Minnesota. (Doc. 63-28 p. 11).

- Defendant Pickle's original requests to produce were served on November 29 and December 7, 2007. (Doc. 42 ¶ 6).
- Plaintiffs' counsel in the status conference of December 14, 2007, acknowledged that four

subpoenas had already been served (Doc. 144 p. 12), which were the original ones served on Remnant, GHS, Century Bank and Trust, and MidCountry. (Doc. 76-2 pp. 34–38; Doc. 76-3 pp. 1–4, 8–11).

- The Plaintiffs' motion for a protective order was not filed until December 18. (Doc. 40).
- The Plaintiffs' responses to Defendant Pickle's requests to produce were not served until January 9, 2008. (Doc. 63-24 p. 20; Doc. 63-25 p. 22).

Thus it is a glaring fraud upon the court to assert that these subpoenas were an effort to circumvent anything, for nothing yet had arisen to circumvent. The Defendants simply read the Complaint with all its broad language, as well as their answer to the Complaint, and proceeded the best they knew how to conduct discovery to address the issues these pleadings contained.

"All of This ... Could Have Been Obtained Directly from the Plaintiffs ...." *(Doc. 140 p. 5).*

The Plaintiffs have been in defensive mode since the summer of 2007, and have never wanted to produce anything. The Plaintiffs only produced documents after the Defendants filed motions to compel, and even then those documents were nearly entirely non-substantive. (Doc. 35; Doc. 61; Pickle Aff. ¶ 26). When the Honorable Philip Frazier asked Simpson whether he would want to subpoena documents from GHS to see if GHS's documents and 3ABN's documents were different, Simpson admitted that he would. (Pickle Aff. Ex. F at p. 32).

"(See Affidavit of Walt Thompson ¶ 8, Doc. 123)." *(Doc. 140 p. 6).*

Simpson's reliance on Thompson's uncorroborated testimony is fatal. We have earlier noted the impossibly contradictory nature of some of Thompson's statements concerning evidence for Linda Shelton's alleged adultery. (Doc. 113 pp. 3–4; Doc. 114-4 p. 1; Doc. 114-5 p. 1; Doc. 114-6 p. 3). Thompson also claimed that the instant lawsuit "has only one purpose," "to expose the truth," and that "the law suit does nothing to hide truth," for "[w]e have nothing to hide." (Doc. 114-4 p. 2; Doc. 114-5 p. 1). If these statements by Thompson are not lies, then

Plaintiffs' counsel throughout this litigation *has acted without authorization* in obstructing discovery and continually seeking to draw a veil of secrecy permanently over this case.

Ignoring Thompson's lies regarding Linda Shelton's alleged adultery, we observe the following: If Thompson as 3ABN Board chairman authorized Plaintiffs' counsel to prevent the exposing of truth despite his statements to the contrary, then Thompson is a proven liar, and his testimony upon which the motion to dismiss was based is impeached. Once a liar, always a liar.

"The Only Legal Prejudice That Defendants Identified Was the Possibility That the Plaintiffs Would Refile the Litigation in Another Forum." *(Doc. 140 p. 7).*

Simpson fails to note that the Defendants' memorandum in opposition to the Plaintiffs' motion cited a number of other examples of legal prejudice, including the exhaustion of financial resources, the waste of time, effort, and expense preparing a defense in the instant case, meeting challenges of venue and jurisdiction in future cases, evidence spoliation, and loss of favorable rulings. (Doc. 126 pp. 14–15, 17–18).

"... $20,000 is for an undisclosed expert ...." *(Doc. 140 p. 9).*

As required by the confidentiality order, Simpson was served with copies of Exhibit A of that order, signed by four experts the Defendants retained. (Doc. 60 ¶ 4(v); Pickle Aff. ¶ 31, Ex. S at p. 2). Simpson was served around June 10, 2008, with a copy of the one Lynette Rhodes had signed, and thus the Defendants did disclose her name to Simpson. (Pickle Aff. ¶ 31).

PLAINIFFS' ARGUMENTS REBUTTED

I. LEGAL AUTHORITY FOR IMPOSITION OF COSTS, EXPENSES, AND FEES

A. Under Fed. R. Civ. P. 41(a)

We here quote part of *Puerto Rico Maritime Shipping Authority v. Leith* not cited by the Plaintiffs, which allows for the payment of costs *and* attorney fees:

> In *Cone v. West Virginia Paper Co.*, 330 U.S. 212, 217, 67 S.Ct. 752, 755, 91 L.Ed. 849 (1947), the Supreme Court noted that "(t)raditionally, a plaintiff ... has had an unqualified right, upon payment of costs, to take a

> nonsuit in order to file a new action after further preparation, unless the defendant would suffer some plain legal prejudice other than the mere prospect of a second lawsuit" (emphasis added). The Court noted that while the Federal Rules of Civil Procedure now restrict the plaintiff's formerly unlimited right to dismiss without prejudice, "Rule 41(a)(2) still permits a trial court to grant a dismissal without prejudice 'upon such terms and conditions as the court deems proper.' " *Id*.
>
> We do not read Rule 41(a)(2) as always requiring the imposition of costs as a condition to a voluntary dismissal, although it is usually considered necessary for the protection of the defendant. See 5 Moore's *Federal Practice* P 41.06 & n.2, at 41-83 to 41-84 (3d ed. 1981). The decision of whether or not to impose costs on the plaintiff lies within the sound discretion of the district judge, see *New York, C. & St. L. R. Co. v. Vardaman*, 181 F.2d 769, 771 (8th Cir. 1950), as does the decision of whether to impose attorney's fees, see Bready v. Geist, 85 F.R.D. 36, 36 (E.D.Pa.1979); *Blackburn v. City of Columbus, Ohio*, 60 F.R.D. 197, 198 (S.D. Ohio 1973); *Eaddy v. Little*, 234 F.Supp. 377, 380 (E.D.S.C.1964); *Lunn v. United Aircraft Corp.*, 26 F.R.D. 12, 19 (D.Del.1960).

668 F.2d 46, 51 (1st Cir. 1981). Other circuits have noted the same:

> Typically, a court imposes as a term and condition of dismissal that plaintiff pay the defendant the expenses he has incurred in defending the suit, which usually includes reasonable attorneys' fees. See 5 Moore's *Federal Practice* p 41.06 at 41-82 to 41-86 (1993). As we have previously observed, such terms and conditions "are the quid for the quo of allowing the plaintiff to dismiss his suit without being prevented by the doctrine of *res judicata* from bringing the same suit again." *McCall*, 777 F.2d at 1184.

Marlow v. Winston & Strawn, 19 F.3d 300, 303 (7th Cir.1994).

> The purpose of awarding attorneys' fees on a voluntary dismissal without prejudice is to compensate the defendant for the unnecessary expense that the litigation has caused. See *Galva Union Elevator Co. v. Chicago and North Western Transportation Co.*, 498 F.Supp. 26, 27-28 (N.D.Iowa 1980); 9 C. Wright & A. Miller, *Federal Practice and Procedure* Sec. 2366, at 178-80 (1971).

Cauley v. Wilson, 754 F.2d 769, 772 (7th Cir. 1985).

B. Under 28 U.S.C. § 1927

Contrary to the Plaintiffs' assertion that "the only legal basis for an award of costs would be the Court's discretion under Fed. R. Civ. P. 41(a)(2)," the U.S. Congress has authorized the imposition of "excess costs, expenses, and attorneys' fees" in a case such as this one:

> **Counsel's liability for excessive costs**
>
> Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

28 U.S.C. § 1927.

The record demonstrates that the Plaintiffs failed to litigate their various claims, and instead have been in defensive mode for a year and a half. Knowing that they could never prevail on their copyright and trademark claims, and their claims concerning Shelton's divorce and Tommy Shelton, they purposely chose to try to limit discovery to little more than financial issues, and then sought to prohibit discovery of those issues as well, all without amending their complaint. The Plaintiffs sought to block discovery of documents from MidCountry, Remnant, and GHS. The Plaintiffs refused to produce any evidence that any donor to 3ABN ceased giving because of the Defendants, save a letter from a single anonymous trustor who was concerned about "documentation." (Doc. 10-4 p. 4).

Yet even before the suit was filed, Plaintiffs and their counsel knew about Shelton's laundering of money through Remnant, and thus that Shelton had failed to disclose his substantial Remnant income on his July 2006 financial affidavit. (*supra* p. 3). Before the suit was filed, Plaintiffs and their counsel knew they could not prevail on any claim.

Thus, this entire case from beginning to end, along with the related cases in Michigan, Minnesota, and Illinois, consists of unreasonably and vexatiously multiplied proceedings. And this Court would not be abusing its discretion in requiring the *attorneys* in this case to personally compensate the Defendants for all their *costs, expenses,* and *attorneys' fees*.

C. Under the Court's Inherent Powers

In *Chambers v. NASCO, Inc.* 501 U.S. 32, 49–51 (1991), the Supreme Court:

> ... upheld the imposition of monetary sanctions against a litigant and his attorney for bad-faith litigation conduct in a diversity case. Some of the conduct was covered by a federal statute and several sanction provisions of the Federal Rules of Civil Procedure, but some was not, and the Court held that, absent a showing that Congress had intended to limit the courts, they could utilize inherent powers to sanction for the entire course of conduct, including shifting attorney fees, ordinarily against the American rule.

Constitution of the United States of America (U.S. Government Printing Office, 2004). Thus, given the circumstances of this case, it would not be an abuse of discretion to impose all costs, expenses, and fees upon the Plaintiffs.

II. PLAINTIFFS' OBJECTIONS REBUTTED

A. Expenses Reasonably and Necessarily Incurred

The costs, expenses, and fees referenced in the instant motion were reasonably and necessarily incurred. (Pickle Aff. ¶¶ 32, 37, 45, 53; Affidavit of Lynette Rhodes; Affidavit of Laird Heal (hereafter "Heal Aff.")). Attorney Heal has submitted an additional invoice for later services amounting to an additional $9,524. (Heal Aff. ¶¶ 8–9, Ex. A pp. 16–20).

B. Imposition of Costs Necessary to Avert Legal Prejudice

The Plaintiffs have made it clear that they are not done litigating against and harassing the Defendants. (*supra* pp. 6–9). Defendant Pickle also made clear that, given the enormous resources of the Plaintiffs, "intense, 18-month conflicts separated by voluntary dismissals without prejudice will exhaust his resources and prejudice his ability to defend himself, even *pro se*." (Doc. 126 p. 14; Doc. 127 ¶¶ 35–36). The imposition of costs, expenses, and fees will avert this legal prejudice.

C. Defendant Pickle's Time

The nearly 1205 hours Defendant Pickle logged in defending himself in this litigation represents a considerable loss of income, since he was thus prevented in engaging in his usual employment. (Pickle Aff. ¶ 53). That loss of income is as much an expense of this litigation as

any other, and is but peanuts considering Simpson's hourly rate of $300. (Doc. 73 ¶ 11).

D. Travel Expenses for Two Trips

The reported mileage and miscellaneous travel expenses were as much expenses of this litigation as any other. These trips resulted in securing, *inter alia*, (a) documentation from 1998 of 3ABN's virtual gift of a house to Shelton as a retirement benefit whereby Shelton profited by almost $129,000 in one week, and (b) the 1757-page record from 3ABN's property tax case in which Shelton testified under oath that he received neither housing nor retirement benefits. (Pickle Aff. ¶¶ 32–36).

E. Miscellaneous Expenses

The Plaintiffs object to the $6 shower. (Doc. 140 p. 16). Of the expenses associated with the two fact-finding trips, only one night's lodging was obtained in a motel. Ordinarily, the cost of a shower is included in the price of a room. However, if in the interests of economy other arrangements are made for repose, one might have to instead obtain a shower as a trucker does, by purchasing one at a truck stop. Doing so makes that cost no less a travel expense than the accommodations attorneys that charge $300 an hour may be more accustomed to.

But the bulk of this category of expense is not the $6 shower. It is the $3,535 cost ($3,682.50 – $147.91) of obtaining MidCountry's records, records that the Defendants have yet to see. (Doc. 132 Table 2). If any party files a future suit over similar claims, this expense would have to be paid yet again for such purposes as, *inter alia*, locating the $10,000 check said to have been sent to Tommy Shelton, tracking all transfers of funds between 3ABN and Shelton, and verifying Shelton's claims on his July 2006 financial affidavit. This $3,535 expense is a concrete example of duplicative discovery costs.

The record will now contain explanations for the various other expenses of this category. (Pickle Aff. ¶¶ 38–44)

F. Copy Costs

With this reply memorandum, we provide a further breakdown and explanation of the copy expenses. (Pickle Aff. ¶¶ 45–52, Table 1). These copies of filings were necessitated by the obstruction of discovery by the Plaintiffs and their allies. (Pickle Aff. ¶¶ 45–52).

CONCLUSION

The Court may impose some or all of the costs, expenses, and fees incurred by the Defendants in the instant case utilizing Fed. R. Civ. P. 41(a)(2), 28 U.S.C. § 1927, or the Court's inherent powers. Doing so will help avert the legal prejudice the Defendants find themselves in by preventing their resources from becoming exhausted, for the Plaintiffs have by no means decided to drop all legal proceedings against the Defendants. At present, future litigation will require duplication of discovery, and greater expense to compensate for the spoliation of evidence and loss of witnesses. The Court should grant this modest relief to the Defendants.

Respectfully submitted,

Dated: December 8, 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

AFFIDAVIT OF SERVICE

Under penalty of perjury, I, Bob Pickle, hereby certify that this document, with accompanying affidavits and exhibits, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: December 8, 2008

/s/ Bob Pickle
Bob Pickle

software copyright and patentability, I have been actively practicing law since 2004.

5. I am familiar with the rates charged by private attorneys in the area and field of practice, most often by seeing fee applications and observing hearings on the same. The billing rate for attorneys in the Commonwealth and my practice areas is most commonly quoted at $250 per hour. My currently quoted rates range from $175 to $200 per hour, with consideration given to clients who have a genuine inability to pay; this is indicative more of the clients I choose to represent than the value of my services.

6. An award of fees is not based on the contracted value agreed by the opposing party and counsel, but rather on the reasonable value of the services provided.

7. The billing submitted to the Defendant Robert Pickle represents a reasonable or even modest charge for the required work involved in the defense of complaint of defamation and infringement upon intellectual property.

8. Defendant Pickle chose to enter his appearance pro se but in the transition period this office continued to provide considerable service, first to forward all court orders until he had full ECF access, second to review the documents Mr. Pickle was preparing and third to provide access to the Court when needed. It is to Mr. Pickle's credit that he very quickly showed that he could rely on his own devices – although he has continued to ask when new situations have arisen.

9. The initial billing was prepared after being requested by Defendant Pickle after the case was dismissed. The amount of this invoice was $53,600.25. The additional assistance rendered Defendant Pickle is detailed in the invoice covering the period from October 1, 2007 to January 1, 2008, with a few telephone calls shown in a later period. This amounted to an

additional $9,524.00.

10. The invoices were prepared by taking time records and charges and adding the unbilled items in Quickbooks Professional. Each item has a source from a contemporaneous record; the preparation was complicated in that there is more than one source file and the software does not support combining sets of transactions other than by reentering them. The second invoice was prepared using these other records, for instance. While there is a standard charge for each document such as an electronic mail message which is, as a rule of thumb, the amount of time taken to review the document and electronically file it for later easy access as required (experience has shown this indexing step is essential), this time charge is adjusted where time records show that more or less time was taken.

11. The time spent by this office on behalf of Defendant Pickle in connection with the defense of the complaint and the fees billed are reflected in the invoices attached as Exhibit A. The rates charged and fees incurred are reasonable given the time and labor required, fees customarily charged in this area for similar legal services, the amount of work required and the results obtained and my experience, reputation and ability as a lawyer.

RESPECTFULLY SUBMITTED BY:

Laird J. Heal Esq.
COUNSEL FOR DEFENDANT
ROBERT PICKLE

By: /s/ Laird J. Heal
Laird Heal, Esq.
78 Worcester Road
P.O. Box 365
Sterling, MA 01564
978-422-0135

Date: December 8, 2008

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. On September 22, 2008, Remnant Publications, Inc. (hereafter "Remnant") served upon the Defendants documents ordered to be produced by Magistrate Judge Ellen S. Carmody in compliance with the Defendants' subpoena *duces tecum*.

2. The Defendants will seek to file under seal as **Exhibit A** a selection of the documents from Remnant pertaining to payments of kickbacks and/or royalties from Remnant to DLS Publishing, Inc. (hereafter "DLS") from 2005 through 2007. These documents, coupled with statements by Walter Thompson and Gerald Duffy that the law firm had done a thorough review of the Plaintiffs' finances, demonstrate whether or not the Plaintiffs and their counsel knew that the instant suit was frivolous.

3. Attached hereto as **Exhibit B** is information from Delta Airlines regarding Linda

Shelton's ticket to Florida purchased by Three Angels Broadcasting Network, Inc. (hereafter "3ABN") at the request of Brenda Walsh. While Brenda Walsh claims that Linda Shelton's ticket was used, the records of Delta Airlines reveal that it was never used.

4. The Defendants spent a considerable amount of time preparing a motion asking leave of the Court to issue subpoenas *duces tecum* upon the EEOC and the California Department of Fair Housing and Employment in order to obtain the investigative files regarding the 3ABN Trust Services Department whistleblowers.

5. Refreshingly, Plaintiffs' counsel represented that he thought the Defendants should be entitled to obtain from those agencies the documents the Plaintiffs had produced during the course of the investigations.

6. By these subpoenas the Defendants wanted to explore the possibility that the Plaintiffs had tainted those agencies' investigations by failing to disclose key documents and information, similar to what the Plaintiffs did in this case and in 3ABN's property tax case. (Doc. 126 pp. 3, 16–17; Doc. 81-4 p. 48; Doc. 127-42; Doc. 127-43 pp. 3–4).

7. As I was pondering being deposed by the Plaintiffs, it occurred to me that Plaintiffs' counsel ought to be able to show me where I said such and such before I testified under oath that I had actually said such and such. It's been more than two years now since I initially wrote about Danny Shelton's (hereafter "Shelton") handling of the sexual assault allegations made by his former step-daughter, the child molestation allegations against Tommy Shelton, the refusal of 3ABN to produce as promised the alleged phone card phone record evidence against Linda Shelton, and other matters. I characteristically try to make sure every word I say is 100% accurate, so I wanted to review the alleged statements the Plaintiffs have accused me of writing.

8. Such a course as the above would alleviate another difficulty: Some statements in

the Plaintiffs' complaint are not correctly worded or properly attributed. Requiring the Plaintiffs to produce the actual document containing the alleged statements before I testify whether I said something would allow the correct wording and attribution to be entered into the record.

9. For example, Derrell Mundall (hereafter "Mundall"), Shelton's former son-in-law, was the source of the allegations found at ¶¶ 46b–d of the complaint. Mundall has given me permission to reveal his identity. Since Mundall claims to have bought the van of ¶ 46b from 3ABN for around $10, and since Mundall claims to have been the recipient of the furniture of ¶ 46d, the allegations appear credible.

10. Even so, Save-3ABN.com's article on these allegations refers to these incidents as allegations, allowing for the possibility that these incidents never occurred. However, the complaint words ¶¶ 46b–46d as if the Defendants claimed that these incidents actually occurred, something they never did, to my knowledge.

11. 3ABN never produced documents pertaining to how much Mundall paid for the van he bought from 3ABN, even though such documents should have been produced in response to my requests to produce served on November 29, 2007, and my revised requests served on September 26, 2008.

12. Another example of a wrongly worded or attributed allegation in the complaint is ¶ 46j. Attached hereto as **Exhibit C** is the closest thing I could find to the Defendants accusing Shelton of using 3ABN's planes for personal travel among material the Defendants wrote prior to the filing of the lawsuit. But this posting was little more than a quotation from page 42 of Administrative Law Judge Barbara Rowe's January 28, 2004, property tax case opinion (attached hereto as **Exhibit D**), and was followed by the suggestion by Gregory Matthews (also in Exhibit B) that Shelton had used the jet for his honeymoon. Thus, if the charge is really defamatory, Rowe and/or Matthews should have been sued, not the Defendants.

13. I told Attorney Gregory Simpson (hereafter "Simpson") in a telephone conversation that I expected him to be able to show me a document where I said what the Plaintiffs alleged that I said. In more than one telephone conversation I challenged him to find anywhere prior to the filing of this lawsuit where I had said that Shelton used the 3ABN jets for personal use. I also challenged him to show where we had ever stated that the allegations of ¶¶ 46b–46d had indeed occurred.

14. Attached hereto as **Exhibit E** is a private message written by Defendant Joy on October 18, 2008, in which he refers to Simpson's verbal settlement offer of October 17, 2008. Defendant Joy refers to the fact that Simpson had told me on October 17 that he would not file a motion to dismiss.

15. Attached hereto as **Exhibit F** is the transcript of the October 22, 2008, motion hearing in our miscellaneous case in the Southern District of Illinois.

16. Attached hereto as **Exhibit G** is Simpson's October 23, 2008, email in which he states that he will not be producing documents by October 27, which contradicts what he said in southern Illinois the day before on page 35 of Exhibit F.

17. Attached hereto as **Exhibit H** is Simpson's October 30, 2008, email, sent not 90 minutes after the end of the status conference of that day, in which he threatens us if we disclose anything pertaining to "confidential" documents. His list of "confidential" documents includes ones obtained from the Community Church of God pertaining to the child molestation allegations against Tommy Shelton, and a video of a public piano concert by Tommy Shelton.

18. Neither Defendant Joy nor myself can locate any pre-dismissal notice from the Plaintiffs that they considered confidential the documents we obtained by way of third-party subpoenas from Kathy Bottomley and the Community Church of God. We do not believe we ever received any such notice.

19. Attached hereto as **Exhibit I** is Simpson's October 31, 2008, email in which he threatens Defendant Joy because Defendant Joy had insinuated that Shelton received at least $300,000 a year in book deals, a figure given us by Nicholas Miller in the fall of 2006.

20. Attached hereto as **Exhibit J** are relevant pages of Remnant's 2007 IRS Form 990.

21. Attached hereto as **Exhibit K** is an email from Mundall, quoting an internet post attached hereto as **Exhibit L.** Mundall told me in this email that, even though the instant lawsuit was dismissed, Shelton will not stop until "he has you completely ruined and incapable of ever living a normal life again."

22. Attached hereto as **Exhibit M** are relevant pages of my September 20, 2007, answers to the Plaintiffs' interrogatories. Of the 64 pages of answers, 41 pages (64%) concerned information regarding potential witnesses. Below are the 121 potential witnesses I listed in my answers to the interrogatories:

Arild Abrahamsen	Sherry Avery
Keeper of the records at Absher-Arnold Motors	
Vicki Barnard	Cheri Bethune
Richard Bethune	Kathi Bottomley
Bruce Chance	Tammy Chance
Carole Chapman	May Chung
Duane Clem	Roger Clem
Scott Clem	Tracy Clem
Cindy Conard	Ron Cristman
David Cronin	Brenda Cullum
Jerry Cullum	Larry Cullum
Robert 'Bob' Davis	Roger Deason
Troy Deason	Kenneth A. Denslow
Brad Dunning	Glenn Dryden
Gerald Duffy	Mable Dunbar
Bonnie Ensminger	David Everett
Larry Ewing	Mark Finley
Greg Firestone	Melody Shelton Firestone
Merlin Fjarli	Herald Follett
Oriana Frost	Trenton Frost
Jay Gallimore	Robert Gentry
Everlina Germany	Jim Gilley

[Ann] Greer	[Jim] Greer
Barbara Hall	Gary Hall
Dee Hildebrand	Bill Hopper
Charlotte Hopper	Greg Houseworth
Bill Hulsey	Stan Jensen
Barbara Kerr	Kay Kuzma
Harold Lance	Hope LeBrun
Stephen Lewis	John Lomacang
Alice Loucks	Alan Lovejoy
Gregory Matthews	Ellsworth McKee
Donna McNeilus	Garwin McNeilus
Fred Millea	Nick Miller
Alyssa Moore	Nathan Moore
Greg Morikone	Derrell Mundall
C A Murray	Samantha Nelson
Steve Nelson	Joel Noble
Joe O'Brien	Nancy O'Brien
Greg Owen	Jan Paulsen
Kevin Paulson	Wintley Phipps
Darlene Pickle	Frank Pitts
Shelley Quinn	D. Michael Riva
Sharon Robberson	Larry Romrell
Joan Russell	Robert Russell
Brandy Shelton	Brenda Shelton
Carol Shelton	Danny Shelton
Ema Lou Shelton	Kenny Shelton
Linda Shelton	Rick Shelton
Ronnie Shelton	Steve Shelton
Teresa Shelton	Tommy Shelton
William Shelton	Stan Smith
Hal Steenson	Mollie Steenson
Bruce Steh	Gregory Scott Thompson
Walter C. Thompson	Ervin Thomsen
Johann Thorvaldson	Carmelita Troy
Cindy Tutsch	Alex Walker
Brenda Walsh	Larry Welch
Leonard Westphal	Bill Whitington
Gloria Wilson	Dude Wood
Judy Wood	Deb Young

23. Attached hereto as **Exhibit N** are my non-document Rule 26(a)(1) disclosures.

My Rule 26(a)(1) disclosures contained the following 14 additional potential witnesses:

Gary Avery	Byford Barnard
Doris Barnard	Jack Barwick
Pat Barwick	Leland Hale
Ben Jordan	Janet McLerren

Charlie Meadows	Sue Meadows
Dorothy Mitchell	Holly Price
Melody A. Shelton	Lou Westphal

24. Attached hereto as **Exhibit O** is Defendant Joy's witness list that was part of his Rule 26(a)(1) disclosures. This list contains the following 28 additional potential witnesses not found in the above two lists:

Dava _____	Doug Batchelor
J. Wayne Coulter	Yoneide Dinzey
Idalia Dinzey	Brian Dodge
Brian Drew	Ethel T. Everett
Elora Ford	Robert Ford
Keeper of the records of Hartland Investigative Services	
Keeper of the records of Hodds Investigations	
William Kerr	Rodney Laney
Tammy Larson	Denzil McNeilus
James Pederson	Mark Rogers
Bob Shelton	Rob Shelton
Kim Smith	Scott Tanner
G. Ralph Thompson	Owen Troy
Dave Turner	Brad Walker
Lynda Welch	Walter Wright

25. Attached hereto as **Exhibit P** is Defendant Joy's notice of self discovery pursuant to Fed. R. Civ. P. 26(a)(1). It states that Defendant Joy produced "all 3ABN digitalized documents found on" his computer, and a "CD of all stored and saved e-mails relating in any way to 3ABN From August 2006 to July 18, 2007."

26. All discovery documents that the Plaintiffs ever produced were produced as PDF's on CD's, except for about 207 pages, a booklet, and some video presentations. Of the thousands of pages in PDF's, none were indexed. I spent a considerable amount of time putting each separate document into its own PDF, giving each PDF a descriptive name that would give us some sort of idea of its contents. None of the PDF's the Plaintiffs produced were text-based, meaning that we would not be able to search them using standard Adobe Acrobat tools. All of the Plaintiffs' productions in this case were nearly entirely non-substantive.

27. Shelton never produced any of his tax records or accounting records for our inspection. Neither did he produce any corporate records for DLS or any other non-3ABN company he controls.

28. 3ABN produced its financial statements and its federal, Illinois, Oregon, and California tax returns for most years from 2001 through 2005. However, except for the California returns (which in part were illegible), and perhaps an Oregon return or two, the Defendants already had these since they are part of the public record.

29. Attached hereto as **Exhibit Q** is the letter with enclosed motion that I served on January 3, 2008, upon Plaintiffs' counsel and Tommy Shelton, putting them on notice that the Defendants were planning on adding Tommy Shelton and 3ABN's officers and directors as named plaintiffs in the instant case. On the last page are the certified mail receipts for these two mailings.

30. Attached hereto as **Exhibit R** is the letter with enclosed motion that I served on January 3, 2008, upon Nicholas Miller, Linda Shelton's counsel, and Mundall, putting them on notice that the Defendants were planning on adding them as third-party defendants in the instant case using the grounds of detrimental reliance. On the last page are the certified mail receipts for serving Nicholas Miller and Mundall.

31. I served Simpson with copies of Exhibit A of the confidentiality order, signed by the four experts we had retained. Attached hereto as **Exhibit S** is the letter I sent to GHS's counsel, which had attached copies of three of the four signed Exhibit A's. This letter was also filed as pages 20–21 of Docket Entry # 28-32 for Case No. 08-mc-40019-FDS here in the District of Massachusetts. I served Simpson copies of the same three signed Exhibit A's at or about the same time. Thus, we did disclose to Simpson that Lynette Rhodes was one of our experts.

32. I have traveled to the Franklin County area on two occasions in order to conduct research and to gather documents pertaining to and necessary for the instant case. The mileage pertaining to the lawsuit that is associated with those trips appeared correctly in Table 1 of Docket Entry # 132.

33. These two trips resulted in our securing quite a bit of helpful material. Just as two examples, we were able to secure deeds from the Franklin County Courthouse which documented that Shelton had bought a house from 3ABN for $6,139 and sold it one week later for $135,000.

34. Another suspicious transaction we secured deeds of was when Charles Lane (hereafter "Lane") sold a piece of property to 3ABN the same day that Lane bought a piece of property from Shelton. The sale to 3ABN gave Lane the cash to buy from Shelton, thus representing yet another instance of money from 3ABN clandestinely flowing into Shelton's pockets.

35. On the second trip we again got quite a bit of helpful material, not the least of which was the securing of the 1757-page record from 3ABN's property tax case, using the Brother 8860DN I had purchased to process documents from Gray Hunter Stenn LLP (hereafter "GHS"). This record contained a lot of interesting tidbits, like when Mollie Steenson and Linda Shelton testified under oath that 3ABN's programming was not copyrighted. This disproves the Plaintiffs' allegation in this case that the Defendants committed copyright infringement by posting on the internet a portion of a 3ABN broadcast.

36. Yet another tidbit was when Shelton testified under oath in 2002 that he did not receive housing or retirement benefits, and that he had not asked the board for any. This fatally contradicted 3ABN Board chairman Walter Thompson's assertion that Shelton had asked to be able to purchase a house from 3ABN in 1998 for $6,139 so that he could build up equity for

retirement.

37. Various miscellaneous and necessary expenses I have paid for in the course of this litigation were listed correctly in Table 2 of Docket Entry # 132. I will now make some comments of the value of some of these items not already referred to elsewhere.

38. *Mending Broken People*, *inter alia*, helped establish that Shelton was funneling money attributable to his pre-divorce activities through DLS, since this book was mostly done before Shelton's divorce in June 2004, DLS wasn't incorporated until November 30, 2004, and DLS was being paid royalties on sales of this book.

39. The postage, certified mail fees, faxing fees, miscellaneous case filing fee, and service of process fees are pretty much self-explanatory. Table 2 of Docket Entry # 132 certainly didn't include all the postage I paid during the course of this case.

40. There were times I had copies made of necessary court filings at my local bank before mailing those filings. The costs appearing in Table 2 of Docket Entry # 132 represent the actual costs paid.

41. I received an old 3ABN promotional CD that was terribly scratched. I was able to retrieve the material from the CD through the application of various substances to the surface of the CD, but in the process of doing so my DVD burner ceased functioning properly. Thus the $35.50 expense for a replacement.

42. The $395 I paid to have John Kannenberg assist me on my second fact-finding trip was well worth it. We were able to cover many more miles much quicker than if I had driven alone, and his real estate experience was helpful in the Franklin County Courthouse. He was able to research some things while I researched others, and I appreciated his help in lugging equipment around. His cellphone came in handy, though I had to pay the excess minutes that my usage caused, which amounted to $50.40.

43. In preparation for processing GHS's documents, besides the Brother 8860DN, I also purchased a hard drive and an external enclosure for that hard drive for $86.95. We needed to have enough redundance as far as electronic storage goes so that documents would not be lost if the hard drive crashed on my laptop computer. This setup would also facilitate the transfer of documents from one computer to another, and the processing of those documents.

TABLE 1: Copying Costs

Date	Documents	Pages	Sets	Copies	Rate	Cost
05/01/08	Motion to Compel Remnant	2	4	8	$0.10	$0.80
	Proposed Order	1	4	4	$0.10	$0.40
	Memorandum for Motion	12	4	48	$0.10	$4.80
	Affidavit of Joy for Motion	7	4	28	$0.10	$2.80
	Affidavit of Pickle for Motion	4	4	16	$0.10	$1.60
	Exhibits	110	4	440	$0.10	$44.00
	Affidavit of Service	1	4	4	$0.10	$0.40
06/10/08	Motion to Appear by Telephone	2	4	8	$0.10	$0.80
	Proposed Order	1	4	4	$0.10	$0.40
	Memorandum for Motion	3	4	12	$0.10	$1.20
	Affidavit of Pickle for Motion	2	4	8	$0.10	$0.80
	Affidavit of Service	1	4	4	$0.10	$0.40
07/03/08	Motion to Compel GHS	5	4	20	$0.10	$2.00
	Memo. for Motion/Response	10	4	40	$0.10	$4.00
	Affidavit for Motion/Response	12	4	48	$0.10	$4.80
	Exhibits Including Sealed	224	3	672	$0.10	$67.20
	Exhibits Excluding Sealed	218	1	218	$0.10	$21.80
08/20/08	Opposition to Remnant's Appeal	10	4	40	$0.10	$4.00
	Affidavit of Pickle for Opposition	7	4	28	$0.10	$2.80
	Exhibits	105	4	420	$0.10	$42.00
	Motion to File Under Seal	2	4	8	$0.10	$0.80
	Sealed Exhibits	6	4	24	$0.10	$2.40
	Affidavit of Service	1	4	4	$0.10	$0.40
09/12/08	Status Report to S.D.IL	5	4	20	$0.10	$2.00
	Affidavit of Pickle	2	4	8	$0.10	$0.80
	Exhibits	14	4	56	$0.10	$5.60
Total						**$219.00**

44. PACER charges, the cost of sleeves for CD's or DVD's of data produced in the case, and the cost of downloaded news articles used as exhibits (Doc. 109-12 through Doc. 109-14) appear to be the only other miscellaneous expenses in Table 2 of Docket Entry #132 not

already mentioned. These are pretty self-explanatory.

45. 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 necessary filings for the courts in the Western District of Michigan and the Southern District of Illinois, where ECF filing was not permitted. Table 1 below correctly presents the total number of copies run off of this unit for those filings (including copies for opposing counsel), times 10¢ per copy.

46. I will list a few additional notes on Table 1. I have in this Table 1 broken down the numbers on Table 3 of Docket Entry #132 into further detail, for it never dawned on me that Plaintiffs' counsel would quibble about the necessity of these copies, since he had received copies of all the above filings.

47. In breaking the numbers down, I discovered that I had omitted the emergency motion to appear by telephone, the sealed exhibits filed in Michigan, and three copies of the status report, items highlighted in yellow above. Thus the above total is a little higher than the total on Table 3 of Docket Entry # 132.

48. In the Western District of Michigan, two copies were served upon the court, one copy upon Remnant's counsel, and one copy upon Plaintiffs' counsel, a total of four copies.

49. In the Southern District of Illinois, one copy was served upon the court, one copy upon counsel for GHS, one copy upon Plaintiffs' counsel in Minnesota, and one copy upon Plaintiffs' counsel in Illinois, a total of four copies. (Plaintiffs counsel in both Illinois and Minnesota had both been identified as attorneys to be noticed.)

50. The motion to compel Remnant was necessary since Remnant took the position that documents pertaining to royalties Shelton received from Remnant were irrelevant to the

question of how much royalties Shelton received from Remnant. The emergency motion to appear by telephone was necessary because ordinarily either the parties or their counsel must appear in person for motion hearings, and appearing by telephone saved considerable expense. After Remnant appealed from the magistrate's decision, it became necessary to file our opposition to that appeal.

51. The motion to compel Gray Hunter Stenn LLP served also as the necessary response to an order to show cause that was issued because of the Plaintiffs' obstructive and untimely-by-30-days motion to quash our subpoena *duces tecum* of GHS. The order to show cause was issued before the Defendants had received the motion to quash by mail. The proceedings in that court resulted in an order that a status report be filed after this Court ruled on the motion to limit the scope of discovery, which is why the filing of the status report was necessary.

52. The exhibits served upon counsel for GHS was six pages shorter than the exhibits served on the court and Plaintiffs' counsel since certain documents had been designated as confidential by the Plaintiffs, and GHS's counsel, to my knowledge, was not authorized to see them.

53. Table 4 of Docket Entry 132 is a summary of the hours I have logged working on my defense. There were times when I did not record my hours, but for when I did, the totals given are both correct and necessary. These hours represent considerable loss of income because preparing my defense has amounted to practically a full time job. Thus, the expense of preparing my defense is represented by that loss of income. For work I do in this locality where I live, I charge $25 an hour, which is but a small fraction (8.33%) of the $300 an hour Simpson charges. (Doc. 73 ¶ 11).

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. Attached hereto as **Exhibit A** is the September 22, 2008, cover letter sent by counsel for Remnant Publications, Inc. (hereafter "Remnant") with the documents produced by Remnant. This letter indicates that Remnant was the designating party that designated the Remnant documents as being confidential.

2. Attached hereto as **Exhibit B** is an October 24, 2008, sent by Remnant's counsel indicating that Remnant was not the designating party. The Defendants had not previously been notified of this fact.

3. I was present by telephone at the motion hearing of March 4, 2008, in the District of Minnesota before the Honorable Artur J. Boylan. I recall Magistrate Judge Boylan expressing doubt that Danny Lee Shelton as an individual could have standing to move the court to quash a

subpoena seeking records of of a bank that pertained to DLS Publishing, Inc. Magistrate Judge Boylan could not see how if incorporation insulated the individual from legal liability, how that individual could legally act as if that corporation were his DBA.

4. The source quoted on pages 141–142 of Docket Entry # 81-2 also stated regarding Remnant's royalty payments, "As far as the line item Royalties - they pay several other Authors a royalty which doesn't amount to any thing." Another source claimed that up to at least around mid-2004, Remnant was not doing printing or publishing for Three Angels Broadcasting Network, Inc. However, after the incorporation of DLS on November 30, 2004, Remnant printed *The Antichrist Agenda* for DLS. (Doc. 63-32 pp. 11, 27–28).

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 8th day of December, 2008.

/s/ Bob Pickle
Bob Pickle
Halstad, MN 56548
Tel: (218) 456-2568

Subscribed and sworn to me
this 8th day of December, 2008.

/s/ Lori J. Rufsvold
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.

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO FILE UNDER SEAL

This constitutes the Plaintiffs' Opposition to Defendants' Motion to File Under Seal (Doc. 153). Over the relevancy objections of Remnant Publications, Inc. and the Plaintiffs, Defendants convinced the District Court for the Western District of Michigan to allow them access to records regarding dealings between Remnant and the Plaintiffs. However, the Michigan court expressly ordered that the Remnant documents were being produced "subject to the Protective Order already entered in the underlying case." (Simpson Aff. Ex. 1).

On October 30, 2008, as part of its order dismissing the case, this Court ordered Defendants to return all confidential documents. (Electronic Clerk's Notes for proceedings held before Judge F. Dennis Saylor, IV – Affidavit of M. Gregory Simpson Ex. 2). Defendants refused to comply with this Court's order, both with respect to the

Remnant documents at issue in this motion and with respect to all other documents designated as confidential under Judge Hillman's Protective Order entered on April 17, 2008 (Doc. 60). (*See* Simpson Aff. Exs. 3 & 4). Judge Hillman's order had permitted the designation of documents as "confidential" whether they were produced by a party or a third party. (Doc. 60 at pp. 1-2). The Remnant documents were designated as confidential by both Remnant and Plaintiffs. They were ordered produced with that express understanding.

Instead of complying with this Court's order to return the Remnant documents, Defendants began talking freely about them on the internet, stating falsely that they prove wrongdoing by the Plaintiffs. (*See* Simpson Aff. Exs. 5 and 6). At the same time, Defendant Joy began making veiled death threats against the Plaintiffs, suggesting that Plaintiff Shelton was like a conquered king and "you know what they do with conquered kings? Ask the czar and his entire family!!!" (Simpson Aff. Ex. 6), and referring to his actions against Shelton and supporters of the Plaintiffs as "ethnic cleansing." (Simpson Aff. Ex. 7).

Now, in a rather transparent effort to publicize documents that had no relevance to the underlying lawsuit and even less relevance to the motion at hand, Defendants move to file Exhibit A to the Affidavit of Robert Pickle (Doc. 152), under seal. The benefit of filing the document under seal is somewhat diminished, however, by Defendants' description of Exhibit A as "a selection of the documents from Remnant [Publications, Inc.] pertaining to kickbacks and/or royalties from Remnant to DLS Publishing, Inc…." The point of filing these documents under seal is obviously undermined by Defendants'

characterization of what they represent. (In point of fact, the Remnant documents reflect perfectly legal transactions that have been fully vetted by certified public accountants and evidence no wrongdoing by anybody).

Quite frankly, Defendants have been talking about these documents on the internet for some time now. The only apparent purpose of this motion is to provide Defendants a forum to publicly characterize confidential documents that they have been ordered to return to Defendants. By calling these documents evidence of "kickbacks and/or royalties" in a public filing, the Defendants can now quote themselves endlessly on the internet, as they tend to do, with citation to a public filing for support. They have abused the judicial process hopefully for the last time.

The motion should be denied because Exhibit A does not contain admissible evidence. Evidence is admissible if and only if it is relevant. Fed. R. Evid. 402. Evidence is relevant if it tends to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Fed. R. Evid. 401.

This case is over. It has been dismissed. The only remaining issue is the pending motion by Defendants for reimbursement of "costs," which to them means every expense they incurred that is metaphysically related to this case, including Mr. Pickle's cost of showering at a camp site while supposedly traveling to investigate allegations related to the lawsuit. The Court is well-advised of the parties' positions with respect to that motion, and has no need of Mr. Pickle's laughably twisted take on the royalty payments reflected in the Remnant documents.

Pickle's affidavit indicates that the Remnant documents somehow show that the lawsuit itself was frivolous. This contention is itself frivolous. The lawsuit mentions royalties in just two allegations: Complaint ¶ 46(h) and 46(i) – alleging that Defendants defamed Plaintiffs by stating that Shelton refused to disclose royalties in divorce proceedings. There was never any dispute that Remnant paid royalties. The issue was whether these were properly disclosed. Defendants have never produced even an iota of evidence that the Remnant royalty payments were improperly characterized in any court proceeding or in IRS reporting. All the evidence has been to the contrary.

Defendants' motion for costs should not become a backdoor means of arguing the merits of the case. The point of dismissing the lawsuit was to stop the lawsuit prior to reaching a determination on the merits, to spare the resources of the Court and the parties. Defendants did not see fit to offer Exhibit A in connection with that motion, and should not be allowed to add new arguments and evidence in support of their position now. If the merits of a dismissed lawsuit are to be addressed in the context of a motion for costs, there is no opportunity for Plaintiffs to respond adequately. Further, the benefit of dismissing the case would be lost if Plaintiffs were now forced to produce all the evidence that supported the case in what would be an endless procession of affidavits from the many witnesses who would have proven Plaintiffs claims had the case proceeded to a resolution on the merits.

If the Court is inclined to consider Exhibit A, then Plaintiffs agree that it should be filed under seal. The best course of action would be to deny Defendants permission to file it at all.

Respectfully Submitted:

Dated: December 22, 2008

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

s/ M. Gregory Simpson

Gerald S. Duffy (MNReg. #24703)
M. Gregory Simpson (MNReg.#204560)
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-and-

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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 December 22, 2008.

Dated: December 22, 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 M. GREGORY SIMPSON

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

M. Gregory Simpson, 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 in the above-captioned action. I make this affidavit based upon my knowledge and information.

2. Attached to as Exhibit 1 is true and correct copy of an Order entered by U.S. Magistrate Judge Ellen S. Carmody in the U.S. District Court for the Western District of Michigan, Southern Division, which ordered production of the Remnant

Publications, Inc. documents "subject to the Protective Order already entered in the underlying case."

3. Attached as Exhibit 2 is a true and correct copy of this Court's order entered on October 30, 2008, ordering "all confidential documents returned."

4. Attached as Exhibit 3 is an email from the undersigned to the Defendants dated October 30, 2008, demanding return of confidential documents.

5. Attached as Exhibit 4 is an email from Defendants dated October 30, 2008, responding to Exhibit 3.

6. Attached as Exhibit 5 is an email from the undersigned to the Defendants dated October 31, 2008 and Defendants' response.

7. Attached as Exhibit 6 is an internet blog posting by Defendant Joy dated October 31, 2008.

8. Attached as Exhibit 7 is an internet blog posting by Defendant Joy dated October 31, 2008

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: December 22, 2008

s/M. Gregory Simpson
M. Gregory Simpson

Subscribed and sworn to me
this 22nd day of December, 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 December 22, 2008.

Dated: December 22, 2008

s/ M. Gregory Simpson
M. Gregory Simpson

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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2008 DEC 16 P 12:24
U.S. DISTRICT COURT
DISTRICT OF MASS.

Three Angels Broadcasting

V.

Case No. 07-40098-FDS

Joy et al.

RECEIPT

Received of the Clerk, U.S. District Court, the following documents and/or exhibits in the above-entitled case:

All documents from mid Country Bank for In camera review

Name: Christine Parizo

Address: Fierst Pucci & Kane LLP
64 Gothic St. Northampton MA 01060

Telephone: (413) 584-8067

Date: 12/16/2008

(exh&docs.rct - 09/96) [rcpt.] [krcpt.]

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

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO FILE UNDER SEAL

INTRODUCTION

The Defendants appreciate the Plaintiffs' opposition to the Defendants' motion to file under seal, for the Plaintiffs have thereby provided substantial, additional evidence that this Court has other legal authority than Fed. R. Civ. P. 41(a)(2) to impose costs, expenses, and fees.

Costs, expenses, and fees maybe shouldn't be imposed under Fed. R. Civ. P. 41(a)(2) if a voluntary dismissal is with prejudice. 8 *Moore's Federal Practice*, § 41.40[10][d][viii] (Matthew Bender 3d ed.). The pending appeal could therefore affect the decision of this Court on the Defendants' motion to impose costs.

Since the Plaintiffs have chosen to oppose the imposing of any costs, expenses, or fees, the Plaintiffs should be given the opportunity to withdraw their motion for voluntary dismissal before such are imposed as conditions of the voluntary dismissal. 8 *Moore's*, § 41.40[10][f].

Imposing costs, expenses, and fees under 28 U.S.C. § 1927 or the Court's own inherent

powers would neither be affected by the pending appeal, nor require the allowance of the withdrawal of the motion for voluntary dismissal. Important to the consideration of using such legal authority are documents produced by Remnant Publications, Inc. (hereafter "Remnant"), documents rendered more difficult to submit to this Court because they must be filed under seal due to the Plaintiffs' designation of these documents as confidential. Despite the Plaintiffs' unwillingness for this Court to see these documents, they should be filed under seal.

RELEVANT PROCEDURAL HISTORY AND FACTS

On October 23, 2008, the Plaintiffs filed a motion for voluntary dismissal. (Doc. 120). On October 30, 2008, that motion was granted, and the Honorable Court stated that the Defendants were permitted to "seek recovery" of "reasonable costs, expenses, and attorney's fees incurred in this litigation." (Doc. 141 pp. 14–16).

On November 13, 2008, the Defendants filed a relatively short motion, memorandum, and affidavit seeking such recovery. (Doc. 130 through Doc. 132). On November 26, 2008, the Plaintiffs filed an opposition brief, opposing the Defendants' recovery of even 1¢ of their costs, expenses, and fees. (Doc. 140). That opposition brief raised the issue of legal authority, falsely claiming that the only legal basis for recovery was Fed. R. Civ. R. 41(a)(2). (Doc. 140 pp. 1, 10).

Accordingly, the Defendants in their reply brief of December 8 cited authorities that show that this Court may impose costs, expenses, and fees alternatively on the basis of 28 U.S.C. § 1927 or its own inherent power, because of the bad faith and vexatious conduct of the Plaintiffs and their counsel. (Doc. 149 pp. 15–18. cf. pp. 2–15; Doc. 126 pp. 6–11). Since the Defendants contend that the Remnant documents constitute *prima facie* evidence of abuse of process and misuse of civil proceedings on the part of the Plaintiffs and their counsel, and because these documents therefore go to the question raised by the Plaintiffs of the legal authority for imposing costs, expenses, and fees, the Defendants sought leave of the Court on December 8, 2008, to file

a selection of these documents under seal as Exhibit A for the Court's review.

The Plaintiffs now seek to prohibit this Honorable Court from reviewing these documents (Doc. 158), thereby hindering the Defendants from fully establishing that in this action the Court may impose costs, expenses, and fees using 28 U.S.C. § 1927 or its own inherent powers.

PLAINTIFFS' ARGUMENTS REBUTTED AND REFUTED

A. "... relevancy objections of ... the Plaintiffs ...." (Doc 158. p. 1).

The Plaintiffs contend:

> Over the relevancy objections of Remnant Publications, Inc. and the Plaintiffs, Defendants convinced the District Court for the Western District of Michigan to allow them access to records regarding dealings between Remnant and the Plaintiffs.

(Doc 158. p. 1). Yet in reality, neither Plaintiff filed an appearance in the District Court of the Western District of Michigan. And regarding relevancy, Magistrate Judge Carmody's order could not have been clearer:

> Further, on reflection, the Court will not order those documents to be submitted for *in camera* review to the Massachusetts court because the relevance of the documents seems clear and there is already a protective order in the Massachusetts case.

(Doc. 127-38).

Between November 16 and November 21, 2007, Dwight Hall, president of Remnant Publications, Inc. (hereafter "Remnant"), told Defendant Pickle that he would not make it difficult for the Defendants to obtain the documents they needed. (Doc. 81-2 pp. 133–134; Doc. 81-3 pp. 2, 10; Pickle Aff. ¶¶ 1–5). Why then did Remnant resist so long in complying with the Defendants' subpoena? Referring to Grey Hunter Stenn LLP's resistance, Magistrate Judge Frazier suggested, "And they probably don't want to get sued themselves for giving up information they shouldn't be giving up." (Doc. 152-6 p. 18–19).

That the Plaintiffs were similarly the driving force behind Remnant's resistance is likely:

On June 25, 2008, the Plaintiffs informed this Court that the "Plaintiffs will seek a Motion to Reconsider the Order [to compel] in the Western District Court of Michigan, following the present Motion." (Doc. 75 p. 5; Doc. 76 ¶ 18).[1]

One may easily conclude that Remnant cares far less about this matter than the Plaintiffs.

B. "... court ... ordered that ... documents were being produced 'subject to the Protective Order ....' " (Doc 158. p. 1).

The Plaintiffs contend:

> However, the Michigan court expressly ordered that the Remnant documents were being produced "subject to the Protective Order already entered in the underlying case."

(Doc 158. p. 1).

The Defendants filed Magistrate Judge Hillman's April 17, 2008, protective order in the Michigan court as Exhibit H in May 2008. (Doc. 81-2 p. 134). That protective order clearly states, "This Order governs all documents and information produced, or to be produced by any party or third party in connection with this litigation ...." (Doc. 60 p. 1). Thus, since even non-confidential documents are produced subject to that order, documents merely produced subject to that order are not confidential unless the requirements of ¶ 1 of that order are also complied with.

C. "On October 30, 2008, as part of its order dismissing the case, this Court ordered Defendants to return all confidential documents." (Doc 158. p. 1).

The Plaintiffs in their opposition then cite the Electronic Clerk's Notes entered on October 31, 2008, but do not cite the actual order issued from the bench by the Honorable F. Dennis Saylor. There is a critical reason why, for the clerk's notes do not accurately reflect this Court's order. From the official transcript of the October 30, 2008, status conference:

> I will order that all materials produced in discovery that were designated as confidential under the confidentiality and protective order issued in this case on April 17th will be returned, as set forth in that order.

1 The reason Remnant filed that motion instead of the Plaintiffs is probably due to too little time to comply with that district's application procedures for *pro hac vice* admissions and ECF registration. (Pickle Aff. ¶ 6, Ex. D).

> Destruction of the documents will only be permitted if consistent with the terms of the order; and similarly, any photocopying or other copying of any such materials will only be permitted if permitted under that order.

(Doc. 141 p. 12). The key point to note is that confidential documents were to be returned "as set forth in [the] order" of April 17. Similarly, copying any such materials would "only be permitted if permitted under that order."

It is a simple fact that the confidentiality order issued by Magistrate Judge Hillman on April 17, 2008, does not require any party to this litigation to return any confidential documents. (Doc. 60 pp. 1–6). Neither does it prohibit any party from retaining copies of such documents. (*Id.*). Only non-parties to this litigation, such as retained experts, must return any confidential documents they receive, as set forth in Exhibit A of the confidentiality order. (Doc. 60 pp. 7–8).

On October 30, 2008, not 90 minutes after the status conference had ended, and the day before the Electronic Clerk's Notes were entered, Plaintiffs' counsel wrote to the Defendants:

> Per Judge Saylor's order of October 30, 2008 and the terms of the Order, you will be required to return these documents to the originator and to destroy or return all copies and notes of same. You will also be required to retrieve any copies that were provided to third parties, such as experts, and to ensure that no notes or copies of these documents remain in the custody of such third parties.

(Doc. 152-8, refiled by Plaintiffs on pp. 5–7 of Doc. 159-2; Doc. 152 ¶ 17). But the order of this Court of October 30, 2008, did not require the destruction of copies of confidential documents.

While the record reflects the Defendants' appreciation for Magistrate Judge Hillman's confidentiality order of April 17, which resolved fundamental points of disagreement between the parties (Doc. 77 p. 8; Doc. 126 p. 19), the Defendants cannot locate similar statements of appreciation by the Plaintiffs for that order. The Defendants therefore submit to this Court that rather than appeal from Magistrate Judge Hillman's order to Judge Saylor, the Plaintiffs instead chose to accomplish their designs through stealth.

For example, during the interchange with the Defendants that led up to the Defendants' filing of their notice of appeal, Plaintiffs' counsel on November 11, 2008, wrote:

> I will be filing a motion to require you both to return all confidential materials, and to consent to the return of the MidCountry Bank records that are currently in the possession of Magistrate Judge Hillman.

(Pickle Aff. Ex. E). Plaintiffs' counsel hereby threatened use of the Court's power to compel the Defendants to *consent* to the return of the MidCountry Bank records, which aren't even in the Defendants' possession. This is *prima facie* evidence that Plaintiffs' counsel believed that neither the confidentiality order of April 17 nor the terms of the order of October 30 were sufficient to keep these records away from the Defendants who had paid more than $3,500 for them.

Furthermore, Remnant's counsel filed an opposition to the Defendants' motion to compel on May 19, 2008, more than one month after the confidentiality order of April 17 was issued. That opposition requested the Michigan court, if the motion to compel was not denied, to "direct a protective order to be put in place to preserve the confidentiality of any documents obtained pursuant to Fed. R. Civ. P. 26(c)." (Doc. 76-3 p. 32). Logically, Remnant would seek a second protective order if the Plaintiffs did not think Magistrate Judge Hillman's confidentiality order was sufficient to conceal evidence of the laundering by Danny Lee Shelton (hereafter "Shelton") of the revenue of Three Angels Broadcasting Network, Inc. (hereafter "3ABN") through Remnant into Shelton's own pockets.

Also, when the documents finally were produced by Remnant on September 22, 2008, Remnant's counsel unsuccessfully sought to have the Defendants sign copies of Exhibit A of the confidentiality order (Doc. 155-2; Pickle Aff. ¶ 8), even though as parties to this litigation the Defendants are already subject to that order. Signing a copy of Exhibit A could conceivably have subjected the Defendants to the same return requirements non-parties must adhere to.

D. "Defendants refused to comply with this Court's order ...." (Doc. 158 p. 1).

The Plaintiffs contend:

> Defendants refused to comply with this Court's order, both with respect to the Remnant documents at issue in this motion and with respect to all other documents designated as confidential ....

(Doc. 158 pp. 1–2). Though the Plaintiffs at this point cite their refiled copy of Docket Entry # 152-8, the communications in question of October 30–31, 2008, tell a very different story.

Defendant Joy pointed out to Plaintiffs' counsel that the Defendants have a right under ¶ 7 of the confidentiality order to challenge the confidentiality designation of the Plaintiffs. (Doc. 152-8 p. 1). The Defendants have never waived that right. ¶ 7 states:

> Neither party is obligated to challenge the propriety of any Subject Discovery Materials designated as Confidential information, and a failure to do so in this action does not preclude a subsequent attack on the propriety of the designation.

(Doc. 60 ¶ 7). Challenging the confidentiality designation of the Plaintiffs after the conclusion of this action would be impossible if the Defendants returned all confidential documents.

In bold defiance of these terms of Magistrate Judge Hillman's order, Plaintiffs' counsel denied the Defendants' right to so challenge, writing on November 13, 2008:

> It doesn't matter if you don't think it is confidential. It is *our* designation of it as confidential that makes it subject to the order. Appeal all you want ....

(Pickle Aff. Ex. F p. 1).

Plaintiffs' counsel dared not file as exhibits to his opposition memorandum these communications. In them on November 12, 2008, he sought to determine whether or not the Defendants were refusing to return the documents in question, suggesting that on that date he wasn't sure. (Pickle Aff. Ex. F p. 3). Defendant Joy replied, "Again, let me clarify that we do intend to file an appeal of the District Court dismissal ...." (Pickle Aff. Ex. F p. 2). Plaintiffs' counsel responded, "Appeal all you want – you don't get to keep documents that were produced solely for litigation that has ended." (Pickle Aff. Ex. F p. 1). Plaintiffs' counsel hereby brazenly

attempted to violate or circumvent the terms of the confidentiality order, for non-parties who are subject to Exhibit A of that order must agree to return all confidential documents "within 30 days after the final termination of instant litigation, including appeal." (Doc. 60 p. 8).

The Honorable Timothy S. Hillman's electronic Order on Motion for Protective Order of March 10, 2008, stated:

> 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.

Evidence of the most transparent abuse by the Plaintiffs was filed by the Plaintiffs themselves. (Doc. 68-2 p. 3). Among the so-called extremely sensitive and confidential Rule 26(a)(1) materials produced on May 14, 2008, was a 2007 edition of *Ten Commandments Twice Removed*; that edition's cover says, "Over 5 MILLION Copies in Print." (*Id.*; Pickle Aff. ¶ 10, Ex. G). The Defendants must therefore be permitted to invoke ¶ 7 of the confidentiality order to demonstrate the extent of the Plaintiffs' abuse and the resulting broad basis for considerable sanctions.

E. "The Remnant documents were designated as confidential by both Remnant and Plaintiffs." (Doc. 158 p. 2).

Yet Remnant denied that Remnant was the designating party. (Doc. 155-3). On both October 24 and October 30, 2008, Plaintiffs' counsel stated that the Plaintiffs were the designating party, and did not so identify Remnant. (Pickle Aff. Ex. H; Doc. 152-8 p. 1).

So why are the Plaintiffs now changing their position of who was the designating party for the Remnant documents? The documents in question pertain to kickbacks and/or royalty payments by Remnant to DLS Publishing, Inc. (hereafter "DLS"). The Defendants have argued that neither 3ABN nor Shelton have standing to designate these documents as confidential, since they concern the business activities of Remnant and DLS, not 3ABN and Shelton,[2] and since

2 To argue against this point, the Plaintiffs must pierce DLS's corporate veil and acknowledge the Defendants' contention that DLS served principally as a channel for 3ABN funds to flow into Shelton's pockets. (Doc. 96-9 p. 2; Doc. 63-28 p. 13).

counsel for DLS has neither made an appearance in this litigation nor communicated with the Defendants. (Doc. 154 p. 2). The Plaintiffs find these arguments so convincing that they now claim that Remnant was a designating party after all. But even if such a reversal of position is deemed acceptable by the Court, if Remnant really cared about the issue, Remnant's counsel would have entered an appearance and filed his own opposition brief.

F. "... Defendants began talking freely about them on the internet ...." (Doc. 158 p. 2).

The Plaintiffs contend:

> Instead of complying with this Court's order to return the Remnant documents, Defendants began talking freely about them on the internet, stating falsely that they prove wrongdoing by the Plaintiffs.

(Doc. 158 p. 2). Yet Plaintiffs' counsel knows this is not the case, since the Defendants already pointed out in their reply memorandum in support of their motion to impose costs that the $300,000 figure Defendant Joy gave in the post in question came from Nicholas Miller's email of September 19, 2006. (Doc. 149 pp. 8–9). That date is more than two years before Remnant produced any documents, and even before the instant case was filed.

Further, the Defendants demonstrated in that same filing from public documents that the Remnant documents must substantiate sums of roughly $90,378, $482,589, and $176,739 in 2005, 2006, and 2007 respectively, not $300,000. (Doc. 149 p. 9). Table 1 of Docket Entry # 154 gave even more detailed estimates of the sums the Remnant documents must substantiate, using publicly available documents. (Doc. 154 p. 3).[3]

The Plaintiffs are well aware that the Defendants have been talking on the internet before this action was filed about Shelton receiving several hundred thousand dollars in royalties, since the Plaintiffs filed the Defendants' article to this effect as pages 8–10 of Docket Entry # 3-2.

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3 This language is carefully chosen, since the documents in question were designated confidential. Rather than saying the documents "do" or "do not substantiate," we instead say that they "must substantiate," according to publicly available information.

As far as whether Remnant's documents really do prove wrongdoing, Plaintiffs counsel himself asserted in his memorandum in support of his motion to dismiss that to say that those documents prove wrongdoing is to reveal the information those documents contain. (Doc. 121 pp. 7–8). However, Plaintiffs' counsel wishes to retract that position as well, now maintaining that the Remnant documents do not prove wrongdoing after all.

G. "... veiled death threats ... 'ethnic cleansing.' " (Doc. 158 p. 2).

The Plaintiffs contend:

> ... Defendant Joy began making veiled death threats against the Plaintiffs, suggesting that Plaintiff Shelton was like a conquered king and "you know what they do with conquered kings? Ask the czar and his entire family!!!" ..., and referring to his actions against Shelton and supporters of the Plaintiffs as "ethnic cleansing."

(Doc. 158 p. 2). These comments by the Plaintiffs are totally irrelevant to the pending motion.

The Defendants disagree upon whether such figures of speech for removal of sin from the church are appropriate. Nevertheless, it is a fact that such language as "cleanse the camp from Achans" refers to the relatively innocuous penalties of removal from church membership or office, Achan's stoning in Joshua 7:24–25 notwithstanding. (Pickle Aff. ¶ 12, Ex. I at pp. 2–3).

Shelton allows his followers to liken him to Moses and John the Baptist, and to teach that God declares it wrong for any human being to disagree with him or to correct him. (Doc. 81-10 pp. 51–53; Pickle Aff. Ex. J at pp. 1–2, 4–6, 9–10). Shelton admitted that a physician found him to be "physcotic" and "out to lunch" (Doc. 100-3 p. 1), or more precisely, a "psychopath." (Pickle Aff. Ex. K at p. 5). A quasi-cult leader and mental illness are a dangerous combination.

Like Napoleon, Shelton refuses to disappear, being reported by 3ABN at least three times now as still being president, even though he was supposedly replaced on September 6, 2007. (Doc. 127 ¶ 43; Doc. 127-44 p. 2; Doc. 127-45; Pickle Aff. Ex. L at p. 12; Doc. 63-34 ¶ 1).

Shelton has surrounded himself with compromised people who dare not cross him lest he

expose their secrets. (Doc. 63-12 pp. 15–16). A 3ABN Board member is alleged to have privately admitted to having been involved with an unsolved murder from years ago, and another board member is alleged to have always been a liar and petty thief. (Pickle Aff. ¶ 16). These individuals confront Shelton to their peril.

Shelton tried the same blackmail-like tactics with Defendant Joy in October 2006, but it didn't work. (Pickle Aff. ¶ 17, Ex. M). Shelton's own voluminous venom, examples of which can be found throughout the record, found its match in the retorts of Defendant Joy.

Members of Shelton's church, the Thompsonville Seventh-day Adventist Church, could discipline Shelton on a number of grounds (Pickle Aff. Ex. I at p. 4), but such an attempt puts them at risk of losing their jobs at 3ABN. Thus Shelton can continue sweet talking widows and the unsuspecting to turn over their assets so that he can do who knows what with all their money.

Shelton's hypnotic sway must be forever neutralized by a free press educating the public about Shelton's moral, financial, and unethical improprieties.

H. "... documents that had no relevance to the underlying lawsuit ...." (Doc. 158 p. 2).

It is not the Defendants' fault that the Plaintiffs chose to put at issue in their complaint the questions of Remnant's royalty payments to Shelton, and whether Shelton correctly reported those payments in IRS filings and in proceedings related to his divorce. (Doc. 1 ¶¶ 46(g)–(i), 50(i)). The Defendants adequately demonstrated that Shelton must have funneled 3ABN revenue through his publishing companies into his own pockets, and that from at least 2005 onward he had used Remnant for the same purpose. (Doc. 81-2 pp. 122–128, 134–135, 137–143).

That Remnant's counsel would maintain that documents pertaining to Remnant's royalty payments to Shelton are irrelevant to the question of Remnant's royalty payments to Shelton (Doc. 103-3 pp. 3–4) was utterly absurd. By echoing the same fallacious claim here, the Plaintiffs give evidence that Remnant's counsel adopted that position because of the insistence

and pressure of the Plaintiffs, not out of incompetence.

I. "... point of filing these documents under seal ... undermined ...." (Doc. 158 pp. 2–3).

The Plaintiffs contend:

> The benefit of filing the document under seal is somewhat diminished, however, by Defendants' description of Exhibit A as "a selection of the documents from Remnant [Publications, Inc.] pertaining to kickbacks and/or royalties from Remnant to DLS Publishing, Inc…." The point of filing these documents under seal is obviously undermined by Defendants' characterization of what they represent."

(Doc. 158 pp. 2–3).

Remnant did not produce any documents to the Defendants until September 22, 2008. (Doc. 155-2). More than a month before that date, on August 20, 2008, the Defendants argued that the Remnant documents would demonstrate that Shelton received kickbacks amounting to between 10% and 32% on sales by Remnant to 3ABN of his booklets published by Pacific Press Publishing Association (hereafter "PPPA"). (Doc. 96-9 pp. 3, 10).

The Defendants' wording as quoted by the Plaintiffs was carefully chosen. Rather than saying that the Remnant documents pertain to kickbacks and royalties, the Defendants instead said that they pertain to kickbacks and/or royalties, allowing for the unlikely possibility that their contention of August 20, 2008, regarding kickbacks was wrong. A review of these documents would take but a few minutes, and the Court would be able to see whether or not the Defendants were correct in their argument of August 20, 2008.

J. "... perfectly legal transactions ... fully vetted by ... accountants ...." (Doc. 158 p. 3).

The Plaintiffs contend:

> In point of fact, the Remnant documents reflect perfectly legal transactions that have been fully vetted by certified public accountants and evidence no wrongdoing by anybody.

(Doc. 158 p. 3).

Previously, the Plaintiffs' missed a golden opportunity to file documents proving that

3ABN's payment of personal, private vacation travel was in fact reimbursed. (Doc. 113 p. 9). Before the final document is filed in this action, it would be ideal if the Plaintiffs could file at least one document disproving the Defendants' allegations. They have again missed a golden opportunity to do so by not filing an affidavit by a certified public accountant explaining how there was nothing improper or unethical or illegal in Shelton laundering 3ABN revenue through Remnant into his own pockets in the form of kickbacks and/or royalties.

Accordingly, as the Defendants did before (*Id.*), the Defendants hereby state their support of the Plaintiffs seeking leave of the Court to file such an affidavit from the Plaintiffs' auditor, Alan Lovejoy, as a supplement or amendment to the Plaintiffs' opposition memorandum. The Defendants could then seek concurring opinions from the American Institute of Certified Public Accountants, the Illinois Society of Certified Public Accountants, and the Illinois Department of Financial and Professional Regulation.

However, the Defendants believe this claim by Plaintiffs' counsel is as hollow as his earlier claim that 3ABN's auditors had determined that there was nothing wrong with Shelton reporting his donation of horse(s) as cash instead of as property on IRS Form 8283 for the year 2003. (Doc. 127 ¶ 9). Alan Lovejoy would not dare risk his career by committing such fallacious claims to writing.

K. "... quote themselves ... with citation to a public filing ...." (Doc. 158 p. 3).

The Plaintiffs contend:

> By calling these documents evidence of "kickbacks and/or royalties" in a public filing, the Defendants can now quote themselves endlessly on the internet, as they tend to do, with citation to a public filing for support.

(Doc. 158 p. 3).

In saying that these documents pertained to kickbacks and/or royalties, the Defendants were merely using language from their memorandum dated August 20, 2008, filed in Michigan

in opposition to Remnant's appeal. (*supra* p. 12). Further, it should also be pointed out that the Plaintiffs and their counsel have filed plenty of unsupportable statements which then get posted and commented on the internet by their allies who are seeking to destroy the reputations of the Defendants. The record already demonstrates that the son of 3ABN Board chairman Walter Thompson (hereafter "Thompson"), Gregory Scott Thompson, has so posted and commented. (Doc. 63-33 pp. 17–19; Doc. 63 ¶ 21). It would therefore be inequitable to take cognizance of this argument by the Plaintiffs.

L. "This case is over." (Doc. 158 p. 3).

Thus wrote Plaintiffs' counsel on Monday, December 22, 2008. Yet just two days later, the same counselor wrote to the Defendants, "I'm going to miss you when this case is over." (Pickle Aff. Ex. N at p. 2). Thus, Plaintiffs' counsel does not really believe that at this point in time "this case is over."

M. "The only remaining issue is the pending motion by Defendants for reimbursement of 'costs' ...." (Doc. 158 p. 3).

Plaintiffs' counsel pretends that there is no appeal, and that the Defendants have not given him notice that they intend to invoke ¶ 7 of the confidentiality order. (Doc. 133; Doc. 152-8 p. 1).

N. "... including Mr. Pickle's cost of showering ...." (Doc. 158 p. 3).

The Plaintiffs contend:

> ... which to them means every expense they incurred that is metaphysically related to this case, including Mr. Pickle's cost of showering at a camp site while supposedly traveling to investigate allegations related to the lawsuit.

(Doc. 158 p. 3).

Shelton plundered 3ABN of perhaps millions of dollars over the years, including between roughly $749,706 and $808,614 from 2005 to 2007 just in book deals with Remnant. (Doc. 154 p. 3). 3ABN's reported legal expenses for 2007 were $1,100,545, a sizable increase over 2006's expense of $152,654, but 3ABN did not report 3ABN's payment of Shelton's personal, private

legal expenses as compensation to Shelton. (Pickle Aff. Ex. O & L at ln. 32 on p. 2, Ex. L at p. 12; Doc. 81-9 p. 18). Shelton claimed that Garwin McNeilus would foot the bill for a lawsuit, a man who sold his company in 1998 for $212 million. (Doc. 109-15 p. 7; Pickle Aff. Ex. P). Thompson claimed that Garwin McNeilus, a longtime 3ABN supporter who was made a 3ABN Board member in 2007, has helped pay for the instant action. (Pickle Aff. Ex. Q; Doc. 63-30 p. 28). 3ABN reported that the two law firms representing the Plaintiffs received a total of $752,399 in 2007 alone. (Pickle Aff. Ex. L at p. 8). How comparatively miniscule are all of the Defendants' costs, expenses, and fees, not to mention the $6 shower.

"N. Lisbon Travel Center" where the shower was purchased (Doc. 132 p. 2) is a truck stop, not a camp site.

O. "This contention is itself frivolous." (Doc. 158 p. 4).

The Plaintiffs contend:

> Pickle's affidavit indicates that the Remnant documents somehow show that the lawsuit itself was frivolous. This contention is itself frivolous. The lawsuit mentions royalties in just two allegations: Complaint ¶ 46(h) and 46(i) – alleging that Defendants defamed Plaintiffs by stating that Shelton refused to disclose royalties in divorce proceedings.

(Doc. 158 p. 4). This is false on numerous counts.

First, ¶ 46(g) of the Plaintiffs' complaint without qualification alleges that the Defendants stated, "3ABN Board members have personally enriched themselves as officers and directors of 3ABN in violation of the Internal Revenue Code." Certainly Shelton's laundering of 3ABN revenue through Remnant into his own pockets, to the tune of between roughly $749,706 and $808,614 in kickbacks and/or royalties from 2005 to 2007 (Doc. 154 p. 3), goes to the question of ¶ 46(g).

Second, ¶ 46(h) also concerns Shelton's refusal to disclose his royalties to the 3ABN Board, as alleged by Nicholas Miller and filed by the Plaintiffs. (Doc. 3-2 p. 8). It isn't just about

Shelton's division of marital assets case.

Third, ¶ 50(i) alleges that the Defendants stated, "Danny Shelton perjured himself through the course of court proceedings relating to his divorce from Linda Shelton." So vital were these allegations concerning Shelton's unethical business dealings with Remnant that the Plaintiffs repeatedly reference them in their complaint, including ¶ 50(i), since Shelton failed to report all his royalties and publishing assets on his July 2006 financial affidavit. (*infra* p. 17).

Fourth, in the hearing of October 22, 2008, in the Southern District of Illinois, Plaintiffs' counsel stated, "It's the paragraphs 46 and 48 of the complaint are where the specific allegations are of defamation," thus unofficially again dismissing the allegations of ¶ 50(a)–(i). (Doc. 152-6 pp. 9–10). As Magistrate Judge Hillman pointedly noted, the Plaintiffs have tried to narrow the issues too far. (Doc. 107 pp. 3–4). But the more the Plaintiffs narrow the issues, the more relevant the Remnant documents become, since there aren't many issues left if the Plaintiffs get their way.

Fifth, Plaintiffs' counsel in the hearing of May 10, 2007, made a major point of emphasizing the question of books deals and royalties, and used those allegations as a basis for a claim of defamation *per se*, with assumed damages. (Doc. 17 pp. 8, 13). About the same time, the Plaintiffs filed incomplete copies of the Defendants' articles about Shelton's July 2006 financial affidavit, and about Shelton's profits from his *Ten Commandments Twice Removed* book deal with Remnant. (Doc. 3-2 pp. 5–6, 8–10). The Defendants promptly filed complete copies. (Doc. 8-2 pp. 14–33, 35–38). There aren't many other exhibits filed by the Plaintiffs in the record that constitute the Defendants' pre-lawsuit, allegedly defamatory activities.

Sixth, it isn't the Remnant documents alone that demonstrate that this lawsuit is an abuse of process and a misuse of civil proceedings. One must also take into consideration the fact that Thompson and Gerald Duffy both claim that the law firm representing the Plaintiffs did a thorough review of the Plaintiffs' finances (Doc. 127-6 p. 1; Doc. 96-2), and thus they knew or

should have known that Shelton had laundered 3ABN revenue through Remnant into his own pockets in the form of kickbacks and/or royalties.

P. "There was never any dispute that Remnant paid royalties. The issue was whether these were properly disclosed." (Doc. 158 p. 4)

When this lawsuit began, this statement was correct. It is no longer so. The dispute now includes whether Remnant paid Shelton kickbacks intentionally mischaracterized as royalties.

3ABN receives 6% royalties from PPPA for books neither 3ABN nor 3ABN's employees have authored; this is understood to be an advertising and distribution fee rather than a true royalty. (Doc. 96-11 pp. 12–13; Doc. 96-9 p. 3). Similarly, since Shelton already receives royalties from PPPA for his 2001 and 2002 booklets (Doc. 96-11 pp. 1–3), if kickback payments from Remnant to DLS for sales of those same booklets to 3ABN are called royalties, it is a lie.

Q. "... never produced even an iota of evidence ...." (Doc. 158 p. 4).

The Plaintiffs contend:

> Defendants have never produced even an iota of evidence that the Remnant royalty payments were improperly characterized in any court proceeding or in IRS reporting.

(Doc. 158 p. 4). Or not disclosed to the 3ABN Board? That was the issue the Plaintiffs themselves made a part of the record in the early stages of this case when they filed an article containing former 3ABN board member Nicholas Miller's claim to that effect. (Doc. 3-2 p. 8).

On May 10, 2007, the Defendants filed articles which outlined Shelton's entire July 2006 financial affidavit, and which pointed out that Shelton had failed to report any royalties as income or DLS as an asset in that affidavit which was part of Shelton's division of marital assets case. (Doc. 8-2 pp. 14-38).

On May 15, 2008, the Defendants filed part of 3ABN's 2006 Form 990, signed by Shelton, in which he denied receiving income from any related organization. (Doc. 63-32 p. 19 at ln. 75c, p. 21). According to IRS instructions that year, DLS was a related organization because

of "Relationship 8," making Shelton's denial in that filing false. (Pickle Aff. Ex. R at p. 2).

On August 26, 2008, the Defendants filed a portion of Shelton's interrogatories from his division of marital assets case in which he reported an amount for his Remnant royalties as "varies." (Doc. 96-6 p. 2).

On August 26, 2008, the Defendants filed Shelton's PPPA contracts which proved that his booklets published by PPPA were authored before his June 25, 2004, divorce, and thus belong in part to Linda Shelton, Shelton's ex-wife. (Doc. 96-11 pp. 1–3, 9–10). On May 15, 2008, the Defendants filed an affidavit by Shelton in which Shelton claimed he had not used D & L Publishing since before his divorce. (Doc. 63-34 ¶ 3). Thus Shelton must have reported any kickbacks received from Remnant for his PPPA booklets (*supra* p. 12) as being paid to DLS, even though DLS did not exist until after his divorce. (Doc. 63-34 ¶ 5). Reporting such payments as entirely attributable to DLS is therefore fraudulent, and is *prima facie* evidence that Shelton fraudulently converted these pre-divorce marital assets. Since the origins of Shelton's book *Ten Commandments Twice Removed* also predate the divorce, the same logic applies to it.

R. "The point of dismissing the lawsuit ...." (Doc. 158 p. 4).

The Plaintiffs contend:

> The point of dismissing the lawsuit was to stop the lawsuit prior to reaching a determination on the merits, to spare the resources of the Court and the parties.

(Doc. 158 p. 4). This statement would appear to be an admission that if the lawsuit had reached a determination on the merits, the Plaintiffs would have lost.

Thus far the Plaintiffs have shown little interest in sparing the resources of the Court or the Defendants. The Plaintiffs themselves have now told the Court what the Defendants previously did, that the motion for dismissal was to avoid expense as well as discovery. (Doc. 127 ¶ 5). Thus, Thompson's testimony that donations are now back to what they used to be is

even less credible. (Doc. 123 ¶ 8).

S. "... should not be allowed to add new arguments and evidence ...." (Doc. 158 p. 4).

The Plaintiffs contend:

> Defendants did not see fit to offer Exhibit A in connection with that motion, and should not be allowed to add new arguments and evidence in support of their position now. If the merits of a dismissed lawsuit are to be addressed in the context of a motion for costs, there is no opportunity for Plaintiffs to respond adequately.

(Doc. 158 p. 4). The Defendants had no idea that the Plaintiffs in their opposition brief would raise the question of legal authority in regards to paying even 1¢ of the Defendants' reasonable costs, expenses, and fees. The only way the Defendants could respond adequately was in their reply memorandum. If the Plaintiffs require another round of briefing or oral argument, the Defendants would not oppose such, and would in fact welcome it.

T. "... an endless procession of affidavits ...." (Doc. 158 p. 4).

The Plaintiffs contend:

> Further, the benefit of dismissing the case would be lost if Plaintiffs were now forced to produce all the evidence that supported the case in what would be an endless procession of affidavits from the many witnesses who would have proven Plaintiffs claims had the case proceeded to a resolution on the merits.

(Doc. 158 p. 4). Endless procession? The Plaintiffs' witness list as disclosed in their Rule 26(a)(1) disclosures consisted of only most of 3ABN's directors and officers, Linda Shelton, the Defendants, Gregory Matthews, and Laird Heal. (Doc. 37-2 pp. 2-5).

By referring only to affidavits the Plaintiffs thus reveal that they weren't even going to let the Court see documentary and foundational evidence.

On December 14, 2007, Plaintiffs' counsel argued regarding the Defendants' document requests, "There's nothing, as far as we're concerned, that they would need more ...." (Doc. 144 p. 10). Even before this suit was filed, there were indications that Shelton would refuse to

produce documents. (Pickle Aff. ¶ 23, Ex. S). Yet this strategy of failing to disclose documents and witnesses, and relying on testimony alone, doomed 3ABN's property tax case. (Doc. 81-4 p. 5–7, 9; Doc. 81-8 pp. 7–10, 13–15, 17–20; Doc. 127-43 pp. 3–4). Shelton hasn't learned a thing.

CONCLUSION

In order to properly respond to the issue the Plaintiffs raised regarding legal authority to impose costs, expenses, and fees, the Defendants seek to file under seal as Exhibit A a selection of documents pertaining to kickback and/or royalty payments by Remnant to DLS from 2005 through 2007. The documents should be filed under seal, and the Court should consider the Plaintiffs' opposition memorandum, with the additional facts brought out in this reply memorandum, as an additional basis for sanctions. The Defendants welcome additional briefing and/or oral argument to adequately address the Plaintiffs' concerns.

Respectfully submitted,

Dated: December 29, 2008

/s/ Gailon Arthur Joy, *pro se*
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and

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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).

Dated: December 29, 2008

/s/ Bob Pickle
Bob Pickle

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. I have reviewed my phone bills for 2007 in order to determine when Dwight Hall of Remnant Publications, Inc. (hereafter "Remnant") (located in the city of Coldwater in Branch County, Michigan) called me. Attached hereto as **Exhibit A** are relevant pages from my November and December 2007 phone bills. The following facts drawn from my phone bills and my memory put the conversation in question between November 16 and 21, 2007.

2. I made calls to Remnant on November 14, 16, 28, and 29, 2007. (Ex. A pp. 2, 5–6).

3. The phone calls to Remnant on November 14 and 16 were attempts to reach Remnant secretary/treasurer Dan Hall in order to make preliminary arrangements for a subpoena *duces tecum*. Dwight Hall then returned my call, with Dan Hall listening in by way of speaker

phone. During the conversation Dwight Hall stated that he would not make it hard for us to obtain documents.

4. I then made calls to Branch County Circuit Court, Coldwater Branch Library, Coldwater City Government, Ovid Township Hall, and the District Court judge's secretary on November 21, 26, and 27, 2007, looking for a suitable place to request Remnant to produce its documents at. (Ex. A pp. 3–5).

5. After securing a conference room at the courthouse, I called Remnant on November 28 and 29, 2007, to see if they would accept service of the subpoena. (Ex. A pp. 5–6). Since Remnant would not accept service, I arranged with the Branch County sheriff's department on November 29, 2007, to serve the subpoena. (Ex. A p. 6). Attached hereto as **Exhibit B** is the email I sent to Faxaway.com on that day, in order to fax the subpoena to the sheriff's department. Attached hereto as **Exhibit C** is the email receipt I received back from Faxaway.com indicating successful transmission of the fax, similar to the receipt I received later that same day after faxing my requests to produce to both the law firms that represent the Plaintiffs in this case.

6. Attached hereto as **Exhibit D** is page 1 of Docket Entry # 29 from W.D.MI Case No. 08-mc-00003-RAE. The docket text for that entry dated July 2, 2008, states, "attorney admission deadline set for 8/1/2008." Since Remnant's motion to amend was filed on June 27, 2008, as Docket Entry # 25, there wasn't a lot of time to complete the requirements before the end of the standard motion briefing schedule.

7. Attached hereto as **Exhibit E** is a letter dated November 11, 2008, written by Plaintiffs' counsel to the Defendants.

8. Along with the letter from Remnant's counsel filed as Docket Entry # 155-2, Remnant's counsel included copies of Exhibit A to Docket Entry # 60 for both Gailon Arthur Joy and myself. His requests for our signature in his letter refers to his wanting us to sign those

copies and return them to him. We did not do so, explaining to him that only non-parties have to sign Exhibit A.

9. Attached hereto as **Exhibit F** are communications between Plaintiffs' counsel and the Defendants dated November 12 and 13, 2008.

10. The " 'Ten Commandments' book" referred to in Plaintiffs' counsel's letter of May 14, 2008 (Doc. 68-2 p. 3), is a 2007 edition of *Ten Commandments Twice Removed.*, by Danny Lee Shelton (hereafter "Shelton") and Shelley Quinn. Since this book was produced by the Plaintiffs in their "confidential" production, I figure that if I use an "abundance of caution" (Doc. 107 p. 4), I can only file the cover of this book if I file it under seal. However, I have at least two other copies of the 2007 edition, and have therefore attached as **Exhibit G** a scan of the cover of one of those two other copies. It says in the upper right-hand corner that over 5 million copies are in print. It therefore cannot be confidential. (Doc. 60 ¶ 1).

11. Attached hereto as **Exhibit H** is a letter dated October 24, 2008, written by Plaintiffs' counsel to the Defendants.

12. Attached hereto as **Exhibit I** are relevant pages from the 2005 edition of the *Seventh-day Adventist Church Manual* dealing with the topic of church discipline. These pages describe the two forms of church discipline within the Seventh-day Adventist Church, one which results in the loss of church offices and the other which results in the loss of church membership. These pages contain a quotation which likens this type of thing to "cleans[ing] the camp from Achans."

13. Attached hereto as **Exhibit J** is an article from 3ABNcritiqued.info which gives quotations from the August 10, 2006, Three Angels Broadcasting Network, Inc. (hereafter "3ABN") broadcast which was a sick attempt at damage control after Alyssa Moore raised sexual assault allegations against Shelton.

14. Attached hereto as **Exhibit K** is a reprint from 3ABNevaluated.info of Dr. Arild Abrahamsen's letter in which he states that Shelton is a psychopath. Reprintings of this letter elsewhere on the internet show that the letter bears the date of June 20, 2006.

15. Attached hereto as **Exhibit L** are selected pages from 3ABN's 2007 IRS Form 990.

16. I have had sources tell me that a particular board member has privately admitted to having been involved with an unsolved murder that took place before his or her becoming a Christian, and that another board member has been a lifelong liar and petty thief.

17. Attached hereto as **Exhibit M** is correspondence between Shelton and Gailon Arthur Joy dated in October 2006. Shelton insinuates that he has dug up dirt on Mr. Joy and will expose him if he doesn't shut up.

18. Attached hereto as **Exhibit N** are communications between Plaintiffs' counsel and the Defendants dated December 24, 2008.

19. Attached hereto as **Exhibit O** are selected pages from 3ABN's 2006 IRS Form 990.

20. Attached hereto as **Exhibit P** is SEC information regarding the 1998 sale of Garwin McNeilus' company.

21. Attached hereto as **Exhibit Q** is an email by 3ABN Board chairman Walter Thompson claiming that Garwin McNeilus had helped pay for this lawsuit.

22. Attached hereto as **Exhibit R** are selected pages from the IRS instructions for the 2006 IRS Form 990.

23. Attached hereto as **Exhibit S** is a post dated February 2, 2007, by Bystander, believed to be Shelton (Doc. 152-15 p. 2) or someone very close to Shelton. Bystander didn't think Defendant Joy would be allowed to see 3ABN's books during the anticipated lawsuit.

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

DEFENDANTS' MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTIONS TO RECONSIDER, AND MOTION TO AMEND FINDINGS

INTRODUCTION

Defendants' motion to impose costs (Doc. 130) was denied without ruling on Defendants' motion to file under seal (Doc. 153) and without reviewing the Remnant documents. The Court's April 13 and 15, 2009, orders contain clearly erroneous findings, findings impossible to make if the Court had reviewed those documents. Defendants are now at risk of having no curative conditions whatsoever to alleviate the prejudice they find themselves in. Pursuant to Rule 59(e) and Rule 52(b), Defendants therefore seek reconsideration of Defendants' motions to impose costs and file under seal, and amendment of findings in the April 13 and 15 orders.

Plaintiffs argued on appeal that the order of November 3, 2008, was not final because the matter of costs was unresolved. (Affidavit of Robert Pickle ("Pickle Aff.") Ex. A pp. 2–4). Defendants believe Plaintiffs to be incorrect on this jurisdictional question. However, if Plaintiffs are correct, and only if Plaintiffs are correct, Defendants hereby incorporate the facts, arguments,

and request for relief found in their appellants' brief. (Pickle Aff. Ex. B pp. 10–68, Ex. C).

FACTS

Relevant Procedural History

Plaintiffs filed their case with an *ex parte* motion to impound, but this Court denied Plaintiffs' outrageous attempt to violate the First Amendment and permanently shield this case from the public eye. (Doc. 2; Electronic Court's Notes entered on June 21, 2007).

The parties made their initial disclosures by August 3, 2007. (Doc. 37-2 p. 7; Doc. 152-14 p. 8). While Defendants produced thousands of documents in connection with those disclosures, Plaintiffs refused to produce anything until March 28, 2008, after being compelled by court order. (Doc. 71 ¶ 1–2; Doc. 81 ¶ 1; Doc. 89 p. 40; Electronic Order of March 10, 2008).

The initial productions of 12,825 pages in 3 unindexed PDF files[1] contained 9 pages not pertaining to the lawsuit, and these included a roll-over contribution form for James R. Greupner ("Greupner"), a partner in Plaintiffs' counsel's law firm, which contained Greupner's unredacted social security number, birthdate, and financial account numbers. (Pickle Aff. ¶¶ 4–5, Ex. D p. 1). Defendants immediately notified Plaintiffs' counsel and Greupner of this problem, and never published or disseminated any of the 9 extraneous pages. (Pickle Aff. ¶¶ 4, 6, Ex. D p. 1).

Plaintiffs claimed that their initial disclosures consisted of less than 500 pages of highly sensitive and confidential business records. (Doc. 37-2 p. 24). But the vast majority of the 207 pages of "confidential" Rule 26(a)(1) materials Plaintiffs produced on May 14, 2008, was anything but that. (Doc. 81 ¶¶ 13–14, Table 4; Doc. 126 p. 9).

Defendants reported stories that were corroborated by two or more sources. However, Plaintiffs' claims of defamation *per se* shifted the burden of proof to Defendants. Because of the information obtained from Defendants' sources, Defendants knew what to look for and where.

[1] This Court strongly reprimanded Plaintiffs for producing their documents without any indexing. (Doc. 107 p. 4). Indexing these documents took a lot of Defendants' time. (Pickle Aff. ¶ 29, Ex. H at Folders 2–4; 7–9).

Accordingly, Defendant Pickle crafted document requests which he served upon Plaintiffs on November 29 and December 7, 2007. (Doc. 63-20 p. 16; Doc. 63-21 p. 17).

Despite the obligation of Rule 34(b)(2)(C) to permit inspection of the portion of a request not objected to, Plaintiffs refused to produce a single page until June 13, 2008, four weeks after Defendant Pickle filed his second motion to compel. (Doc. 68-2 p. 4; Doc. 61).

Motions for protective orders should be filed "at the outset of discovery or, at the latest, before Rule 34's 30-day time limit has expired." *Burlington N. & Santa Fe Ry. Co. v. U.S. Dist. Court for Dist. of Mont.*, 408 F.3d 1142, 1149 n.3 (9th Cir. 2005). Instead, Plaintiffs filed their first such motion 5½ months after the start of discovery, and the second such motion 6 months after the first motion and 5½ months after Rule 34's 30-day time limit. (Doc. 40; Doc. 74).

Prior to Plaintiffs filing their first motion for a protective order, Defendants sought documents from MidCountry Bank ("MidCountry"), Gray Hunter Stenn LLP ("GHS"), and Remnant Publications, Inc. ("Remnant"). (Doc. 42 pp. 38, 43, 49). Plaintiffs encouraged GHS and Remnant to resist. (Doc. 114-26 ¶ 7; Doc. 75 p. 4; Doc. 161 pp. 3–4). Defendants moved to compel Remnant. (Doc. 81-2 pp. 121–143). MidCountry and GHS decided to comply, but Plaintiffs filed motions to quash. (Doc. 63-27 pp. 1, 5; Doc. 114-26 p. 1, ¶ 7). Plaintiffs' motion to quash the subpoena of GHS was untimely by 60 days. (Doc. 76-3 p. 5; Doc. 114-26 p. 4). The courts in Michigan and Minnesota enforced the subpoenas, and the court in Michigan found that the documents sought from Remnant were relevant. (Doc. 127-38; Doc. 63-36).

Thus, throughout this case, Plaintiffs clearly sought to obstruct and delay discovery, protract the litigation, and increase Defendants' costs.

Newly Discovered Evidence

Plaintiffs' Sweeping Admission in Plaintiffs' Appellees' Brief Served on March 23, 2009

In Defendants' appellants' brief, Defendants repeatedly cited the voluminous record of

this case to show that Plaintiffs filed a frivolous suit in bad faith, vexatiously multiplied proceedings, and engaged in abuse of process. (Pickle Aff. Ex. B at pp. 8–38, 50–52, 55–58, 64). In response, Plaintiffs made the following, astonishing admission in their appellees' brief:

> It should also be noted that there was never an occasion for 3ABN and Shelton to submit evidence in support of the merits of their claims to the district court, and therefore there is nothing available in the district court record from which 3ABN and Shelton can respond to the web of innuendo and speculation that infests the appellants' brief.

(Pickle Aff. Ex. A at p. 5). The implications of this March 23, 2009, statement are four-fold.

First, Plaintiffs admit that Plaintiffs need evidence in support of Plaintiffs' claims in order to rebut Defendants' many citations to the voluminous record. Thus, Plaintiffs admit that Defendants' exhibits and testimony in the record are relevant to Plaintiffs' claims.

Second, Plaintiffs have seven attorneys of record in this case, and Defendants of necessity are proceeding *pro se*. Throughout 18 months of litigation, Defendants filed a multitude of exhibits, often consisting of Plaintiffs' own statements or public, government records. Plaintiffs' assertion that seven well-paid attorneys could not rebut Defendants' exhibits by filing evidence to the contrary is a tacit admission that *no such evidence exists*. Plaintiffs therefore tacitly admit that their lawsuit and its claims were baseless.

Third, most or all of Plaintiffs' exhibits concerning Defendants' pre-lawsuit activities were filed by May 24, 2007. In particular, Three Angels Broadcasting Network Inc. ("3ABN") corporate secretary Mollie Steenson filed an affidavit on that day in which she asserted that her exhibits were in support of Plaintiffs' case against Defendants and Save3ABN.com. (Doc. 10-3 ¶¶ 5–11). Plaintiffs' admission that those exhibits weren't in support of the merits after all demonstrates that this suit was baseless from the beginning, and that Mollie Steenson's affidavit contains misstatements of material fact.

Fourth, and most importantly: This Court found that there was nothing in the record to

"suggest" that Plaintiffs filed a frivolous suit in bad faith. Defendants' appellants' brief had already repeatedly cited the voluminous record to the contrary. Since Plaintiffs admit that there is nothing in the record to rebut Defendants on this point, Plaintiffs therefore state on the record that the finding of this Court must be in error.

Recording by Shelton, Meaning Camouflaged by Inaccurate Wording

On May 14, 2003, Pastor Glenn Dryden ("Dryden") wrote 3ABN Board chairman Walter Thompson ("Thompson"), telling him that Tommy Shelton, brother of Danny Lee Shelton ("Shelton"), had molested six boys. (Doc. 81-2 pp. 1–3; Pickle Aff. Ex. E–G). Dryden attached a separate sheet of action items suggested for Tommy Shelton in light of Illinois Senate Bill 1035, which would extend the civil and criminal statute of limitations for child sexual abuse. (*Id.*).

On May 23, 2003, Shelton called Dryden and left a recorded message in which he spoke of an unsigned letter written by Dryden which referred to a bill regarding extending the statute of limitations. (Pickle Aff. ¶¶ 10–11). Shelton twice spoke of how "in this case" the statute of limitations had already run out, and Shelton asserted that the bill would not affect that. (Pickle Aff. ¶ 11). Thus, Shelton made clear that Tommy Shelton had indeed sexually assaulted a minor for which the statute of limitations would apply.

Shelton left a second message on the same day that referred to a second letter by Dryden, a letter that stated as fact that Tommy had molested six boys. (Pickle Aff. ¶¶ 10, 12).

Both messages contained veiled threats, referring to attorneys, to liability for defamation, and to Dryden bringing reproach upon himself and ruining his credibility. (Pickle Aff. ¶¶ 11–12).

Shelton referred to two letters from Dryden when there was but one letter, the one referring to Tommy Shelton molesting six boys. In reviewing the recordings again in early 2009, Defendants realized that what Shelton called a letter in his first message was instead the sheet of action items attached to Dryden's letter, since it was that sheet that referred to Senate Bill 1035

and the extending of the statute of limitations. (Pickle Aff. ¶ 13–14).

This proves that Shelton had and read the action items which called for Tommy Shelton to apologize to the Community Church of God in Virginia for deceit and inappropriate behavior, a church Tommy Shelton pastored from about 1995 to about 2000. (Pickle Aff. ¶ 14, Ex. G; Doc. 63-15 p. 3). Thus, Shelton must have lied to Thompson when Shelton told Thompson that the allegations against Tommy Shelton were all 30 years old. (Doc. 81-2 pp. 50–66, 61).

3ABN World *Articles Which Plaintiffs Refused to Produce*

Defendants sought copies of the widely distributed *3ABN World*. (Doc. 63-20 pp. 10–11). Plaintiffs refused to produce any copies whatsoever, even though they can't possibly be confidential. (Doc. 63-25 p. 5; Doc. 81-11 p. 40). Defendants sought copies partly because every issue was obtainable in one way or another from 3ABN's website except for the September and November 2004, and the August 2005 issues; the September and November 2004 issues appear to have gone missing by February 5, 2005. (Doc. 81-11 p. 40; Pickle Aff. ¶¶ 15–16, Ex. I–N). This suggests that these missing issues contained something that Shelton and 3ABN conspired to hide, and Defendants wanted to know what that might be.

In January 2009, Defendants purchased copies of the missing issues from a library. (Pickle Aff. ¶ 17). An article in the September 2004 issue referred to 3ABN Books' plans to publish *Mending Broken People* ("*MBP*"), a book by Kay Kuzma ("Kuzma"). The article also referenced "Danny Shelton's and Shelley Quinn's book about the Sabbath," later titled, *Antichrist Agenda* ("*AA*"), of which *Ten Commandments Twice Removed* ("*TCTR*") is an excerpt. (Pickle Aff. Ex. O). An article about *MBP* in the November 2004 issue claimed *MBP* would be published that very month, and that Kuzma began writing it in 1997. (Pickle Aff. Ex. P). Shelton receives royalties through DLS Publishing, Inc. ("DLS") on sales of *MBP*.[2] (Doc. 96-11 pp. 12–13).

[2] Though *MBP* was supposed to be published in November 2004, DLS wasn't incorporated until November 30, 2004, and the *MBP* contract wasn't signed until January 2005. (Doc. 96-11 pp. 11–13). These facts coupled with the November 2004 issue being missing suggests that Plaintiffs artificially distanced *MBP* from Shelton's divorce.

Probably the September issue arrived back from the press toward the beginning of August. (Pickle Aff. ¶ 18, Ex. Q–R). Thus it must have been completed and gone to press by around early to mid-July. The September issue was announced by July 27, and a copy was posted online on August 24. (Pickle Aff. Ex. S).

Shelley Quinn ("Quinn") claimed that Shelton completed the manuscript for *AA* before Quinn saw it while visiting 3ABN, and that after that Quinn rewrote it. (Pickle Aff. Ex. T at pp. 4–5). Since by early to mid-July or so, the article in the September 2004 issue which announced *AA* was already completed, we now have documentary evidence that Shelton's manuscript predates Shelton's June 25, 2004, Guam divorce. (Doc. 96-11 pp. 9–10; Pickle Aff. ¶ 21). And since *MBP*'s beginnings go back to 1997, *MBP* also predates Shelton's divorce.

This evidence suggests that Shelton and 3ABN conspired to hide evidence of assets and income relevant to Shelton's still-unsettled marital property division case.

Fraud and Misrepresentation re: Motions in Question

Plaintiffs falsely stated yet again that their complaint contains "24 specific defamatory statements." (Doc. 140 pp. 2–3). On October 22, 2008, Magistrate Judge Frazier found that ¶ 46(g) of Plaintiffs' complaint is "pretty broad," and Plaintiffs' counsel admitted that more than one allegation in the complaint was indeed "broad." (Doc. 152-6 pp. 9–11; Doc. 126 pp. 10–11).

Plaintiffs falsely suggested yet again that the thousands of pages of Rule 26(a)(1) materials Plaintiffs produced were substantive. (Doc. 140 p. 3). Defendants filed their analysis of those documents long ago. (Doc. 81 pp. 1–8). Plaintiffs have never rebutted that analysis. And Plaintiffs' claim to have produced "virtually all of 3ABN's corporate records and tax filings" is fallacious. (Doc. 103 ¶¶ 5(c), (ak), (at), (bz); Doc. 74 p. 2 at ¶ 3; Doc. 92 p. 9; Pickle Aff. ¶ 22).

Plaintiffs falsely stated that Defendants first caused to be issued third-party subpoenas *duces tecum* after Plaintiffs had produced documents, when the original subpoenas were served

before Plaintiffs had filed their *first* motion for a protective order. (Doc. 140 p. 3; Doc. 42 pp. 38, 43, 49). On December 14, 2007, Plaintiffs' counsel complained to the Court that these subpoenas shouldn't have been issued from this district. (Doc. 144 p. 12). Therefore, it is fraudulent for Plaintiffs to now blame Defendants for following Rule 45(a)(2)(C). (Doc. 140 p. 5).

Plaintiffs falsely stated that this Court's order of September 11, 2008, vindicated "Plaintiffs' efforts to narrow the scope of discovery," when the order denied those efforts, gave Plaintiffs a tongue lashing, and required Plaintiffs, not just Defendants, to obtain leave of court before issuing any more subpoenas. (Doc. 140 p. 4; Doc. 107 pp. 3–5)

Plaintiffs falsely stated that they believed that the purchase of two domain names from Defendant Joy's bankruptcy estate accomplished the lawsuit's objectives. (Doc 140. p 6). Other post-petition Save 3ABN websites contain the same material: Plaintiffs made this fact part of their basis for their motion to dismiss Defendant Joy's adversarial proceeding, and inquired about these 16 other Save 3ABN sites at Plaintiffs' Rule 2004 examination of Defendant Joy. (Pickle Aff. Ex. U, Ex. V at pp. 37–38, 42–44, 47, 153).

Without advance notice, Plaintiffs converted that Rule 2004 examination into a deposition for this case, asking about whether the Save 3ABN sites are involved in commerce, sources within 3ABN, who reported Plaintiffs to the IRS, etc. (Pickle Aff. Ex. V at pp. 91–96, 114–118, 135–140, 151–154, 194–197). Plaintiffs therefore falsely stated that this case was still in the "document discovery phase" and that no depositions had been conducted. (Doc. 140 p. 8).

Defendant Joy's Rule 2004 examination testimony describes Thompson playing fast and loose with the truth yet again: Thompson falsely stated on January 5, 2008, that the Bankruptcy Court had shut down Save3ABN.com when it had not. (Pickle Aff. Ex. V pp. 45–47, Ex. W). Yet Plaintiffs' sole basis for their reasons for dismissal is an affidavit by Thompson, devoid of any and all documentary support. (Doc. 140 p. 6; Doc. 123; cf. Doc. 105 p. 5; Doc. 113 pp. 3–4).

A favorable ruling from the IRS? Utterly impossible! Shelton admitted falsifying a figure on his 2003 tax return, falsely denied receiving any section 4958 excess benefit transactions on 3ABN's 1998 Form 990, and falsely denied on 3ABN's 2006 Form 990 that Shelton was receiving compensation from related organizations. (Doc. 81-7 pp. 1–3, 6, 12; Doc. 93 at Ex. O (Ex. GG); Doc. 126 pp. 12–13; Doc. 63-31 p. 2; Doc. 49-2 pp. 35–37; Doc. 161 pp. 17–18).

Regarding the allegations investigated by the EEOC, Defendants contend that Shelton, Thompson, and the 3ABN administration believed and knew the allegations to be true. (Pickle Aff. ¶ 25, Ex. X–Y). Plaintiffs therefore fallaciously and fraudulently claim innocence regarding the firing of the Trust Services whistle blowers. (Doc. 140 p. 6). Defendants contend that Plaintiffs characteristically failed to produce these key documents (Ex. X–Y) to state and federal investigative agencies, and that this is why the EEOC could not determine whether or not statutes had been violated. (Doc. 71 ¶ 16; Doc. 126 pp. 16–17; Pickle Aff. Ex. AA).

Plaintiffs falsely assert, without any documentary support whatsoever, that the suit was dismissed because donation levels were restored after the aforesaid favorable rulings restored 3ABN's reputation. (Doc. 140 p. 7; Doc. 121 p. 4). Yet 3ABN's first public statement about the EEOC investigation that Defendants know of is Plaintiffs' motion to dismiss. (Pickle Aff. ¶ 26). Confidence could not have been restored if the public never knew anything about it. And about October 8, 2008, 3ABN president James Gilley wanted to raise a third of 3ABN's total 2007 revenue by October 17, suggesting severe financial distress. (Doc. 127-46; Doc, 162-13 p. 1).

Remnant produced subpoenaed documents on September 22, 2008, documents which Magistrate Judge Carmody found were relevant, a finding which survived appeal. (Doc. 127-38; Doc. 127-40). Though Plaintiffs and their counsel know that these documents are proof of Shelton's private inurement, his failure to disclose his royalties, and his perjury on his July 2006 financial affidavit, and thus relevant to this case, Plaintiffs fraudulently declare that these

documents have "no relevance to the underlying lawsuit." (Doc. 158 p. 2).

Plaintiffs know that their assertions that Defendants will indiscriminately publicize sensitive information are fallacious, for Defendants have still not published Shelton's tax returns, embarrassing correspondence pertaining to Shelton's daughter and sister, and Greupner's rollover contribution form. (Doc. 49 ¶¶ 13–14; Pickle Aff. ¶¶ 4, 6).

ARGUMENT

I. SUBSTANTIVE REQUIREMENTS OF RULE 59(e) MOTIONS

Under Rule 59, motions to reconsider may be granted if there is a clear error of law; newly discovered evidence not previously available; an intervening change in controlling law; or to prevent manifest injustice. *Gencorp, Inc. v. American International Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999). While motions under Rule 59(e) and Rule 60(b) are similar, the former are "not controlled by the same exacting substantive requirements" of the latter. *Lavespere v. Niagara Machine & Tool Works, Inc.*, 910 F.2d 167, 173–174 (5th Cir. 1990).

> Because Rule 59(e) motions are subject to much more stringent time requirements than Rule 60(b) motions, Rule 59(e) motions provide relief for the movant on grounds at least as broad as Rule 60 motions. [citing *Lavespere*, 910 F.2d at 174.] Rule 59(e), therefore, provides district courts with the power to consider equitable factors and provide relief for "any ... reason justifying relief from the operation of the judgment." [citing Fed.R.Civ.P. 60(b)(6); *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863-64.]

Templet v. HydroChem, Inc., 367 F.3d 473, 483 (5th Cir. 2004).

The Court may thus consider factors enumerated under Rule 60(b) such as mistake, inadvertence, surprise, excusable neglect; and fraud, misrepresentation, or misconduct of an opposing party. However, the strict limitations associated with these factors under Rule 60(b) should not be imposed when they are considered under Rule 59(e). *Lavespere*, 910 F.2d at 174.

II. ORDERS OF APRIL 13 AND 15, 2009, ARE IN ERROR

A. No Legal Authority Cited for Restricting

Dismissal Conditions by 28 U.S.C. § 1920

Neither Plaintiffs in their opposition memorandum nor the Court in its order cite any legal authority for using 28 U.S.C § 1920 to restrict dismissal conditions that may be imposed under Rule 41(a)(2). This absence of legal authority is problematic given that dismissal is "typically" conditioned upon payment of defendant's expenses, "which usually includes reasonable attorneys' fees," and that "the purpose" for doing so "is to compensate the defendant for the unnecessary expense that the litigation has caused." *Marlow v. Winston & Strawn*, 19 F.3d 300, 303 (7th Cir.1994); *Cauley v. Wilson*, 754 F.2d 769, 772 (7th Cir. 1985). This fact alone suggests that Rule 41(a)(2) cannot be restricted by 28 U.S.C. § 1920.

B. Reliance upon *Blackburn* Was an Error

The Court adopted Plaintiffs' reasoning that imposing a condition of payment of attorney fees under Rule 41(a)(2) is restricted by the American Rule, citing *Blackburn v. City of Columbus, Ohio*, 60 F.R.D. 197, 198 (S.D. Ohio 1973). *Blackburn* noted that absent statutory authority or other factors, attorney fees are not awarded. 60 F.R.D. at 199.

But, *Blackburn* "ignores the fact that Rule 41(a)(2) has the same force as any statute of the United States. 28 U.S.C. § 2072." *GAF Corp. v. Transamerica Ins. Co.*, 665 F.2d 364, 369 n.16 (D.C. Cir. 1981). Thus, Rule 41(a)(2) **is** statutory authority for awarding attorney fees apart from the American Rule. Similarly, the 5th Circuit noted:

> [W]e have before us an order made pursuant to a congressionally approved rule, reimbursing costs expended at the behest of a plaintiff who does not wish to continue his suit, but who faces no legal barrier to bringing the same action again at a later date. There is no doubt that a court has ample authority to award attorneys' fees as a term and condition of a Rule 41(a)(2) voluntary dismissal in order to protect defendants.

Yoffe v. Keller Industries, Inc., 580 F.2d 126, 129 n.9 (5th Cir. 1978).

While *Leith* cited *Blackburn* to support the idea that whether to impose attorney's fees lies within the sound discretion of the court, *Leith* did not cite *Blackburn* in support of imposing

the American Rule upon Rule 41(a)(2) dismissals. *Puerto Rico Maritime Shipping Authority v. Leith*, 668 F.2d 46, 51 (1st Cir. 1981). Thus, the Court's reliance upon *Blackburn* for its standard when considering the question of attorney fees was in error, for as the *GAF* court notes:

> Good faith, however, is simply irrelevant to an award of attorneys' fees or the imposition of any other "terms and conditions" under Rule 41(a)(2). As noted above, the purpose of the rule is to protect defendants from undue prejudice or inconvenience caused by a plaintiff's premature dismissal.

GAF, 665 F.2d at 369. Thus, the question is whether Plaintiffs' "premature dismissal" has caused Defendants "undue prejudice or inconvenience."

C. Rule 41(a)(2) Not the Only Authority for Awarding Costs, Expenses, and Fees

Defendants invoked Rule 41(a)(2), 28 U.S.C. § 1927, and the court's inherent power as a basis for the awarding of costs, expenses, and fees. (Doc. 149 pp. 15–18). The order of April 13 makes no mention of 28 U.S.C. § 1927 and the court's inherent power, implying that the Court did not consider or read Defendants' arguments on this point.

D. The Court Did Not Adequately Address "Potential Legal Prejudice"

In denying Defendants' motion for costs, the Court found that it had already adequately addressed the legal prejudice facing Defendants by requiring Plaintiffs to refile their claims in this division of the District of Massachusetts. (Doc. 166 p. 3). Now that Defendants' motion for costs is denied, this condition effectively becomes the only condition of dismissal.

Yet Plaintiffs knew before the dismissal that Defendants would be forced to file their claims in state court because Defendants lack diversity jurisdiction to sue Plaintiffs' counsel. (Doc. 141. pp. 10–11). The Court understood this complication before granting the dismissal. (Doc. 141 p. 15). Thus, if Plaintiffs can file their claims as counterclaims in a state action after all, the dismissal is left without any curative conditions whatsoever to address the legal prejudice facing the Defendants, and the Court's finding is therefore in error. There is nothing in the record

to suggest that Plaintiffs are absolutely barred from filing counterclaims in state court, and Plaintiffs imply that they will be able to do so defensively if Defendants file suit. (Doc. 140 p. 8).

E. Motion to File Under Seal Should Have Been Ruled Upon First

Since Defendants' arguments in support of their motion to impose costs were dependent upon the Court's review of the Remnant documents, the motion to file under seal should have been ruled upon first. That it was not suggests that the Court ruled upon the motion to impose costs without reading all of Defendants' submissions in connection with that motion.

F. Remnant Documents Are Relevant; Court's Orders Inconsistent

The order of April 13 reasons that evidence that a suit was brought to harass, embarrass, or abuse, or that a plaintiff deliberately sought to increase the defendant's costs by unduly protracting the litigation, is relevant to Defendants' motion to impose costs. (Doc. 166 p. 3). Defendants have repeatedly contended that the Remnant documents are *prima facie* evidence of abuse of process and malicious prosecution. (Doc. 126 pp. 4–5, 13–14; Doc. 127 ¶¶ 13, 16; Doc. 149 p. 3; Doc. 161 pp. 2–3, 16–17). Thus, according to both the order of April 13 and Defendants, as well as the Michigan court (Doc. 127-38), these critical documents are relevant.

On April 15, 2009, Defendants inquired about the status of the motion to file under seal. Later that day, the motion was ruled upon without a hearing. In contradiction to the order of April 13, the electronic order of April 15 states that the Remnant documents are irrelevant, *without the Court ever having reviewed them*.

G. Record Does More Than "Suggest" That Plaintiffs Are Guilty of Abuse of Process and Malicious Prosecution

The order of April 13 makes the sweeping finding, "There is nothing in the record to suggest that the plaintiffs filed this suit simply to harass, embarrass, or abuse the defendants or that they sought to increase their costs ...." Such a finding is clearly erroneous, for to say that the record "suggests" abuse of process and malicious prosecution is an understatement. Plaintiffs

tacitly admitted that the record is rife with evidence to support Defendants' claims in this regard, and that the record is void of any evidence to the contrary. (*supra* 3–5). A review of the Remnant documents would have alleviated any uncertainty the Court may have had regarding this issue.

If the Court has any question as to the veracity of Defendants' unrebutted assertions regarding Plaintiffs' discovery, the Court may review Folders 2–10 on Ex. H, and Folders 1–4 on Ex. BB. (Pickle Aff. ¶¶ 27–32). The Court will find these documents to be all that Defendants have previously claimed. (Doc. 71 pp. 1–2; Doc. 81 pp. 1–8; Doc. 103 pp. 1–10).

This Court repeatedly said it wanted the case to move forward expeditiously. (Doc. 17 pp. 14, 24; Doc. 144 pp. 11, 22; Doc. 146 p. 14–15). But Plaintiffs told the Court on December 14, 2007, that they intended to produce "nothing" in discovery. (Doc. 144 p. 10). When plaintiffs "never had any intention of providing discovery in this case but nonetheless permitted the case to proceed, thereby seeking the advantage of filing [their claims] without having to support them," that is "undue vexatiousness." *S.E.C. v. Oakford Corp.*, 181 F.R.D. 269, 271 (S.D.N.Y. 1998).

Pursuant to Rule 52(a)(5), Defendants "question the sufficiency of the evidence supporting the findings," and ask that they be amended to reflect the evidence in the record.

H. The Order of April 13 Mischaracterizes Defendants' Experts

As required by the confidentiality order, Defendants served on opposing counsel signed Exhibit A's for each expert Defendants retained. (Doc. 152 ¶ 31). But nowhere have the Defendants designated any of these experts as *expert witnesses.*

I. The Order of April 13 Mischaracterizes Defendants' Expenses

In applying 28 U.S.C. § 1920 to Defendants' itemization of expenses, the Court's order suggests that none of Defendants' miscellaneous expenses fit, when in reality nearly all of those expenses constitute "[f]ees for exemplification and copies of papers necessarily obtained for use in the case." 28 U.S.C. § 1920(4). Of the $4,614.90 total of miscellaneous expenses, $3,534.59

alone was the net fee charged by MidCountry for copies of its records. (Doc. 132 Table 2; Doc. 63-30 pp. 3–7). Other items on the list in Table 2 are clearly marked "Copies," and even fees and costs associated with the fact-finding trips are attributable to obtaining copies of papers necessarily obtained for use in the case. (Doc. 132 Table 2; Doc. 152 ¶¶ 32–36).

III. THE ORDERS OF APRIL 13 AND 15 SUBJECT DEFENDANTS TO MANIFEST INJUSTICE

Only after Defendants had obtained the damning Remnant documents did Plaintiffs file their motion to dismiss. In doing so, Plaintiffs sought the following:

- A dismissal without prejudice to insulate Plaintiffs *and* their counsel from liability for malicious prosecution. (Doc. 141 pp. 6, 8–9; Doc. 140 p. 8).
- Removal from Defendants of the Remnant documents, even though the confidentiality order does not so require. (Doc. 120 p. 1; Doc. 60 pp. 1–6).
- Removal from Defendants of documents Plaintiffs wrongly designated confidential (thus, removal of further evidence of Plaintiffs' abuse of process), even though the confidentiality order does not so require. (*Id.*).
- Return of MidCountry's records, necessitating duplicative discovery expense in future litigation, even though the confidentiality order does not so require. (*Id.*).

This Court granted the dismissal without prejudice, even though Plaintiffs' stated purpose for having it be without prejudice was the stripping from Defendants of their legal right to sue Plaintiffs and their counsel for malicious prosecution. (Doc. 141 pp. 6, 8–9). This constituted the type of plain legal prejudice impermissible under a Rule 41(a)(2) dismissal. *Selas Corp. v. Wilshire Oil Co.*, 57 F.R.D. 3, 6 (E.D.Pa.1972); *Kappa Publishing Group, Inc. v. Poltrack*, 1996 U.S. Dist. LEXIS 3844, at *4 (E.D.Pa. 1996); *In re Sizzler Restaurants International Inc.*, 262 B.R. 811, 821 (Bankr.C.D.Cal. 2000).

The erroneous, post-judgment finding inserted into the record ("There is nothing in the

record to suggest ....") further erodes Defendants' legal right to be heard regarding their claims of misuse of process and malicious prosecution, and undermines Defendants' appeal.

Further, the Court has now declined to require Plaintiffs to reimburse Defendants for any of Defendants' costs, including MidCountry's records, even though Defendants paid considerably for these records and have not yet seen them. (Doc. 166). Defendants should be reimbursed for these records, or Defendants should be allowed to possess what they paid for, or both.

It is manifestly unjust to allow Plaintiffs and their counsel to so control dismissal that they are insulated from liability, the dismissal is at risk of being without any curative conditions, an erroneous finding is inserted into the record, and Defendants' ability to pursue their legal rights in the future, whether as plaintiffs or defendants (Plaintiffs "face[] no legal barrier to bringing the same action again at a later date." *Yoffe*, 580 F.2d at 129 n.9), is hampered financially. The erroneous findings should therefore be corrected, and Plaintiffs should be required to reimburse Defendants for some or all of their costs, expenses, and fees.

IV. PLAINTIFFS' FRAUD, MISREPRESENTATION, OR MISCONDUCT

Defendants hereby incorporate the examples given on pp. 7–10 of this memorandum, as well as the examples given in Doc. 149 pp. 10–15 and Doc. 161 pp. 3–20.

Plaintiffs' complaint contains allegations regarding Shelton's undisclosed royalties, about which Shelton perjured himself in his divorce-related proceedings. (Doc. 1 ¶¶ 46(g)–(h), 50(i)). In August 2008, Defendants argued that Shelton received kickbacks from Remnant for purchases by 3ABN of certain booklets to the tune of 10% to 32%. (Doc. 96-9 p. 3). Defendants in 2007 suggested that Shelton may have received around $572,967 in royalties from Remnant from 2005 to 2006, and now maintain that Shelton's kickbacks and/or royalties from Remnant must amount to between $749,706 and $808,614 from 2005 to 2007. (Doc. 81-7 p. 26; Doc. 154 p. 3).

And, despite the ruling of the Michigan court, Plaintiffs believe them irrelevant? No!

Plaintiffs and their counsel know that these documents prove their claims to be utterly baseless, and give foundation for a counterclaim of misuse of process. The same is true regarding the EEOC-related documents. (Pickle Aff. Ex. X–Y).

V. MISTAKE, INADVERTENCE, SURPRISE, EXCUSABLE NEGLECT

Plaintiffs asserted that the Remnant documents should not be reviewed by the Court because Defendants did not submit them in opposition to Plaintiffs' motion to dismiss. (Doc. 158 p. 4). Such an argument is without merit under the circumstances:

- Plaintiffs surprised Defendants by filing their motion to dismiss on October 23, 2008, only one week before the October 30 status conference, when counsel had explicitly stated that he would not file any such motion. (Doc. 127 ¶¶ 6–7; Doc. 152-5 p. 1).
- On October 23, Defendants contacted Remnant to begin the 7-day process outlined in the confidentiality order for using confidential material, intending to use this material to oppose Plaintiffs' motion to dismiss. (Pickle Aff. Ex. CC; Doc. 60 ¶ 3).
- Both Remnant and Plaintiffs mailed (but, uncharacteristically, didn't email) responses on October 24, which Defendants received on October 27. Remnant denied being the designating party, and Plaintiffs asserted that new negotiations had to be commenced with them. (Pickle Aff. ¶¶ 33–34; Doc. 155-3; Doc. 162-9).
- Defendants barely got their opposition written and filed before the status conference, and were unable to file a motion to file under seal as required by Local Rule 7.2, much less obtain a ruling on such a motion prior to the status conference.
- Therefore, Defendants requested an evidentiary hearing for which Defendants would have submitted these documents, as well as documents relevant to the EEOC investigation. (Doc. 126 p. 20). That request was never considered.

That Plaintiffs and Remnant did not email Defendants suggests that Plaintiffs purposely

sought to use the confidentiality order to shield highly relevant and more or less publicly available information from the Court's review. (Doc. 154 p. 3). The Court should not assist Plaintiffs in this effort. *Jepson v. Makita Elec. Works Ltd.*, 30 F.3d 854, 860 (7th Cir. 1994).

Plaintiffs have thus placed in jeopardy the good Local Rule 7.2, which seeks to prevent the unnecessary prohibition of public scrutiny of litigation. In this instance, we have a local rule and a confidentiality order that do not allow for the necessary due process that would enable defendants to file relevant documents declared confidential by plaintiffs, when defendants need to oppose a motion that is at risk of being ruled on outside of a normal briefing schedule.

All the Remnant and EEOC-related documents that Defendants believe relevant to the motion to dismiss and the motion to impose costs, because they demonstrate abuse of process and malicious prosecution, should therefore be allowed to be submitted. Reasons for the failure to file such evidence earlier must be given, and Defendants have provided such. *Lavespere*, 910 F.2d at 174–175; citing *Waltman v. International Paper Co.*, 875 F.2d 468 (5th Cir. 1989).

VI. NEWLY DISCOVERED EVIDENCE PROVE THAT FINDINGS ARE IN ERROR

A. Plaintiffs' Tacit Admission Served on March 23, 2009

In a filing unavailable until after March 23, 2009, Plaintiffs tacitly admit that the record is rife with evidence that Plaintiffs and their counsel are guilty of abuse of process and malicious prosecution, and that there is nothing in the voluminous record to rebut this evidence. (*supra* 3–5). The findings of the April 13 order must therefore be amended, and the evidence in the entire record considered in resolving the question of whether to award some or all costs, expenses, and fees under Rule 41(a)(2), 28 U.S.C. § 1927, and/or the court's inherent powers.

B. Shelton's Recordings, Meaning Camouflaged by Inaccurate Wording

Around early December 2006, Defendants broke the story that Shelton had lied about "the serious nature, wide extent, and recent timing" of the child molestation allegations against

Tommy Shelton, that Thompson and the 3ABN Board had failed to properly investigate these allegations, and that their gross negligence had thus jeopardized the financial stability of 3ABN and the Illinois Conference of Seventh-day Adventists. (Doc. 63-15).

Shelton then threatened to sue. (Doc. 63 ¶ 8; Pickle Aff. Ex. DD at p. 2, Ex. EE). The only cease and desist letter Defendants received accused Defendant Joy of defamation *per se* in regard to the allegations against Tommy Shelton. (Doc. 63-18 p. 2). Tommy Shelton publicized the fact that a suit would be filed against Defendant Joy over these issues. (Doc. 63-19 p. 2).

Plaintiffs' complaint alleges that Defendants lied when Defendants claimed, "The 3ABN Board of Directors has failed in its responsibility to oversee and manage 3ABN's financial assets," and, "The 3ABN Board of Directors has failed in its responsibility to oversee the governance and administration of the organization." (Doc 1 ¶¶ 46(e), 48(c)). Defendants' assertions about the child molestation allegations unquestionably fall under these broad claims.

The recording left by Shelton tacitly admits that Tommy Shelton molested boys, and proves that Shelton read Dryden's action items which made the most recent alleged incidents as recent as 3 years old, not 30 years old. (*supra* 5–6). Thus, Defendants' assertions were true, and Shelton knew it. Thus, Plaintiffs have always known that their claims that Defendants were lying on these points were utterly baseless.

The record already demonstrates Shelton's use of threats of litigation to intimidate and silence, irrespective of truth. (Doc. 81-2 pp. 9–10; Doc. 63-17; Doc. 63 ¶ 8). There is no other motive for this lawsuit.

C. *3ABN World* Articles Which Plaintiffs Refused to Produce

The *3ABN World* articles prove that *AA* (and thus *TCTR*) and *MBP* all predate Shelton's June 25, 2004, divorce, as do his booklets published by Pacific Press Publishing Association. (*supra* 6–7; Doc. 96-11 pp. 1–3, 9–10). Shelton thus lied on his July 2006 financial affidavit in

his divorce-related proceedings by not reporting any assets or income attributable to these books. (Doc. 81-7 pp. 8–13; Doc. 8-2 pp. 20–21). 3ABN conspired with Shelton to hide this evidence by removing the *3ABN World* issues in question from 3ABN's website, and by refusing to produce these issues in this litigation. (*supra* 6–7). 3ABN also allowed Shelton to line his pockets through self-dealing book deals. (Doc. 96-11 pp. 18–38). The Court's review of the Remnant documents will demonstrate to what extent and through what methods Shelton profited in this way.

Thus, Plaintiffs (and their counsel (Doc. 126 p. 4)) have always known that Plaintiffs' allegations regarding perjury in divorce-related proceedings, undisclosed royalties, and private inurement were all utterly baseless. (Doc. 1 ¶¶ 46(g)–(h); 50(i)). And the removal of the *3ABN World* issues from 3ABN's website raises spoliation concerns yet again. (Doc. 126 p. 18).

CONCLUSION

For the various reasons laid out above, and to be presented at oral argument, Defendants seek some or all of the costs, expenses, and fees incurred by Defendants, the filing of certain Remnant documents under seal, and corrections to the findings in the orders of April 13 and 15, 2008, to reflect that the surviving dismissal condition does not adequately address Defendants' potential legal prejudice, that the record does suggest abuse of process and malicious prosecution, and that the Remnant documents are relevant.

Respectfully submitted,

Dated: April 26, 2009

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and

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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' OPPOSITION TO DEFENDANTS' MOTION FOR LEAVE TO FILE UNDER SEAL

Plaintiffs Three Angels Broadcasting Network, Inc. ("3ABN") and Danny Lee Shelton submit this memorandum in opposition to the motion of Defendants Gailon Arthur Joy and Robert Pickle to file certain exhibits to an affidavit, and an explanatory affidavit, under seal. (Doc. 173).

Defendants assert that Exhibits Q-R, X-Y and BB of the Affidavit of Robert Pickle (Doc. 171), as well as an affidavit that "succinctly draws attention to the facts or admissions in the above," need to be filed "because they have a bearing on Defendants' motions for reconsideration and motion to amend findings." (Doc. 173, p. 1). What that "bearing" may be is not explained, presumably being reserved for the reply memorandum, as is the pattern with these Defendants. (*See, e.g.,* Defendants' Memo in Support of Motion for Costs (Doc. # 131)(seeking costs and fees because of claimed prejudice consisting only of concern for spoliation of evidence and faded witness

memories) and Defendants' Reply Memo in Support of Motion for Costs (Doc. # 149)(adding additional grounds for motion for costs and fees including alleged litigation misconduct).

The exhibits are said to be relevant to the motion for reconsideration of this Court's order denying Defendants an award of fees and costs (Doc. # 169). The motion for reconsideration hinges on whether new evidence has been found, not reasonably available to Defendants at the time of the original briefing, that shows litigation misconduct by Plaintiffs such as would warrant an award of costs and fees pursuant to Fed. R. Civ. P. 41(a)(2) (which allows the court to condition voluntary dismissal on terms necessary to mitigate legal prejudice). *In re Williams*, 188 B.R. 721, 725 (D. R.I. 1995); *see also* 12 Moore's Federal Practice 3d, § 59.30[6] (Matthew Bender 3d ed.) ("A Rule 59(e) motion to alter or amend a judgment may not be used to relitigate the same matters already determined by the court."); *Williams v. Poulos*, 11 F.3d 271, 289 (1st Cir. 1993); *FDIC v. World Univ. Inc.,* 978 F.2d 10, 16 (1st Cir. 1992) (a motion to amend may not be used to raise arguments, or to present evidence, that could reasonably have been raised or presented before the entry of judgment); *see also* 12 Moore's Federal Practice 3d, § 59.30[6].

Thus, to be relevant, these exhibits would have to be (1) something newly discovered; (2) that Defendants couldn't reasonably have submitted when they briefed the original motion in November of 2008; (3) that shows litigation misconduct. As the proponents of the evidence, Defendants have the burden of proving these things. *FDIC v. World Univ. Inc.,* 978 F.2d at 16 (moving party in a motion to amend must clearly

establish a manifest error of law or present newly discovered evidence). The exhibits flunk all three tests.

Although the motion is not clear on this point, and Plaintiffs have not been made aware of exactly what documents Defendants seek to file, the Pickle affidavit (Doc. 171 ¶¶ 18, 25) identifies the exhibits as materials that were produced by the Plaintiffs during discovery in this case, which were stamped as "Confidential" under the Protective Order issued by Magistrate Judge Hillman on April 17, 2007. (See Doc. 60). For the following reasons, the motion should be denied.

1. Defendants Were Ordered to Return These Documents.

At the threshold, Defendants are not even supposed to have these documents anymore. This Court expressly ordered that Defendants return all discovery materials stamped as confidential. At the status conference on October 30, 2008, which by consent of the parties was converted into a hearing on the Plaintiffs' motion for voluntary dismissal, this Court stated:

> I will order that the materials produced in discovery that were designated as confidential under the confidentiality and protective order issued in this case on April 17th will be returned, as set forth in that order.

(Doc. 141, p. 12). The electronic clerk's notes echoed this order: "Court orders all confidential documents returned." Defendants never sought a stay of this order. The Court's order was consistent with the Protective Order itself, which had provided that material produced under it "Shall be used for no other purpose than this litigation." (Doc.

60, pp. 1-2). The matter had been briefed and argued by both sides and the Court issued its order from the bench.

But now, more than six months after the Court's order, the Defendants have *not* returned any of the confidential documents and instead seek leave to file them in connection with yet another abusive and pointless motion. While resisting the temptation to publish the documents themselves, Defendants describe the confidential documents in pleadings available to the public, for example referring to perfectly proper royalty payments to Shelton from Remnant Publications for the sale of books he authored as "kickbacks and/or royalties." (See Doc. # 158 at pp. 2-3 – Plaintiffs Memo in Opposition to Defendants Motion to File Under Seal and record citations therein). This is somewhat akin to describing a banking transaction as "a robbery and/or withdrawal."

Plaintiffs are continuing to incur litigation costs directly related to Defendants' failure to return these documents, as ordered by this Court. Enough is enough. The Court should order Defendants to show cause why they should not be held in contempt for flouting its order to return the confidential documents, and for describing them publicly.

2. The Exhibits Are Irrelevant to the Motion For Reconsideration.

The motion should be denied because the proferred exhibits do not contain admissible evidence. Evidence is admissible if and only if it is relevant. Fed. R. Evid. 402. Evidence is relevant if it tends to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Fed. R. Evid. 401. As argued with citation to authorities

in Plaintiffs' Memorandum in Opposition to Defendants Motions to Reconsider and to Amend Findings (filed and served herewith), the substantive legal issue now is whether new evidence that was not available to Defendants has come to light that would justify the "extraordinary remedy" of a motion to reconsider. These documents fall far short of that standard.

Exhibits Q-R are described in the Pickle affidavit as purchase orders that will help establish when the supposedly missing issues of *3ABN World* "came back from the printer." Defendants do not explain why this matters, or why they could not have presented this information and argument to the Court last November when they briefed the motion for costs and fees. Exhibits Q-R would not be considered if they were filed, so the motion for leave to file them should be denied.

Exhibits X-Y suffer from the same problem. The Pickle affidavit says they "speak to the question of whether Plaintiffs believed the allegations against Leonard Westphal to be true." (Doc. 171 ¶ 25). Why that would be relevant to any remaining issue in the case is not explained. Whatever these documents are, Defendants had them when they originally briefed the motion. If they are relevant, Defendants should have brought them to the Court's attention in November, and not for the first time on motion for reconsideration. They are manifestly not relevant to the underlying issue of litigation misconduct, and leave to file them should be denied.

Exhibit BB is said to be a "CD or DVD containing documents produced by Plaintiffs which Plaintiffs designated confidential." (Pickle Affidavit, Doc. 171 ¶ 31). Why this Court needs those materials to decide the motion to reconsider is not explained

in the moving papers. Why Defendants wish to file them under seal, however, is becoming apparent. Defendants have been ordered (by this Court) to return all documents labeled confidential. They have expressed concern that they will be unable to retrieve these documents again in the future for use in some unspecified litigation that they hope to commence. If the documents are made part of the district court record, Defendants must think they will be preserved for whatever litigation Defendants have in store for the Plaintiffs. In short, Defendants want to file these documents in this litigation because of an unspecified lawsuit to come.

In any case, the motion to file Exhibit BB should be denied because it contains only information that was available to Defendants when they filed their initial brief in November. If Exhibit BB is relevant, Defendants could and should have brought it to the Court's attention the first go around.

Finally, Defendants wish to file an affidavit that "succinctly draws attention to the facts or admissions in the" exhibits to be filed under seal. That is what briefs are for. Allowance of such an affidavit is not authorized by any rule, and would amount to an extra brief not permitted by the rules, to which no reply would be authorized. The motion to file an explanatory affidavit should be denied.

CONCLUSION

Plaintiffs ask that the Court deny Defendants motion to file exhibits and an affidavit under seal. However, if the Court is inclined to grant the motion, then Plaintiffs agree that the exhibits and affidavit should be filed under seal.

Respectfully Submitted:

Dated: May 11, 2009

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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 May 11, 2009.

Dated: May 11, 2009

/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,

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

Case No. 07-40098-FDS

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS TO RECONSIDER AND TO AMEND FINDINGS

INTRODUCTION

Plaintiffs Three Angels Broadcasting, Inc. ("3ABN") and Danny Lee Shelton ("Shelton") submit this memorandum in opposition to Defendants' Motions to Reconsider and to Amend Findings [Docket # 169]. Plaintiffs oppose the motion because Defendants raise no new arguments that were unavailable to them before in support of their position on the underlying order issued by this Court, which had denied Defendants' motion for costs and attorneys fees. [Docket # 166]. The Court will recall that it granted Plaintiffs' motion for voluntary dismissal under Rule 41(a)(2), subject to conditions, and denied Defendants' motion for an award of costs and fees.

Defendants now move to reconsider the latter order, but in doing so merely rehash their previously rejected arguments, gussied up with a few more irrelevant and overblown

factual contentions that were known to Defendants all along. Their motion to reconsider completely misses the central point underlying this Court's denial of their costs and fees, namely, that the kind of prejudice contemplated by Fed. R. Civ. P. 41(a)(2), i.e., *legal* prejudice, would not be reduced by an award of costs and fees, and that the risk of duplicative litigation is adequately controlled by requiring Plaintiffs to refile any related litigation in the same forum.

FACTS

Regarding Defendants' factual presentation, as usual, it is hard to know where to begin. To the extent the alleged facts are *different* from those in Defendants' original motion, there is no reason they could not have been presented to the Court the first time around. To the extent they are the *same* facts as were presented in Defendants' original motion, they have already been considered and found to fall short of establishing prejudice such as would warrant an award of costs and fees. Setting aside the issue of whether the cited evidence supports the facts that Defendants allege in support of their motion to reconsider, Defendants are merely rehashing arguments that this Court previously rejected. The only new development is that the level of bombast has gone from ten to eleven.

Since a motion to reconsider or amend must not merely rehash previously rejected arguments, the beginning point here is to ascertain what arguments were made in support of the motion for fees and costs. Then it can be determined whether new or different arguments are being made, and whether there is an adequate reason to consider them now.

The original memorandum in support of Defendants' motion for costs identified two kinds of supposed prejudice resulting from dismissal of the case: (1) Difficulties arising from the impossibility of reusing discovery information in future litigation contemplated by the Defendants; and (2) likely spoliation of evidence due to death or incapacitation of witnesses. (Doc. # 131 at p. 2). Plaintiffs' memo responded to those arguments, which were, in a word, silly, because there would be no future litigation unless the Defendants themselves commenced it. (Doc. 140). Defendants then submitted a reply memorandum raising a host of new arguments, which are substantively indistinguishable from the arguments now being advanced in this motion for reconsideration. (*See* Doc. # 149).

Because Defendants' arguments in this motion for reconsideration were first raised in their reply memo in the original motion, Plaintiffs never had a chance to rebut them there because the rules do not permit a surreply. But there was no need to respond to the reply memo because courts ordinarily do not consider arguments raised for the first time in a reply memo. *Rivera-Muriente v. Agosto-Alicia*, 959 F.2d 349, 354 (1st Cir. 1992) ("It is well settled in this court, for good reason which need not be rehearsed here, that a legal argument made for the first time in an appellant's reply brief comes too late and need not be addressed."); *In re Boston Regional Medical Center, Inc.***,** 328 F.Supp.2d 130, 143 (D. Mass. 2004) (same). The fact that Defendants had these same arguments available to them in the original motion shows that they do not have grounds for reconsideration now. Defendants have offered no reason why these arguments and evidence could not have

been presented in the original motion. They therefore lack grounds for a motion to reconsider.

This Court's order indicates that it considered the arguments raised by the Defendants in their reply brief and concluded that the only *legal* prejudice to them resulting from the dismissal was adequately addressed by the requirement that similar future litigation be filed in the same forum, and that no circumstances that might justify an award of fees and costs was present. (Doc. # 166 at pp. 3-4). The litigation expense they had incurred was not a form of legal prejudice, absent litigation misconduct or duplicative litigation, neither of which was a feature of this case.

Although a point-by-point refutation of Defendants' factual recitation is probably a waste of time, it appears to be necessary in order to avoid conceding any of their ridiculous claims. In their zeal to expose every bad act by the Plaintiffs that their imaginations can concoct, Defendants generally lose sight of the point of their brief, which should be to show new evidence of litigation misconduct that would justify an award of fees and costs under Rule 41(a)(2), and to show why that new evidence could not reasonably have been brought to the Court's attention in the original motion. The arguments advanced in support of the motion for reconsideration fall well short of what would be needed for this Court to reconsider its order. Each category of factual assertions will be discussed in turn.

1. The Motion to Impound.

Defendants' factual recitation begins with their gripe that Plaintiffs began the case by filing a motion to impound. (Doc. # 170 at p. 2). This fact was known to the Court

and the parties since the motion to impound was filed in April of 2007. (*See* Doc. # 2). Yet, it was not argued in support of Defendants' motion for fees and costs. (*See* Doc. # 131). The motion to impound was temporarily granted, then was denied following briefing and a hearing. Although Defendants characterize the motion to impound as "outrageous," this Court did not suggest that a good faith basis for the motion was lacking. In short, there is nothing new here that would warrant a motion for reconsideration.

2. Discovery Conduct.

Defendants next recite their usual litany of complaints about Plaintiffs' discovery conduct. (Doc. # 170 at pp. 2-3). These claims have been raised and rejected any number of times before by every judge to consider them, including this Court, Magistrate Judge Hillman, and several out-of-district judges who heard motions to quash the third party subpoenas served by the Defendants. But Defendants did not raise their allegations of discovery misconduct as a basis for the award of fees in their original brief in support of their motion for costs. (Doc. # 149). They argued discovery misconduct as a basis for the fee claim for the first time in their reply memo, where they presented exactly the same facts that they present now in their motion for reconsideration. (*See* Doc. # 149 at pp. 2-15).

Thus, when it denied Defendants' motion for fees and costs, this Court had all the information before it that Defendants are now proferring regarding the supposed litigation misconduct, which was really just routine litigation pretrial activity. This Court summarized all of the Defendants' assertions with the following succinct observation:

> There is nothing in the record to suggest that the plaintiffs filed this suit simply to harass, embarrass, or abuse the defendants or that they sought to increase their costs, and the court sees no other reason to award attorneys' fees under the circumstances.

(Doc. # 144 at pp. 3-4). In other words, Defendants made the same arguments that they make now, and this Court rejected them. Defendants suggest that this finding would be "impossible to make if the Court had reviewed those documents" (Doc. # 170, p. 1) and that this Court's failure to more specifically address their arguments "suggests that the Court ruled . . . without reading all of Defendants' submissions in connection with that motion." (Doc. #170, p. 13). The possibility that the Court read and understood their arguments but simply disagreed with them does not exist for these gentlemen.

3. The "Sweeping Admission" in Appellate Brief.

This Court has not had the misfortune of being required to read Defendants' appellate briefs, in which they wove together snippets from dozens of exhibits that they had submitted with their numerous pretrial motions, and from those snippets argued the merits of the underlying case instead of the appellate issue, i.e., whether this Court abused its discretion in granting voluntary dismissal with the conditions it imposed. Unaware of the limited scope of appellate review, Defendants are treating the appeal as an opportunity to try the case on paper, and their briefs string together hearsay from unsourced emails to smear the Plaintiffs with many of the same baseless allegations that caused the suit in the first place, and some new ones too.

In response to this barrage of irrelevant information (irrelevant because whether Defendants' statements are in fact defamatory is not an issue now that the case is

dismissed), Plaintiffs noted in their brief to the First Circuit Court of Appeals that the materials they had filed in the pretrial motion activity in the case did not contain the information necessary to rebut Defendants' smear job.

This statement was made to explain why Plaintiffs' appellate brief did not cite to affidavits or other evidence from the district court record establishing the merits of Plaintiffs' claims, and rebutting the contentions of the Defendants that the Plaintiffs had engaged in wrongdoing. The merits had never been at issue before; thus there had been no opportunity to present evidence on that topic and the district court record lacked evidence from which the Defendants' claims could be shown to be false.

This is the "sweeping admission" that Defendants contend constitutes "new evidence" that justifies reconsideration. (Doc. # 170, pp.3-4). In fact, this is just one of many examples in which the Defendants fail to appreciate that pretrial motion practice was not the occasion to prove up the merits of either side's case. The quoted "astonishing admission" was not an admission, evidentiary or otherwise. Defendants simply fail to recognize that the merits of the lawsuit are not supposed to be proven in pretrial motion practice.

4. The Dryden Recording.

Defendants next argue that a tape recording they acquired long ago constitutes "new evidence" that Danny Shelton was dishonest, about something that is not material to the case, in a phone call with a non-party on one occasion in 2003. Defendants say that a recording of the call has Shelton making a statement which Defendants think cannot be reconciled with another statement he made to somebody else. (Doc. # 170, pp.

5-6). Even if the tape recording was evidence of dishonesty, which it is not, the relevance of this "new evidence" is hard to fathom. It doesn't show litigation misconduct, which is what Defendants need to show to have a hope of getting an award of fees and costs. Further, it is not newly discovered. Defendants artfully dodge the question of exactly when they acquired this tape, both in their brief and in the Pickle affidavit (Doc. # 171, ¶ 13), because they have had it since before the lawsuit started. There is nothing relevant, or new, or remotely interesting, here.

5. 3ABN World Articles.

Defendants' next offer "new facts" relating to some issues of a magazine published by Plaintiffs called "3ABN World" that Plaintiffs supposedly "refused to produce." (Doc. # 170, p. 6). Through a convoluted process of reasoning that is impossible to follow, Defendants conclude from these magazines that Shelton "conspired to hide" the date he wrote a book in order to hide assets from his wife in their marital dissolution. The "conspiracy to hide" arises from the fact that these issues of the magazine were apparently inadvertently omitted from the document production in the case, a matter which would have been rectified had it been brought to the attention of counsel. In any case, since Defendants admit they got these magazines from the *library* after the case was dismissed (Doc. #170, p. 6), it is a bit hard to see how omitting them from a document production could be evidence of a conspiracy. They were publicly available from any number of sources, including a simple request to 3ABN for back issues of their magazine. Again, this is not evidence of litigation misconduct that might justify reconsideration of the order denying costs.

6. Fraud and Misrepresentation.

Defendants finally spew a more or less random assortment of nitpicky complaints about statements made by Plaintiffs or their counsel, in briefs or argument, every one of which is said to demonstrate fraud, but every one of which is demonstrably accurate. (Doc. # 170, pp. 7-10). It is tempting to respond to the substance of each of them, but it would simply take too much time and they are all irrelevant to the issues under consideration anyway. Restraint will therefore be the order of the day. These facts were all known to Defendants at the time they briefed their motion for fees and costs. They chose not to present these facts and arguments at that time. Now, with no explanation for their failure to raise these arguments before, they simply throw them against the wall to see if they will stick, labeling them "fraud" which is apparently a synonym for "something we disagree with." The Court should not consider any of these arguments.

ARGUMENT

A rule 59(e) motion to alter or amend a judgment may not be used to relitigate or rehash the same matters already determined by the court. *In re Williams*, 188 B.R. 721, 725 (D. R.I. 1995); *see also* 12 Moore's Federal Practice 3d, § 59.30[6] (Matthew Bender 3d ed.) ("A Rule 59(e) motion to alter or amend a judgment may not be used to relitigate the same matters already determined by the court."). Further, a motion to amend may not be used to raise arguments, or to present evidence, that could reasonably have been raised or presented before the entry of judgment. *Williams v. Poulos*, 11 F.3d 271, 289 (1st Cir. 1993); *FDIC v. World Univ. Inc.,* 978 F.2d 10, 16 (1st Cir. 1992); *see also* 12 Moore's Federal Practice 3d, § 59.30[6].

The moving party in a motion to amend must clearly establish a manifest error of law or present newly discovered evidence. *FDIC v. World Univ. Inc.,* 978 F.2d at 16. A motion to amend must demonstrate why the court should reconsider its previous decision and set forth facts or law of a strongly convincing nature to induce the court to reverse its earlier decision. 12 Moore's Federal Practice 3d, § 59.30[3]. Reconsideration of a previous order is an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources. *Id.*, § 59.30[4].

The present motion to reconsider, amend or alter the prior order, however it is characterized, does everything that such motions are not supposed to do. It rehashes old arguments that were made and rejected, not just by this Court, but also by Magistrate Judge Hillman and the out-of-district courts that considered the third-party subpoenas. For example, the pretrial wrangling over discovery that Defendants have complained endlessly about, was nothing unusual in a case of this nature. Defendants told anybody who would listen that Plaintiffs' position on those pretrial motions was not well-founded, but not one court agreed. To the contrary, Plaintiffs prevailed every time: in getting a protective order issued, in getting Defendants' discovery requests nullified because they were overbroad, in getting out-of-district documents funneled to the Massachusetts court for consideration of their relevancy, and so on. These arguments are old. They have been considered and rejected. Defendants are simply rehashing arguments that they lost.

In addition to rehashing old arguments, Defendants are guilty of making new ones without any explanation for their failure to make them in their original motion. For example, they complain about the fact that Plaintiffs brought a motion to impound, which

is a fact they knew when they brought their original motion. They also offer a tape recording of Danny Shelton saying something they, without apparent justification, consider a lie. They had this tape recording when the filed their original motion, and offer no justification for failing to call it to the Court's attention at that time. The same can be said of the supposed "conspiracy" to hide issues of 3ABN World, which Defendants eventually got from that repository of all deep, dark secrets: the local library. The same can be said about the "fraud and misrepresentation" by Plaintiffs detailed on pages 7-10 of their memo. They had the raw material for these arguments all along, and offer no explanation for not raising them in their original motion papers. There is no basis for the "extraordinary remedy" of a motion to reconsider. The motion should be denied.

CONCLUSION

For the reasons stated above, Plaintiffs oppose the motion of the Defendants for reconsideration or amendment of this Court's order denying them an award of their costs and attorneys fees.

Respectfully Submitted:

Dated: May 11, 2009

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

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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 May 11, 2009.

Dated: May 11, 2009

/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, Plaintiffs, v. Gailon Arthur Joy and Robert Pickle, Defendants.	Case No.: 07-40098-FDS

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTIONS TO RECONSIDER, AND MOTION TO AMEND FINDINGS

INTRODUCTION

Defendants seek reconsideration of their motion for costs and motion to file under seal (Doc. 130; Doc. 153), and amendment of the findings of the orders of April 13 and 15, 2009.

Plaintiffs' oppositions (Doc. 174; Doc. 175) contain no objections to many of Defendants' arguments, and indisputably contain multiple misstatements of fact. The misrepresentations are of such a nature that Defendants will seek sanctions pursuant to Fed. R. Civ. P. 11(c)(2) and the Court's inherent powers. Defendants will serve their motion for sanctions upon Plaintiffs within the next several days, after which they will allow the required 21 days for Plaintiffs to make the necessary corrections before filing their motion.

Plaintiffs argued on appeal that the order of November 3, 2008, was not final because the matter of costs was unresolved. (Doc. 171-2 pp. 2–4). Defendants believe this position to be wrong. However, if Plaintiffs are correct, and only if Plaintiffs are correct, Defendants hereby

17). However, Magistrate Judge Boylan denied the subsequent motion because his previous order had directed Defendants to obtain such relief from the Massachusetts court.[4] (Doc. 92 p. 31).

Defendant Pickle's second motion to compel might have prevailed if he had provided "a request by request breakdown of why information is sought and the argument for its production," as Local Rule 37.1(b) requires. (Doc. 107 p. 3). But at the time, Defendant Pickle didn't know how to do that given the "overly general nature" of Plaintiffs' responses. (Doc. 61 p. 2).[5]

3. "The 'Sweeping Admission' in Appellate Brief"

Defendants filed merits-related evidence to justify Defendants' discovery requests and defeat Plaintiffs' obstruction of discovery. Plaintiffs camouflaged their inability to similarly file merits-related evidence in rebuttal by instead filing case-related, attorney correspondence, and by refiling exhibits that were already in the record. (Doc. 171-3 pp. 56–57 n.18).

The uninformed and inexperienced might conclude that Plaintiffs simply chose the losing legal strategy of withholding evidence from the Court. But the real problem is that no such evidence ever existed, despite the voluminous initial disclosures Defendants gave Plaintiffs way, way back in 2007. (Doc. 89 p. 40; Doc. 103 p. 1). Plaintiffs' suit was therefore baseless.

Despite Plaintiffs' repeated, fallacious assertions, the statements of Plaintiffs and their agents, representatives, and co-conspirators which Defendants filed are not hearsay. (Doc. 175 p. 6; Pickle Aff. Ex. A pp. 20–21). Fed. R. Evid. 801(d)(2).

4. "The Dryden Recording"

Plaintiffs asserted in May 2007 that Defendants in particular drastically affected donation levels in December 2006. (Doc. 10-5 ¶ 7). Only one thing could possibly substantiate this claim: Defendants' late 2006 exposé of Shelton's 2003 cover up of the child molestation allegations

[4] Defendant Pickle regrets not more clearly elucidating the situation in the May 7, 2008, status conference. It should also be noted that the loss of these documents at the courthouse until about December 16, 2008 (Doc. 160) is why Defendants did not pursue the matter further.

[5] Unaware of the scheduling order's allowance for reply briefs, Defendant Pickle mistakenly requested leave to file a reply brief due to Plaintiffs never having been specific enough in their objections. (*Id.*).

against Tommy Shelton. (Doc. 63-15). Therefore, this recording must be material.

This newly discovered evidence for the very first time indisputably proves that Shelton as well as Three Angels Broadcasting Network, Inc. ("3ABN") Board chairman Walter Thompson ("Thompson") had the "action items" which revealed that there were recent allegations against Tommy Shelton in Virginia. (Pickle Aff. ¶ 5; Doc. 170 pp. 5–6). Since Defendants' late 2006 exposé of the 3ABN Board's failure to protect 3ABN from liability was therefore correct, Shelton's launch of this retaliatory suit was therefore baseless. (Doc. 170 pp. 18–19).

Plaintiffs' counsel falsely claims that Defendants acquired this recording prior to the lawsuit, when it was not in Defendants' initial disclosures, and when Defendants produced it to the same counselor on June 19, 2008, soon after it was received. (Pickle Aff ¶ 6, Ex. F–G).

Determining when evidence is discovered doesn't necessarily depend on when a party obtains the documents. For example, evidence was considered timely when it was contained in yet untranslated emails. *Perez v. Volvo Car Corp.*, 247 F.3d 303, 318-19 (1st Cir. 2001). In this instance, Defendants had no idea that what Shelton called a letter was in actuality the action items. (Pickle Aff. ¶¶ 5, 7).

Earlier recognition of Shelton's mischaracterization of the action items was hindered by (a) receiving the recordings about the beginning of Plaintiffs and Remnants' lengthy blitzkrieg or battles in four states,[6] (b) Defendants' preparation in August and September of motions seeking leave to serve four subpoenas, (c) the arrival of the Remnant documents and subsequent preparations for filing counterclaims, (d) the hastily drafted opposition to Plaintiffs' motion to dismiss, and (e) preparations for Defendants' appeal involving re-reading the entire record.

5. "3ABN World Articles."

Plaintiffs fallaciously contend regarding the missing *3ABN World* issues:

[6] Plaintiffs' blitzkrieg necessitated a motion to extend the time for a filing. (Doc. 85).

> The "conspiracy to hide" arises from the fact that these issues of the magazine were apparently inadvertently omitted from the document production in the case, a matter which would have been rectified had it been brought to the attention of counsel.

(Doc. 175 p. 8). Defendants brought this very matter to the same counselor's attention in letters on June 18 and 25, 2008. (Pickle Aff. Ex. H; Doc. 81-11 p. 40).[7]

The matter is graver still. Not only did Plaintiffs conspire to destroy evidence by removing these issues from their web site, but, after Defendants obtained these issues in January 2009, Plaintiffs spoiled the evidence of their spoliation by *recreating* the missing 2004 and 2005 issues, using software that did not exist until 2008. (Pickle Aff. ¶¶ 9–17, Tables 1–3, Ex. J–N).

Plaintiffs contend that "a simple request to 3ABN for back issues of their magazine" would have sufficed. Have they forgotten the request to produce dated November 29, 2007? (Doc. 63-20 p. 10). Only requests through counsel are allowed by this Court. (Doc. 144 p. 19).

The issues in question are not available from a variety of public sources. Defendant Pickle could not locate a single public library in the entire state of Minnesota that carried *3ABN World*. (Pickle Aff. ¶ 18). In January 2009, Defendants purchased photocopies from the Center for Adventist Research in the James White Library at Andrews University in Berrien Springs, Michigan, which is 780 to 880 miles away from each Defendant. (Pickle Aff. ¶¶ 19–20, Ex. O).

6. "Fraud and Misrepresentation."

Plaintiffs fraudulently assert that "... every one of [the disputed statements by Plaintiffs or their counsel] is demonstrably accurate." (Doc. 175 p. 9). Yet Plaintiffs fail to demonstrate the accuracy of any of their disputed statements, much less all of them. The citations in Defendants' opening brief prove the impossibility of ever proving all of them true. (Doc. 170 pp. 7–10).

Ronnie Shelton claimed on June 26 and 27, 2008, that both Plaintiffs had been vindicated by the IRS, according to Plaintiffs' attorneys. (Doc. 96-4; Doc. 96-5). Thompson testified

[7] The same counselor admitted on June 20, 2008, that none of the 2004 issues were available from 3ABN's website. (Doc. 81-2 p. 118).

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. Attached hereto as **Exhibit A** is Defendants' Reply Brief of Defendants-Appellants for First Circuit case no. 08-2457.

2. Attached hereto as **Exhibit B** is a table I have prepared giving corresponding references in the district court record for references to the joint appendix and exhibits cited in Reply Brief of Defendants-Appellants.

3. Attached hereto as **Exhibit C** are relevant pages from Plaintiffs' Brief of the Appellees for First Circuit case no. 08-2457.

4. Attached hereto as **Exhibits D–E** are Judge Gilbert's orders of June 30 and July 8, 2008, issued in S.D. Ill. case no. 08-mc-16. There is a dramatic change of tone toward Defendants between the two orders.

5. Pastor Glenn Dryden ("Dryden") had stated that he had sent his May 14, 2003 letter to Walter Thompson ("Thompson") along with the sheet of action items, a statement Thompson never denied. (Doc. 171-6 p. 1; Doc. 81-2 pp. 51–65). But to my knowledge, Gailon Arthur Joy and I never had proof that Danny Lee Shelton ("Shelton") also had the action items until realizing for the first time early this year that Shelton was referring to those action items in the first message he left on the Ezra Church of God answering machine.

6. Attached hereto as **Exhibit F** is my letter of June 19, 2008, to Attorney Gregory Simpson ("Simpson"), which I sent with a CD on which, among other things, were the recordings at issue. Attached hereto as **Exhibit G** is Dryden's email of June 2, 2008, stating that he had shipped material to me that evening. Thus, my reception of the recordings was not until after June 2. Since we never had the recordings before that date, they were not in our initial disclosures.

7. In the recordings of Shelton's phone messages, Shelton referred to the action items as being a letter and as being separate and distinct from Dryden's May 14, 2003, letter. We therefore did not know what Shelton was referring to.

8. Attached hereto as **Exhibit H** is my letter of June 18 to Simpson, alerting him to the fact that no issues of *3ABN World* were produced in response to Request # 8 of my Requests to Produce. (Doc. 63-20 p. 10).

9. Filed conventionally as **Exhibit I** is a CD containing all the *3ABN World* issues in PDF format that I have. On that CD: (a) in the folder labeled in part **Folder 1** are the issues I could only obtain from Archive.org, (b) in the folder labeled in part **Folder 2** are the issues I could readily obtain from 3ABN.org, and (c) in the folder labeled in part **Folder 3** are the formerly missing issues that Three Angels Broadcasting Network, Inc. ("3ABN") recreated in 2009 and reposted on their website.

10. I extracted the file metadata for each *3ABN World* issue using Adobe Acrobat 5.0.5. Anyone can do the same by looking at the files on Exhibit I using Acrobat, or even by checking file properties using Windows Explorer. Attached hereto as **Exhibits J–L** are printouts of the file metadata Acrobat gave me for each issue.

11. I have placed the data from Exhibits J–L in three tables. **Table 1** contains file metadata from the issues available only from Archive.org, until recently. InDesign is a high-end publishing layout program produced by Adobe.

TABLE 1: *3ABN World* Issues Available Only from Archive.org

Issue	Creator	Producer	Created	Modified	PDF Ver.
10/04	InDesign CS (3.0.1)	PDF Lib. 6.0	09/01/04	09/28/04	1.3
12/04	InDesign CS (3.0.1)	PDF Lib. 6.0	10/22/04	11/30/04	1.3

12. **Table 2** contains file metadata from the issues that I could readily obtain from 3ABN.org. One can easily tell when 3ABN upgraded their software over time.

TABLE 2: *3ABN World* Issues Available from 3ABN.org

Issue	Creator	Producer	Created	Modified	PDF Ver.
09/04	Missing from Around Feb. 2005 Until 2009				
10/04	Missing Until 2009				
11/04	Missing from Around Feb. 2005 Until 2009				
12/04	Missing Until 2009				
01/05	InDesign CS (3.0.1)	PDF Lib. 6.0	11/24/04	11/30/04	1.3
02/05	InDesign CS (3.0.1)	PDF Lib. 6.0	12/15/04	01/11/05	1.3
03/05	InDesign CS (3.0.1)	PDF Lib. 6.0	01/19/05	01/27/05	1.3
04/05	InDesign CS (3.0.1)	PDF Lib. 6.0	02/18/05	03/23/05	1.3
05/05	InDesign CS (3.0.1)	PDF Lib. 6.0	03/18/05	03/28/05	1.4
06/05	InDesign CS (3.0.1)	PDF Lib. 6.0	04/21/05	05/12/05	1.5
07/05	InDesign CS (3.0.1)	PDF Lib. 6.0	04/21/05	05/23/05	1.5
08/05	Missing Until 2009				
09/05	InDesign CS2 (4.0)	PDF Lib. 7.0	08/08/05	08/08/05	1.4

Issue	Creator	Producer	Created	Modified	PDF Ver.
10/05	InDesign CS2 (4.0)	PDF Lib. 7.0	08/29/05	08/29/05	1.4
11/05	InDesign CS2 (4.0.1)	PDF Lib. 7.0	10/05/05	10/05/05	1.4
12/05	InDesign CS2 (4.0.1)	PDF Lib. 7.0	11/08/05	11/08/05	1.4
01/06	InDesign CS2 (4.0.2)	PDF Lib. 7.0	01/05/06	01/05/06	1.4
02/06	InDesign CS2 (4.0.4)	PDF Lib. 7.0	11/07/06	11/07/06	1.4
03/06	Not Available	Dist. 7.0.5 (Mac)	01/30/06	01/30/06	1.4
04/06	Not Available	Dist. 7.0.5 (Mac)	03/16/06	03/16/06	1.4
05/06	Not Available	Dist. 7.0 (Mac)	04/06/06	04/06/06	1.4
06/06	InDesign CS2 (4.0.2)	PDF Lib. 7.0	05/08/06	05/08/06	1.3
07/06	InDesign CS2 (4.0.2)	PDF Lib. 7.0	06/07/06	06/07/06	1.3
08/06	InDesign CS2 (4.0.3)	PDF Lib. 7.0	07/10/06	07/10/06	1.3
09/06	InDesign CS2 (4.0.3)	PDF Lib. 7.0	08/01/06	08/01/06	1.3
10/06	InDesign CS2 (4.0.4)	PDF Lib. 7.0	09/11/06	09/11/06	1.3
11/06	InDesign CS2 (4.0.4)	PDF Lib. 7.0	09/28/06	09/28/06	1.3
12/06	InDesign CS2 (4.0.4)	PDF Lib. 7.0	11/21/06	11/21/06	1.4
01/07	InDesign CS2 (4.0.4)	PDF Lib. 7.0	12/07/06	12/07/06	1.4
02/07	InDesign CS2 (4.0.4)	PDF Lib. 7.0	02/15/07	02/15/07	1.4
03/07	InDesign CS2 (4.0.4)	PDF Lib. 7.0	02/21/07	02/21/07	1.4
04/07	InDesign CS2 (4.0.4)	PDF Lib. 7.0	03/07/07	03/07/07	1.4
05/07	InDesign CS2 (4.0.4)	PDF Lib. 7.0	04/03/07	04/03/07	1.4
06/07	InDesign CS2 (4.0.5)	PDF Lib. 7.0	05/03/07	05/04/07	1.4
07/07	InDesign CS2 (4.0.5)	PDF Lib. 7.0	06/07/07	06/07/07	1.4
08/07	InDesign CS2 (4.0.5)	PDF Lib. 7.0	07/17/07	07/17/07	1.4
09/07	InDesign CS2 (4.0.5)	PDF Lib. 7.0	08/15/07	08/15/07	1.4
10/07	InDesign CS2 (4.0.5)	PDF Lib. 7.0	09/26/07	09/26/07	1.4
11/07	InDesign CS3 (5.0.1)	PDF Lib. 8.0	10/23/07	10/23/07	1.5
12/07	InDesign CS3 (5.0.1)	PDF Lib. 8.0	11/01/07	11/01/07	1.5
01/08	InDesign CS3 (5.0.1)	PDF Lib. 8.0	12/18/07	12/18/07	1.5
02/08	InDesign CS3 (5.0.1)	PDF Lib. 8.0	12/27/07	12/27/07	1.5
03/08	InDesign CS3 (5.0.2)	PDF Lib. 8.0	02/26/08	02/26/08	1.5
04/08	InDesign CS3 (5.0.2)	PDF Lib. 8.0	03/27/08	03/27/08	1.5
05/08	InDesign CS3 (5.0.2)	PDF Lib. 8.0	04/29/08	04/29/08	1.5
06/08	InDesign CS3 (5.0.2)	PDF Lib. 8.0	05/21/08	05/21/08	1.5

Issue	Creator	Producer	Created	Modified	PDF Ver.
07/08	InDesign CS3 (5.0.2)	PDF Lib. 8.0	06/10/08	06/10/08	1.5
08/08	InDesign CS3 (5.0.3)	PDF Lib. 8.0	07/10/08	07/10/08	1.5
09/08	InDesign CS3 (5.0.3)	PDF Lib. 8.0	08/04/08	08/04/08	1.5
10/08	InDesign CS3 (5.0.3)	PDF Lib. 8.0	09/08/08	09/08/08	1.5
11/08	InDesign CS3 (5.0.3)	PDF Lib. 8.0	10/08/08	10/08/08	1.5
12/08	InDesign CS3 (5.0.4)	PDF Lib. 8.0	11/04/08	11/04/08	1.5
01/09	InDesign CS4 (6.0)	PDF Lib. 9.0	12/03/08	12/03/08	1.5
02/09	InDesign CS4 (6.0)	PDF Lib. 9.0	01/07/09	01/07/09	1.5
03/09	InDesign CS4 (6.0)	PDF Lib. 9.0	02/05/09	02/05/09	1.5
04/09	InDesign CS4 (6.0.1)	PDF Lib. 9.0	03/05/09	03/05/09	1.5
05/09	InDesign CS4 (6.0.1)	PDF Lib. 9.0	04/09/09	04/09/09	1.5

13. **Table 3** contains file metadata from the five old, missing issues 3ABN recreated in 2009. The creation and modification dates of 02/03/09 are only as accurate as the date on the computer that created the PDF file.

TABLE 3: Old *3ABN World* Issues Recreated by 3ABN in 2009

Issue	Creator	Producer	Created	Modified	PDF Ver.
09/04	InDesign CS4 (6.0)	PDF Lib. 9.0	02/03/09	02/03/09	1.5
10/04	InDesign CS4 (6.0)	PDF Lib. 9.0	02/03/09	02/03/09	1.5
11/04	InDesign CS4 (6.0)	PDF Lib. 9.0	02/03/09	02/03/09	1.5
12/04	InDesign CS4 (6.0)	PDF Lib. 9.0	02/03/09	02/03/09	1.5
08/05	InDesign CS4 (6.0)	PDF Lib. 9.0	02/03/09	02/03/09	1.5

14. Additional proof that these issues were recreated is the fact that the text does not line up on the page the same way that it did in the original issues. As just one example, attached hereto as **Exhibit M** is the article about 3ABN Books from the recreated September 2004 issue. The last column is one line longer than in the original issue (Doc. 171-15), improperly putting the last line of that column part way into the bottom margin. Based on my experience at typesetting, I believe this to be due to differences in letter and word spacing between InDesign

CS and InDesign CS4, either built into the program itself, or due to user settings.

15. Also of interest in Table 2 above was how the February 2006 issue appears to have been destroyed, suggesting a pattern of spoliation. The February 2006 issue was definitely recreated in November 2006, using software not used by 3ABN until about October 2006. The February 2006 issue contained an article about the Trust Services Department's new office which had opened in Florida, which article is attached hereto as **Exhibit N.** The article also described how Trenton and Oriana Frost worked at that office.

16. The Frosts were two of the four whistleblowers that were fired in the spring of 2006. After the other whistleblowers, Kathy Bottomley ("Bottomley") and Ervin Thomsen ("Thomsen"), filed their discrimination complaints on July 12 and September 25, 2006, respectively, an investigation by the California Department of Fair Employment and Housing ("DFEH") was launched. After the filing of these discrimination complaints, 3ABN recreated the February 2006 *3ABN World* issue.

17. I have copies of Bottomley's and Thomsen's complaints, and can provide those to the Court if there is any question as to the July 12 and September 25, 2006, filing dates that are upon them.

18. I tried multiple times to see if I could locate a library in Minnesota that had copies of *3ABN World*. I also scoured the internet multiple times, trying to find a website that had the missing issues. I inquired of different friends to see if anyone might know someone that had these issues. All these efforts were unsuccessful. Thus, unsure of what the missing issues might contain, and unable to find a source from which I could get them for free, I was waiting until 3ABN finally fulfilled their obligation by producing them in discovery.

19. However, in January 2009 it occurred to me that perhaps the issues in question contained a mention of Shelton's book *Antichrist Agenda*, and that perhaps it was because such a

mention made that book a pre-marital asset that these issues went missing. I therefore paid $19 to obtain photocopies of the issues from the Center for Adventist Research at the James White Library at Andrews University. Attached hereto as **Exhibit O** is the invoice I paid for those photocopies, which is dated January 20, 2009.

20. A mapping program tells me that this library in Berrien Springs, Michigan, is about 780 miles from where I live, and about 880 miles from where Mr. Joy lives.

21. Attached hereto as **Exhibit P** is an email forwarded to me by Fran, a lady that reported Plaintiffs to the IRS a number of years ago. I have redacted out the contact information of the individual in the IRS Whistleblower Office who wrote the email. I checked the IP address in the email headers of that individual's email, and that IP address is owned by the Internal Revenue Service.

22. Attached hereto as **Exhibit Q** is Simpson's acknowledgement that he had a copy of the Remnant documents, dated September 24, 2008.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 20th day of May, 2009.

/s/ Bob Pickle
Bob Pickle
Halstad, MN 56548
Tel: (218) 456-2568

Subscribed and sworn to me
this 20th day of May, 2009.

/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, Plaintiffs, v. Gailon Arthur Joy and Robert Pickle, Defendants.	Case No.: 07-40098-FDS

DEFENDANTS' REPLY MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR LEAVE TO FILE UNDER SEAL

INTRODUCTION

Defendants seek leave to file under seal materials in support of their motions to reconsider and amend findings. (Doc. 169).

Plaintiffs' oppositions (Doc. 174; Doc. 175) indisputably contain multiple misstatements of fact. The misrepresentations are of such a nature that Defendants will seek sanctions pursuant to Fed. R. Civ. P. 11(c)(2) and the Court's inherent powers. Defendants will serve their motion for sanctions upon Plaintiffs within the next several days, after which they will allow the required 21 days for Plaintiffs to make the necessary corrections before filing their motion.

Particularly egregious, blatant, and intentional is Plaintiffs' misrepresentation of kickbacks as being "perfectly proper royalty payments." (Doc. 174 p. 4; *infra* 11).

RELEVANT FACTS

Pertaining to the Confidentiality Order

On April 17, 2008, Magistrate Judge Hillman issued a confidentiality order. (Doc. 60). The order itself says nothing at all about parties returning any documents. (Doc. 60 pp. 1–6).

However, non-parties (and only non-parties) must sign Exhibit A of that order so that the court may obtain personal jurisdiction over non-parties in order to enforce that order. (Doc. 60 pp. 5–6, 8). Exhibit A does require non-parties to return confidential documents:

> Upon the earlier of: (i) demand of counsel of record for 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 ... to the person or party from whom I received the Confidential Information.

(Doc. 60 p. 8).

Exhibit A thus clearly says that non-parties must return confidential documents at any time requested by the party who supplied the documents, which could theoretically be the day after the documents were given to the non-parties, and years before the litigation ended.

Additionally, Exhibit A clearly says that non-parties are to return the documents to the party that gave them the documents, not to some other third party.

Defendants argued on appeal that Plaintiffs tried to alter the confidentiality order's provisions on the sly by inducing the Court to order parties to return documents.[1] (Doc. 171-3 pp. 9, 36, 62, 64, 67). However, this Court wisely worded its order of October 30, 2008, so that any return of documents by parties was only pursuant to the confidentiality order. (Doc. 141 p. 12). This is the more obvious since the Court at that point in time was unsure what the confidentiality order actually required. (Doc. 141 pp. 14).

On appeal, Plaintiffs responded by asserting that an order requiring parties to return documents is an order "enforcing the Protective Order as written," and denied that they had sought the alteration of the confidentiality order. (Doc. 178-4 p. 4). Defendants replied:

[1] More evidence of Plaintiffs' attempts to impose the confidentiality order's terms for non-parties upon parties is found at Doc. 161 p. 6.

- Plaintiffs failed in their appellees' brief to quote any language from the confidentiality order which requires parties to return anything, since such language isn't there.
- Plaintiffs sought the return of documents from Remnant Publications, Inc. ("Remnant") and MidCountry Bank ("MidCountry") to themselves, not to Remnant and MidCountry as Exhibit A requires. (Doc. 120 p. 1).
- Plaintiffs' assertion that the non-party return requirements of Exhibit A apply to parties is ludicrous, since Exhibit A requires non-parties to return documents *at any time*, even before litigation has ended.

(Doc. 178-2 pp. 33–35).

If Exhibit A requires parties to return documents, then mere requests to that effect from opposing counsel the day after production could grind discovery to an absolute halt in an ongoing case.

Additionally, Plaintiffs admitted that the orders of this Court were insufficient to require the return of even the MidCountry documents, for on November 11, 2008, Plaintiffs threatened to obtain a court order compelling Defendants to "consent" to the return of the MidCountry documents, documents not even in Defendants' possession. (Doc. 162-6).

Pertaining to the Remnant Documents

Remnant lost its appeal on September 8, 2008. (Doc. 127-40). Remnant then produced the subpoenaed documents to Defendants on September 22. (Doc. 155-2).

Prior to that date, on August 20, 2008, in Defendants' opposition to Remnant's appeal, Defendants argued that Danny Lee Shelton ("Shelton") received kickbacks on sales by Remnant to Three Angels Broadcasting Network, Inc. ("3ABN") of his booklets published by Pacific Press Publishing Association ("PPPA"). (Doc. 96-9 p. 3).

Prior to 2005, 3ABN bought these booklets from Shelton for 25¢ apiece, sometimes

PLAINTIFFS' ARGUMENTS REFUTED

A. "What that 'bearing' [of the exhibits to the motion] may be is not explained ...."

False. To the contrary, Defendants fully explained what bearing the exhibits to be filed under seal have upon Defendants' motions:

- **Exhibits Q–R** establish when a *3ABN World* issue might have gone to press and come back from the printers. This is relevant to a proper understanding of the implications of the newly found evidence in certain *3ABN World* issues, since it clarifies when the articles may have been written. (Doc. 170 p. 7).
- **Exhibits X–Y** establish whether or not 3ABN administration believed the allegations against Leonard Westphal to be true. Thus these exhibits conclusively demonstrate whether Plaintiffs always knew that ¶ 48(b) of their complaint was baseless, and whether claims of vindication by the EEOC are fraudulent due to Plaintiffs' failure to produce these documents to the EEOC during its investigation. (Doc. 170 p. 9).
- **Exhibit BB** demonstrates the truthfulness of Defendants' unrebutted assertions regarding the vexatious nature of Plaintiffs' discovery. (Doc. 170 p. 14).

B. "... Plaintiffs have not been made aware of exactly what documents Defendants seek to file ...."

False. On April 20, 2009, Defendants gave Plaintiffs' counsel a list of documents Defendants were considering filing in connection with Defendants' motions to reconsider. (Affidavit of Robert Pickle ("Pickle Aff.") ¶¶ 1–4, Ex. A at p. 4). In that list were the documents designated TABN000677, TABN000680, TABN002431, and TABN002620. (Pickle Aff. Ex. A at p. 4). Anyone who has read Defendants' filings in connection with the instant motions can tell from a mere glance at these four documents that TABN000677 and TABN000680 are Exhibits Q–R, and that TABN002431, and TABN002620 are Exhibits X–Y. (Pickle Aff. ¶ 4).

C. "... litigation misconduct by Plaintiffs such as would warrant

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

DEFENDANTS' MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION FOR SANCTIONS

INTRODUCTION

Defendants seek sanctions pursuant to Fed. R. Civ. P. 11(c)(2) and the Court's inherent powers in regards to two memoranda filed by Plaintiffs' counsel. (Doc. 174; Doc. 175).

Throughout this litigation, and even before it started, Defendants were struck by the lack of integrity and professional standards of the law firm, Siegel Brill Greupner Duffy & Foster P.A. ("SBGDF"). Gerald Duffy ("Duffy") invoked common law copyright to keep the public from discovering his attempt to silence concerns about child molestation allegations. (Doc. 63-18). Jerrie Hayes ("Hayes") denied in open court that a criminal investigation was going on, even though her own proposed protective order referred to an investigation by the Department of Justice. (Doc. 89 p. 33; Doc. 40-2 ¶ 4). Duffy later admitted that at the time of Hayes' denial, he was representing Plaintiffs in their investigation by the U.S. attorney. (Doc. 96-2).

Despite his alleged high ratings for ethics, Gregory Simpson ("Simpson") has continued

this pattern of questionable conduct.

FACTS

On April 27, 2009, Defendants' filed motions to reconsider and to amend findings, and to file under seal. (Doc. 169; Doc. 173). Plaintiffs responded on May 11, 2009, with memoranda in opposition to those motions, both signed by Simpson. (Doc. 174; Doc. 175). Defendants replied, demonstrating that Plaintiffs had made multiple misstatements of fact and law, at least some of which were clearly intentional, and Defendants told the Court that Defendants would file this motion if the matters were not corrected in 21 days. (Doc. 177; Doc. 179).

According to SBGDF's website, Simpson obtained his law degree in 1989, received "the highest possible distinction" in "Martindale Hubbell's peer rating process for legal ability and ethical standards," and sat on the Hennepin County Bar Association Ethics Committee every year since 1997. (Affidavit of Robert Pickle ("Pickle Aff.") Ex. A). Simpson therefore knows better.

Erroneous Statements in Plaintiffs' Responses

A. " ... referring to perfectly proper royalty payments to Shelton from Remnant Publications for the sale of books he authored as 'kickbacks and/or royalties.' " (Doc. 174 p. 4).

Simpson possesses the documents from Remnant Publications, Inc. ("Remnant"). (Doc. 178-17). In light of prior briefing (Doc. 161 p. 17), this misstatement must be intentional.

Pacific Press Publishing Association ("PPPA") pays Danny Lee Shelton ("Shelton") royalties for booklets by Shelton that PPPA published. (Doc. 96-11 pp. 1–3). Three Angels Broadcasting Network, Inc. ("3ABN") buys merchandise from PPPA. (Doc. 96-11 p. 4). But 3ABN instead bought Shelton's PPPA booklets from Shelton when 3ABN could have bought them from PPPA for as much as 32% less. (Doc. 96-11p. 5; Doc. 96-10 ¶¶ 11–12). Thus Shelton made sales income on these booklets to 3ABN's detriment on top of the royalties he earned from PPPA. In 2005 3ABN started buying these same booklets from Remnant for the same price it had

been buying them from Shelton, even though Remnant didn't have stock to fill the orders. (Doc. 96-11 pp. 18–22). The only logical reason for such an arrangement is that it was a kickback scheme. There is no honest way to call payments to Shelton by Remnant for sales of PPPA booklets "royalties" since Remnant was not the publisher.

For books Remnant did publish, there are still possible difficulties.[1] Payments from Remnant that far exceed industry standards for royalties, or that equate to the profits Shelton would make if he himself were the publisher or wholesaler, cannot be "perfectly proper royalty payments." The portion in excess of industry standards would rightly be called a kickback.

The proper resolution of this motion requires a review of the Remnant documents by the Court to determine whether these documents have indeed been intentionally mischaracterized.

B. "... a matter which would have been rectified had it been brought to the attention of counsel." (Doc. 175 p. 8).

Simpson thus denies that he was ever contacted about the missing *3ABN World* issues. However, on June 18, 2008, Defendants notified Simpson about Plaintiffs' failure to produce the magazines. (Doc. 180-9). Simpson responded on June 20. (Doc. 81-2 p. 118). On June 25, Defendants specifically identified for Simpson the three *3ABN World* issues unobtainable from either 3ABN.org or Archive.org. (Doc. 81-11 p. 40). Defendants filed the letters of June 20 and 25 on July 9, 2008. Defendants included the problem of the missing *3ABN World* issues in an affidavit filed on September 8, 2008. (Doc. 103 p. 7). Simpson never rectified the matter.

C. "... including a simple request to 3ABN for back issues of their magazine." (Doc. 175 p. 8).

Defendant Pickle served a request to produce upon 3ABN for issues of *3ABN World* on November 29, 2007, and asked Plaintiffs' counsel for the missing issues on June 25, 2008. (Doc. 63-20 p. 10; Doc. 81-11 p. 40). At the request of Plaintiffs' counsel, this Court ordered that

[1] Due to Plaintiffs' confidential designation, despite Plaintiffs' lack of standing to so designate documents pertaining to unrepresented corporation DLS Publishing, Inc., Defendants believe Defendants are prohibited from speaking of certainties and must speak instead of "possible difficulties."

Defendants could only contact Plaintiffs through Plaintiffs' counsel. (Doc. 144 pp. 12, 19). Thus, Defendants made more than one simple request, of the only type allowed by this Court.

D. "What that 'bearing' may be is not explained ...." (Doc. 174 p. 1).

To the contrary, Defendants did explain what bearing the exhibits in question had to their motions to reconsider and amend findings:

1. Exhibits Q–R: These establish when a *3ABN World* issue would have gone to press and come back from the printer, thus clarifying when the articles in question were written. (Doc. 170 p. 7). That in turn demonstrates that Shelton's book is a pre-divorce asset, that Shelton failed to disclose royalties for that book on his 2006 financial affidavit, and that Plaintiffs thus always knew that ¶¶ 46(h) and 50(i) of their complaint were baseless. (Doc. 170 pp. 7, 19–20). Plaintiffs' suit must therefore have been filed for an improper purpose. (Doc. 170 p. 19).

2. Exhibits X–Y: These establish whether or not 3ABN administration believed the allegations against Leonard Westphal to be true, and thus whether Plaintiffs always knew that ¶ 48(b) of their complaint was baseless, and whether claims of vindication by the EEOC are fraudulent due to Plaintiffs' failure to produce these documents to the EEOC during the EEOC's investigation. (Doc. 170 pp. 9, 16–17).[2]

3. Exhibit BB: This demonstrates the truthfulness of Defendants' unrebutted assertions in the record regarding the vexatious nature of Plaintiffs' discovery, which has a bearing on the accuracy of a finding in the order of April 13, 2009. (Doc. 170 pp. 13–14).

E. "... Plaintiffs have not been made aware of exactly what documents Defendants seek to file ...." (Doc. 174 p. 3).

Defendants "made [Simpson] aware of exactly what documents" on April 20, 2009, and Simpson replied that very day. (Doc. 180-2 pp. 3–4). A simple glance at the five documents

[2] Plaintiffs used their fallacious EEOC exoneration claims to oppose Defendants' motion for costs. (Doc. 140 p. 6, cited at Doc. 170 p. 9).

produced by 3ABN in the list Defendants gave Simpson would have told anyone that four of those five were Exhibits Q–R and X–Y that Defendants wished to file. (*Id.*; Doc. 180 ¶¶ 2–4).

F. "... *In re Boston Regional Medical Center, Inc.*, 328 F.Supp.2d 130, 143 (D. Mass. 2004) ...." (Doc. 175 p. 3).

Simpson cited this case to show that no arguments raised the first time in a reply brief should be considered. However, this particular case concerned arguments raised the first time in *a supplemental brief*, arguments the court found could have been raised on five different, previous occasions, one of which was in *a reply brief*. 328 F.Supp.2d at 142.

G. "This Court's order indicates that it considered the arguments raised by the Defendants in their reply brief ...." (Doc. 175 p. 4).

Plaintiffs' quote no such language from the order of April 13, 2009. Defendants are unable to find any language that suggests that the Court read Defendants' reply brief.

H. "These claims have been raised and rejected ... by every judge to consider them, including this Court, Magistrate Judge Hillman, and several out-of-district judges who heard motions to quash the third party subpoenas served by the Defendants." (Doc. 175 p. 5).

Plaintiffs make this contention while citing Defendants' facts at Doc. 170 pages 2–3. Yet Plaintiffs cite nothing to prove that Defendants' stated concerns have been unanimously rejected. We note the following specific points raised on pages 2–3 of Doc. 170:

1. Defendants produced 1000's of documents in their initial disclosures; Plaintiffs produced nothing until compelled by court order.

If Magistrate Judge Hillman rejected Defendants' concerns, why did his March 10, 2008, electronic order compel Plaintiffs to produce their non-confidential Rule 26(a)(1) materials?[3]

2. Plaintiffs produced their Rule 26(a)(1) materials in large, unindexed PDF files, for which Court reprimanded Plaintiffs.

Defendants referred to the following in footnote 1 of Doc. 170 p. 2:

[3] The non-confidential materials Plaintiffs produced in response to that order constituted about 77% of the total pages Plaintiffs ever produced. (Doc. 81 Tables 1 & 4, ¶ 14; Doc. 103 ¶ 2).

> 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).

(Doc. 107 p. 4). Thus, Magistrate Judge Hillman never rejected this concern of Defendants.

3. Failure to permit inspection of the portion of a request not objected to as required by Rule 34(b)(2)(C).

This Court itself told Plaintiffs on May 7, 2008:

> Well, surely, if he has asked for documents from the plaintiff, even if those requests are overbroad, it seems to me that clearly there must be a core of documents you think are relevant that could be produced to get the process rolling. In other words, if he asks for A through Z, and you believe that only A through G are relevant, I don't know why you couldn't produce A through G and preserve your rights about H through Z and fight about that.

(Doc. 77 p. 13). And that is precisely what Fed. R. Civ. P. 34(b)(2)(C) requires. (Doc. 170 p. 3).

4. Courts in Michigan and Minnesota enforced the subpoenas; court in Michigan found Remnant documents to be relevant.

If every court universally rejected Defendants' arguments and concerns, the Minnesota and Michigan courts would not have ruled thus. (*infra* pp. 12–13 at N(3)–(4)).

I. Defendants' appellate "briefs string together hearsay from unsourced emails ...." (Doc. 175 p. 6).

Statements made by Plaintiffs themselves, or by their agents, servants, representatives, or co-conspirators, are by definition not hearsay. Fed. R. Evid. 801(d)(2). Defendants already refuted this misstatement. (Doc. 178-2 pp. 20–21, 26). Since Simpson professes to have read Defendants' appellate briefs, his misstatement must be intentional.

J. "The merits had never been at issue before; thus there had been no opportunity to present evidence on that topic ...." (Doc. 175 p. 7).

But Defendants' appellate reply brief pointed out that Defendants twice invited Plaintiffs

to submit such evidence. (Doc. 178-2 p. 12). (a) Plaintiffs suggested that 3ABN could have been reimbursed for personal vacation travel that 3ABN paid for Linda Shelton and Brenda Walsh. (Doc. 110 p. 5). Defendants invited Plaintiffs to support that assertion with proof of such reimbursement. (Doc. 113 p. 9). (b) Plaintiffs asserted that the Remnant documents concerned transactions fully vetted by C.P.A.'s, and were perfectly legal and not wrong. (Doc. 158 p. 3). Defendants invited Plaintiffs to support that assertion with an affidavit by a C.P.A. attesting that those transactions were not improper or unethical or illegal. (Doc. 161 pp. 12–13).

What golden opportunities wasted! Defendants' twice promised not to oppose Plaintiffs' motions to file supplemental briefs in order to file such evidence. (*Id.*; Doc. 113 p. 9).

On May 24, 2007, Plaintiffs filed Mollie Steenson's affidavit with exhibits, all supposed to be supportive of the merits of the case. (Doc. 10 pp. 6–8; Doc. 10-3 ¶¶ 5–11). But Defendants already pointed this out. (Doc. 170 p. 4; Doc. 178-2 pp. 12–13).

K. "... a tape recording ... about something that is not material to the case ...." (Doc. 175 p. 7).

Plaintiffs asserted in May 2007 that Defendants in particular drastically affected donation levels in December 2006. (Doc. 10-5 ¶ 7). Only one thing could possibly substantiate this claim: Defendants' late 2006 exposé of Shelton's 2003 cover up of the child molestation allegations against Tommy Shelton. (Doc. 63-15). Therefore, Plaintiffs know this recording is material.

L. "... this tape ... they have had it since before the lawsuit started." (Doc. 175 p. 8).

Simpson does not qualify by saying, "Upon information and belief." Defendants received the recordings after June 2, 2008, and produced them on June 19 to Simpson as he requested. (Doc. 178-8; Doc. 178-7; Pickle Aff. Ex. B). The lawsuit was filed on April 6, 2007. (Doc. 1).

M. "... every one of which is said to demonstrate fraud, but every one of which is demonstrably accurate." (Doc. 175 p. 9).

Plaintiffs thus refer to the following points which are referenced on Doc. 170 pages 7–10:

1. "The Complaint identified 24 specific defamatory statements ...." (Doc. 140 pp. 2–3).

The 24 "statements" referred to are ¶¶ 46(a)–(k), ¶¶ 48(a)–(d), and ¶¶ 50(a)–(i). (Doc. 1). On October 22, 2008, Magistrate Judge Frazier found regarding ¶ 46(g):

> Those are pretty broad. Are the allegations -- let me go back here to Mr. Simpson. Does your complaint state it that broadly, that there were just general allegations of financial impropriety?

Simpson replied in part, "There are some that are broad, and there are some that are narrow, Judge. And they've made these allegations broadly ...." (Doc. 152-6 p. 9). If Simpson agrees that some of the 24 "statements" are broad, he knows that they are not all at the same time specific.

2. "They were given thousands of pages of records in discovery including virtually all of 3ABN's corporate records and tax filings ...." (Doc. 140 p. 3).

For Rule 11 purposes, we ignore the false implication that this material was substantive.

3ABN was founded in 1985. (Doc. 1 p. 3). 3ABN's tax filings for the IRS and states of California, Oregon, and Illinois were produced only for the years 2001 to 2005. Some pages were illegible. The 2002 Form AG990-IL and 2005 Form CA 199 were missing. (Pickle Aff. ¶ 3). Board and executive committee minutes were produced from 2001 through about April 16, 2007, with some omissions. (Doc. 103 ¶¶ 5(ak)–(am)). No board minutes pertaining to 3ABN's purported gift in 2007 of 40 or more acres to Shelton were produced. (Doc. 103 ¶ 5(c)).

No tax filings or corporate records were produced for Three Angels Enterprises, LLC, Crossbridge Music, Inc., and DLS Publishing, Inc.; no tax filings or corporate records were produced for Plaintiffs' other domestic and foreign corporations; and no tax filings were produced for Shelton and D & L Publishing. (Doc. 103 ¶¶ 5(ao), (at), (by)–(bz)).

Plaintiffs put at issue Shelton's royalties (Doc. 1 ¶¶ 46(h)–(i), 50(i)), but no tax filings were produced for 2006, the year of 3ABN's massive promotional campaign for Shelton's *Ten Commandments Twice Removed* book. (Doc. 49 ¶ 4; Doc. 3-2 pp. 8–10). Arbitrarily restricting

board minutes to a post-2001 time period prevented discovery concerning embezzlement allegations against former 3ABN CFO Pete Crotser, the 1998 real estate deal, and other matters.

IRS Form 990's and minutes were incomplete due to unilateral redactions in violation of the confidentiality order. (Doc. 103 ¶ 5(at); Doc. 171 ¶ 22; Pickle Aff. ¶ 4; Doc. 60 ¶ 1).

"[V]irtually all of 3ABN's corporate records and tax filings"? Absolutely not!

3. **"Finding little help among the Plaintiffs' *relevant* documents, the Defendants adopted a strategy of seeking oppressively large amounts of irrelevant information .... In an email to a confidante, Defendant Gailon Arthur Joy explained the Defendants' plan ...."** (Doc. 140 p. 3).

The email cited is dated January 20 and 22, 2008. (Doc. 76-5 p. 33). Plaintiffs never produced document one until March 28, more than two months later. (Doc. 68-2 p. 1).

In support of his motion to limit the scope of discovery, Simpson correctly stated that Defendant Pickle's requests to produce were served in 2007, and that of all Defendants' subpoenas for six different non-parties, only the one for Glenn Dryden is dated *later* than March 10, 2008. (Doc. 75 pp. 3–4). Thus, regardless of document relevance or Defendants' strategy, Simpson knew that Defendants adopted no such strategy *after* reviewing Plaintiffs' documents.

4. **"In other words, Plaintiffs' efforts to narrow the scope of discovery were justified."** (Doc. 140 p. 4).

This statement purports to be derived from Magistrate Judge Hillman's order of September 11, 2008. Yet that order said:

> ... 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.

(Doc. 107 p. 3).

5. **"... Defendants sought to circumvent any limitations that this Court might place ... by using third party subpoenas issued by other courts. Plaintiffs resisted the end-run around this Court ...."** (Doc. 140 p. 5).

Subpoenas for MidCountry Bank ("MidCountry"), Remnant, and Gray Hunter Stenn LLP

("GHS") had to be issued by courts near where those entities are located. Fed. R. Civ. P. 45(a)(2)(C), 45(c)(3)(A)(ii). Plaintiffs complained on December 14, 2007, that Defendants' subpoenas "were not issued from the correct court." (Doc. 144 p. 12). Thus, Defendants had to have other courts reissue those subpoenas, subpoenas which were first issued by this Court. (Doc. 76-2 pp. 34, 39; Doc. 76-3 pp. 1, 5, 10, 12). There is thus no evidentiary basis for the assertion that Defendants attempted any sort of end-run.

6. "... the goals of the lawsuit had been met by means outside the lawsuit, namely by purchasing the offending web sites from Defendant Joy's bankruptcy trustee ...." (Doc. 140 p. 6).

Plaintiffs repeatedly demonstrated in legal proceedings that their goal was to stop Defendants' use of any domain name that included the letters "3ABN." (Doc. 89 p. 30; Doc. 127-41 p. 4; Doc. 171-19 pp. 2–3; Doc. 171-20 pp. 37–38, 42–44, 47, 153). 16 such domain names are still in use, and Plaintiffs have not obtained the injunction against such use that they requested in their complaint. (Doc. 127 ¶ 29; Doc. 1 p. 20 at ¶¶ 2–3). Beginning about February 25, 2008, Defendants referred to and filed articles from five of these other Save 3ABN websites. (Doc. 63-29 p. 6; Doc. 63-30 pp. 10–27; Doc. 81 Tables 1 & 4, ¶ 27; Doc. 81-10 pp. 23, 53; Doc. 81-11 p. 18; Doc. 96-11 pp. 45–63; Doc. 100 ¶ 18; Doc. 100-16; Doc. 127-34 to Doc. 127-37).

7. "... and by obtaining favorable rulings from the governmental agencies that had been investigating the Plaintiffs' conduct." (Doc. 140 p. 6).

Walter Thompson ("Thompson") cited anonymous attorneys as saying that the IRS does not provide letters to demonstrate that a criminal investigation has concluded favorably. (Doc. 123 ¶ 5). Therefore, Simpson already knows that he cannot demonstrate the accuracy of the statement that the IRS gave a favorable ruling despite documented private inurement and tax evasion, and despite IRS confirmation that a whistleblower's claim is still open. (Doc. 126 pp. 12–13; Doc. 178-18).

8. "... the bankruptcy judge closed down the web site that had taken

3abn's name and was using it to malign 3abn." (Doc. 171-21).

Thompson made this statement on January 5, 2008. (*Id.*). Defendant Joy's bankruptcy's docket sheet through January 14, 2008, reveals no such order shutting down Save3ABN.com. (Pickle Aff. Ex. C).

9. "When it became apparent that the Defendants' incessant badmouthing of the Plaintiffs had ceased to be a major concern within Plaintiffs' community, and donations were restored ...." (Doc. 140 p. 7).

If donations had been indeed restored, 3ABN employee Hal Steenson and 3ABN president James Gilley would not have tried to raise $5 million in 9 days by October 17, 2008, roughly a third of 3ABN's total 2007 revenue. (Doc. 127-46; Doc, 162-13 p. 1; Doc. 170 p. 9).

If 3ABN cannot prove that they disseminated information about the EEOC investigation prior to October 23, 2008, then Plaintiffs cannot demonstrate the accuracy of their contention that a favorable EEOC ruling restored donations by restoring public confidence. (Doc. 170 p. 9).

To demonstrate the accuracy of Plaintiffs' statement, Plaintiffs must finally establish what donation levels have been and why donors ceased or lessened giving since the year 2002, differentiating between donations and sales and between insider and non-insider donations. (Doc. 48 pp. 4–5; Doc. 126 p. 20). This is particularly necessary since donation levels were likely volatile during 2008, artificially lowering donation levels in the first part of 2008[4].

10. "... documents that had no relevance to the underlying lawsuit ...." (Doc. 158 p. 2).

Defendants stated regarding this previous statement by Plaintiffs:

> Though Plaintiffs and their counsel know that these documents are proof of Shelton's private inurement, his failure to disclose his royalties, and his

[4] Well-known philanthropists and ASI Missions, Inc. ("ASI") directors Garwin McNeilus ("McNeilus") and Stan Smith ("Smith") joined the 3ABN Board in 2007. (Pickle Aff. ¶¶ 6–9, Ex. D–H). McNeilus indicated about February 2008 that Shelton was history. (Pickle Aff. ¶ 10). Upon information and belief, at the May 2008 3ABN Board meeting, after directors learned that allegations about Remnant book deals were true, Shelton came one vote shy of being terminated, and some directors resigned in protest when that vote failed. (*Id.*). McNeilus, Smith, and long-time 3ABN director and supporter May Chung are indeed no longer directors. (Pickle Aff. ¶¶ 11–12, Ex. H–I). The loss of support from these individuals and their circle of friends in the first part of 2008 could have been substantial, especially since ASI has been such a strong supporter and promoter of 3ABN. (Pickle Aff. ¶¶ 13, Ex. J).

> perjury on his July 2006 financial affidavit, and thus relevant to this case, Plaintiffs fraudulently declare that these documents have "no relevance to the underlying lawsuit." (Doc. 158 p. 2).

(Doc. 170 pp. 9–10). Thus, without evidentiary support, Plaintiffs fallaciously assert as demonstrably accurate that the Remnant documents are irrelevant to these specific questions in their complaint. (Doc. 1 ¶¶ 46(g)–(i), 50(i)).

N. "Defendants told anybody who would listen that Plaintiffs' position on those pretrial motions was not well-founded, but not one court agreed." (Doc. 175 p. 10)

In actuality, Defendants' scored a definite win over the question of the form of electronic discovery. (Doc. 33). Regarding later pretrial discovery issues:

1. Defendant Pickle's first motion to compel Plaintiffs. (Doc. 35).

Magistrate Judge Hillman's March 10, 2008, electronic order granted this motion in part.

2. Plaintiffs' motion for a confidentiality order. (Doc. 40)

After Defendants complained that Plaintiffs were trying to declare confidential 3ABN's financial statements, which are required by Illinois statute to be open to public inspection, Magistrate Judge Hillman warned the parties against abusively designating documents as confidential. (Doc. 48 p. 2, 5; Doc. 89 p. 37; Doc. 44 ¶ 11; Electronic Order of Mar. 10, 2008).

3. Shelton's motion to quash the subpoena of MidCountry. (Doc. 76-3 pp. 18–19)

Magistrate Judge Boylan agreed with Defendants that Shelton did not have standing to object to Defendants' subpoena of MidCountry documents pertaining to DLS Publishing, Inc. (Doc. 155 ¶ 3; Pickle Aff. ¶¶ 14–16, Ex. K). Magistrate Judge Boylan denied Plaintiffs' motion to quash and instead enforced the subpoena. (Doc. 63-36).

4. Defendants' motion to compel Remnant. (Doc. 81-2 pp. 121–132).

In the hearing of June 16, 2008, Magistrate Judge Carmody repeatedly stated that she believed the documents sought for were relevant, even "clearly relevant," yet ruled from the

bench anyway that they should be sent under seal to Massachusetts for *in camera* review to determine their relevancy. (Pickle Aff. Ex. M at pp. 7, 12, 14, 20–23). However, she reversed her decision in her subsequent written order:

> Further, on reflection, the Court will not order those documents to be submitted for *in camera* review to the Massachusetts court because the relevance of the documents seems clear and there is already a protective order in the Massachusetts case.

(Doc. 127-38). That the Michigan court thus agreed with Defendants, even Simpson admitted:

> Over the relevancy objections of Remnant Publications, Inc. and the Plaintiffs, Defendants convinced the District Court for the Western District of Michigan to allow them access to records regarding dealings between Remnant and the Plaintiffs.

(Doc. 158 p. 1).

5. Plaintiffs' motion to quash subpoena of GHS. (Doc. 114-26)

Judge Gilbert markedly changed his tone toward Defendants after receiving Defendants' filings. (Doc. 76-3 pp. 50–51; Doc. 178-5; Doc. 178-6).

From Plaintiffs' perspective, Magistrate Judge Frazier agreed with Defendants on many, many points: (a) ¶ 46(g) of Plaintiffs' complaint was "pretty broad," wouldn't "get to a jury," and Plaintiffs needed "to come up with specifics." (b) "Well, of course, they want everything. I mean, I would. Wouldn't you want everything?" (c) Plaintiffs were "obviously ... trying to back you down for some reason"; their suit was "a nice public way of refuting those statements ... saying it ain't so, Joe." (d) "They don't have to come in and disprove that Mr. Shelton was a crook .... You guys have to prove that he was a crook ...." "And the only way they are going to do that is, well, by getting into these records." (e) Regarding the need to challenge Plaintiffs' information in their financial statements and auditor's reports, "I have no doubt that you are entitled to a large amount of the financial information that pertains to Three Angels Broadcasting ...." "Would it be relevant ... if it turns out that the documents that the accountant has are different from the

documents that actually exist or maintained by Three Angels Broadcasting ...?" "And there are a lot of different ways that financial impropriety could be disguised by clever bookkeeping. ... changes in accounting methods, any number of these that might be relevant ...." (g) The subpoena was not quashed. (Doc. 152-6 pp. 8–9, 11, 13, 19, 22–24, 27, 32, 36).

6. Plaintiffs' motion to limit the scope of discovery. (Doc. 75)

Magistrate Judge Hillman denied Plaintiffs' requests (a) to limit the scope of discovery as to subject matter or time frame, (b) to prohibit discovery of donor information, and (c) for *in camera* review of the MidCountry, Remnant, and GHS documents. (Doc. 107; Doc. 74 pp. 2–3; Doc. 75 pp. 16–17). While Plaintiffs' request that leave of the court be obtained before issuing subpoenas was granted, that requirement was imposed on Plaintiffs as well as Defendants, which Plaintiffs' counsel likely did not consider either complimentary or agreeable. (Doc. 107 pp. 4–5).

About Plaintiffs' efforts to narrow the scope of discovery, Magistrate Judge Hillman said:

> ... 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. ... 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 which they could be entitled should they prevail.

(Doc. 107 p. 4). Not one court agreed with Defendants' concerns? Preposterous![5]

O. "To the contrary, Plaintiffs prevailed every time: in getting a protective order issued, ... in getting out-of-district documents funneled to the Massachusetts court for consideration of their relevancy, and so on." (Doc. 175 p. 10)

If Plaintiffs truly believe that they "prevailed," they would not still be covertly seeking

[5] Magistrate Judge Hillman also acknowledged Defendant Pickle's claim that he had in part modeled his requests to produce after those of Plaintiffs. (Doc. 107 p. 3 n.1; cf. Doc. 108 p. 7).

revocation of ¶ 7 of the confidentiality order, and the imposing of that order's non-party return requirements upon parties. (Doc. 161 pp. 4–7; Doc. 174 pp. 3–4; Doc. 179 pp. 1–3, 10).

The only documents "funneled" to Massachusetts were the MidCountry records, and those were sent to Massachusetts to ensure that they complied with the yet future confidentiality order of April 17, 2008, not for consideration of relevancy.[6] (Doc. 63-36 pp. 2–3).

P. "They also offer a tape recording of Danny Shelton saying something they, without apparent justification, consider a lie." (Doc. 175 p. 11)

Defendants never claimed that the 2003 recordings contained a lie. Rather, the recordings prove: (a) Shelton had Dryden's action items which alluded to allegations against Tommy Shelton for conduct occurring between 1995 and 2000. (b) Shelton believed child molestation incidents had occurred for which the statute of limitations applied. (Doc. 170 pp. 5–6).

The recordings of Shelton's messages to Dryden thus prove that Shelton lied in 2003 when he told Thompson that the allegations were 30 years old, when they were as recent as three years old at the time. (Doc. 81-2 pp. 50, 53–54, 61, 64).

ARGUMENT

I. APPLICABLE STANDARDS

A. Fed. R. Civ. P. 11

An attorney must make reasonable inquiry before making or denying factual or legal contentions. Fed. R. Civ. P. 11(b). An attorney may not sign, file, submit, or later advocate papers that make or deny factual contentions which do not have evidentiary support, unless specifically so identified. *Id.* Legal contentions must be warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law. Fed. R. Civ. P. 11(b)(2). Papers must not be presented for any improper purpose. Fed. R. Civ. P. 11(b)(1).

Under Rule 11, an attorney has 21 days after service of a motion for sanctions to correct

[6] Plaintiffs' motion for a confidentiality order explicitly reserved questions of relevancy. (Doc. 41 p. 3).

or withdraw the challenged paper. Fed. R. Civ. P. 11(c)(2). Thus a Rule 11 motion must be filed before the controversy is resolved by resolving the motions in question.

Rule 11 sanctions may be monetary or non-monetary, and are limited to whatever is necessary to "deter repetition of the conduct" by the attorney or others. Fed. R. Civ. P. 11(c)(4). For violations, sanctions may be imposed on the attorney's client as well, and his law firm must usually be held jointly responsible. Fed. R. Civ. P. 11(c)(5)(A), 11(c)(1).

Sanctions under Rule 11, even an award of attorney fees, is based upon an objective standard of reasonableness, and, like sanctions under 28 U.S.C. § 1927, does not require a finding of bad faith. *Cruz v. Savage*, 896 F.2d 626, 634 (1st Cir. 1990); *see also Dubois v. USDA*, 270 F.3d 77, 81(1st Cir. 2001). "A violation of Rule 11, as revised, might be caused by inexperience, incompetence, willfulness, or deliberate choice." *Cruz*, 896 F.2d at 631.

In a case involving racial discrimination, an attorney quoted an affidavit in a response brief, inadvertently adding a single word. That word turned a statement that on its face had nothing to do with race into a statement that did. He was sanctioned for "not verifying the accuracy of the alleged quotation[,] ... not promptly withdrawing it when the error was pointed out," and "put[ting] before the Court a false piece of evidence." *Jenkins v. Methodist Hosps. of Dallas, Inc.*, 478 F.3d 255, 263, 265-266 (5th Cir. 2007).

As simply an illustrative list, the Advisory Committee on 1983 amendments to Rules notes that sanctions may take the form of "striking the offending paper; issuing an admonition, reprimand, or censure; requiring participation in seminars or other educational programs; ordering a fine payable to the court; referring the matter to disciplinary authorities ..., etc."

B. Court's Inherent Powers

Sanctions under the court's inherent powers accomplish similar ends as Rule 11, particularly when Rule 11 cannot apply. However, a finding of bad faith is required. *Roadway*

Express, Inc. v. Piper, 447 U.S. 752, 767 (1980). Sanctions may include fines, contempt citations, disqualifications or suspensions of counsel, and drawing adverse evidentiary inferences. *Shepherd v. ABC*, 62 F.3d 1469, 1475 (D.C. Cir. 1995).

While attorney fees (or the value of opportunities lost by a litigant due to time expended) may not be awarded under Rule 11 to a *pro se* attorney, such fees may be awarded under the court's inherent power. "Failure to do so ... would place a *pro se* litigant at the mercy of an opponent who might engage in otherwise sanctionable conduct, but not be liable for attorney fees to a *pro se* party." *Pickholtz v. Rainbow Techs., Inc.,* 284 F.3d 1365, 1377 (Fed. Cir. 2002).

The same logic applies to *pro se* litigants whether they be attorneys or not, but Defendants are unclear whether there is presently any legal authority to make or ignore that distinction when imposing sanctions under the court's inherent powers. If that distinction may be ignored, which it should be if abuses are to be properly deterred, "*Chambers* thus permits, indeed requires, the court to separately consider" a request for fees or opportunity costs under the court's inherent power. *Id.*, citing *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991).

II. APPLICATION OF STANDARD TO CONDUCT

A. LEGAL CONTENTIONS WARRANTED BY EXISTING LAW

Simpson used a case in which the court found that a party should have raised certain arguments in a reply brief to support his position that no argument first raised in a reply brief should be considered. (*supra* 5; Doc. 175 p. 3).

Simpson provides no argument for modifying existing law so that the statements of Plaintiffs themselves, or their agents, servants, representatives, or co-conspirators, which Defendants cited in their appellate brief, must now be considered hearsay. (Doc. 175 p. 6). To illustrate, Defendants' use of "EX 625" and "EX 434, 459, 666–667, 722–723, 726" on Doc. 171-3 p. 10–11 is of statements by and an article provided by Shelton himself, clearly not

hearsay by existing law. Fed. R. Evid. 801(d)(2)(A). Simpson knows this, having already read Defendants' rebuttal of his argument[7]. (Doc. 175 p. 6; Doc. 178-2 pp. 20–21, 26).

B. FACTUAL CONTENTIONS

The number of glaring, factual misrepresentations in Plaintiffs' oppositions that are devoid of evidentiary support is truly astounding. (*supra* 2–15). Even if Simpson failed to make reasonable inquiry, a violation of Fed. R. Civ. P. 11(b), not all can be explained that way.

Defendants' repeated identification of the Remnant documents as being *prima facie* evidence for claims against Simpson and his colleagues (Doc. 126 pp. 4–5, 13–14; Doc. 127 ¶¶ 13, 16; Doc. 149 p. 3; Doc. 161 pp. 2–3, 16–17) must have strongly motivated Simpson to thoroughly investigate those documents. His mischaracterization of the kickback issue therefore must have been intentional and in bad faith, an attempt to shield himself and his colleagues from the liability incurred by litigating an action they have always known to be frivolous. This clear instance of bad faith allows the imposition of sanctions under the Court's inherent powers.

Additionally, Simpson used this mischaracterization to try to induce the Court to "order Defendants to show cause why they should not be held in contempt" for using arguments regarding kickbacks that Simpson knows Defendants made before ever receiving the Remnant documents. (Doc. 174 p. 4; Doc. 96-9 pp. 3, 10; Doc. 155-2).

Despite Defendants' citation of the June 25, 2008, letter requesting Simpson to produce the missing *3ABN World* issues (Doc. 170 p. 6 citing Doc. 81-11 p. 40), Simpson retorted that Defendants had never made such a request. (Doc. 175 p. 8).

[7] Plaintiffs' appellate brief argued that Defendants' evidence was hearsay regarding (a) Defendants' impeachment of Thompson, (b) unspecified dozens of exhibits suggesting bad faith and vexatious conduct, and (c) Nicholas Miller's allegation of document fraud. (Pickle Aff. Ex. N pp. 2–4). Defendants responded: (a) Thompson's and 3ABN's statements are not hearsay, and the findings of an administrative law judge are an exception to the hearsay rule. (b) Statements made by Plaintiffs or their coconspirators or agents are not hearsay, and Plaintiffs gave no examples of exhibits they considered hearsay. (c) Nicholas Miller's allegations are mostly confirmed by Doc. 93 at Ex. O (Ex. HHH), a document that was part of Plaintiffs' Rule 26(a)(1) materials, and evidentiary standards for judicial protection of evidence are not the same as those for conviction. (Doc. 178-3 pp. 20–21, 26, 31). Because Plaintiffs failed to cite specific examples for (b), further analysis as to exclusions from or exceptions to the hearsay rule is impossible.

How could Simpson have forgotten by May 11, 2009, that Defendants had indeed notified him on April 20, 2009, regarding what documents they were contemplating filing? (*supra* 4–5).

It would be rare indeed if every argument Defendants raised was universally rejected by seven judges and magistrate judges in four federal judicial districts[8]. (*supra* 5–6, 12–14).

Some misstatements clearly fall into the category of continued advocacy of factual contentions already proven false. Regarding the contention that 24 statements in Plaintiffs' complaint are specific, even Simpson acknowledged that to be untrue. (*supra* 8; Doc. 75 p. 2).

III. FACTORS THAT MAY BE CONSIDERED

Not only is Simpson trained in the law, but he is also promoted as having high marks for legal ability and ethics. (Pickle Aff. Ex. A). Thus, the violations of Rule 11 outlined herein are more worthy of sanctions, especially since the misstatements infected the entire briefs. The matter goes far beyond mere zealous advocacy.

The improper conduct described herein was, at least in some instances, clearly intentional. (*supra* 2–3, 6–14). For example, Simpson's continuing to maintain that the Remnant documents "had no relevance to the underlying lawsuit" can only be intentional, since those documents pertain to matters Plaintiffs explicitly put at issue in their complaint. (*supra* 11–12).

That Simpson earlier tried to end written discovery by stealth before Defendants received a single responsive document demonstrates a pattern of misconduct[9]. (Doc. 171-3 pp. 33).

The objective is deterrence. Reprimand, removal from the case, and drawing adverse evidentiary inferences would effectively deter such conduct in the future, especially if dismissal

[8] But then, if Plaintiffs defeated Defendants on every front and at every turn, Plaintiffs would never have moved for dismissal.

[9] By June 5, 2008, Simpson agreed to an extension of the June 11 deadline for written discovery, but Defendants did not receive the promised draft stipulation, and the draft did not extend the June 11 deadline. (Doc. 71 ¶¶ 14–15; Doc. 73-3 p. 4; Doc. 103 ¶ 8). Late on June 11, Simpson threatened sanctions, demanding that Defendants withdraw their June 10 motion to extend the time, even though that would have made a later attempt to extend the time untimely. (Doc. 103-6). Simpson claimed the draft stipulation was sent to the wrong fax number, but the detective agency at that number told Defendant Joy it had received no such fax, and despite Simpson's claim that copies were mailed to Defendants, Defendants never received them. (Doc. 73 ¶ 5; Doc. 73-3 p. 6; Doc. 146 p. 7).

with or without prejudice is not upheld on appeal.

The parties and their counsel have considerable means at their disposal, with the parties having spent $752,399 on the two law firms of record in 2007 alone, and with Simpson billing at $300 an hour. (Doc. 162-13 p. 8; Doc. 73 ¶ 11). A fine paid into the court would also deter.

Defendants spent considerable time preparing the instant motion and the reply memoranda to Plaintiffs' oppositions at issue in the instant motion. If monetary sanctions under the Court's inherent power should be awarded to non-attorneys *pro se* in order to deter sanctionable conduct by represented parties against those *pro se* litigants, then Defendants request such sanctions as they pertain to Defendants' preparation of the instant motion and the reply memoranda, made necessary by the sanctionable conduct.

CONCLUSION

Simpson is an attorney claiming to have considerable experience, ability, and ethics. That he filed opposition briefs riddled with so many misstatements is sanctionable, especially since some of the misstatements are demonstrably intentional. His mischaracterization of the kickback issue as it pertains to the Remnant documents was in bad faith, intended to shield him and his colleagues from liability, and intended to persuade the Court to launch contempt proceedings against Defendants. Sanctions are therefore warranted.

Respectfully submitted,

Dated: May 28, 2009

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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

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO

DEFENDANTS' MOTION FOR SANCTIONS

INTRODUCTION

Plaintiffs Three Angels Broadcasting, Inc. ("3ABN") and Danny Lee Shelton ("Shelton") submit this memorandum in opposition to *pro se* Defendants' Motion for Sanctions [Docket # 184]. The motion, which complains about several dozen isolated sentence fragments mined from memos submitted by Plaintiffs, is frivolous and itself violates Rule 11 because it contains numerous intentional distortions of the record and is merely supplemental argument on the underlying motions. Mindful that a party disregards *ad hominem* attacks at its peril, Plaintiffs will respond by correcting, clarifying and providing context, as necessary, to show that each contention does not support a finding of a violation of Fed. R. Civ. P. 11 or the exercise of the Court's inherent powers. The result of this exercise is an unfortunately long memo, but one which demonstrates that the motion should be denied.

ISSUE

The legal issue presented by this motion is whether Plaintiffs have submitted briefs that violate Fed. R. Civ. P. 11 by setting forth factual or legal contentions that lack support. Manifestly, nothing appears in Plaintiffs' briefs that is inaccurate, let alone violative of Rule 11. By contrast, Defendants' motion and supporting memorandum go well beyond the limit of tolerable litigation conduct, and it is only out of a strong desire to end this litigation that the Plaintiffs have resisted filing their own motion for sanctions against the Defendants.

LEGAL STANDARD

Rule 11 provides that by presenting to the court a pleading or other writing, an attorney or unrepresented party "is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances," (1) the filing "is not being presented for any improper purpose"; (2) "the claims ..and other contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification or reversal of existing law or the establishment of new law"; (3) the allegations and other factual contentions have evidentiary support"; and (4) "the denials of factual contentions are warranted on the evidence." Fed. R. Civ. P. 11(b). The court's inherent power to sanction parties for bad faith litigation conduct should ordinarily be exercised only when Rule 11 is inadequate. *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50, 111 S. Ct. 2123, 2126, 115 L.Ed.2d 27 (1991).

ARGUMENT

The factual recitation contained in Defendants' memorandum in support of their motion [ECF # 184] seems to be premised on the assumption that the Court would not check the accuracy of the Defendants' citations to the record. Nearly every factual assertion in it is irrelevant, unsupported by the record, requires the unique world view of these Defendants to be viewed as supportive of their position, or all of the above.

1. *Response to Introduction.*

The first example of supposed wrongdoing, raised in the Introduction section of Defendants' brief, is their oft-repeated charge that a pre-suit letter authored by Gerald S. Duffy, counsel for 3ABN, improperly invoked the doctrine of "common law copyright" in order "to keep the public from discovering his attempt to silence concerns about child molestation allegations." [Doc. 184 p. 1]. The letter was a "cease and desist" letter that sought to avert litigation by notifying the Defendants that their conduct placed them at risk of being sued. [Doc. 63-18]. The letter's reference to "common law copyright" was perfectly appropriate in view of the fact that Massachusetts recognizes the doctrine, as do other states. *See Edgar H. Wood Assocs., Inc. v. Skene*, 347 Mass. 351, 354, 197 N.E.2d 886, 889 (1964) ("Common law copyright exists in this Commonwealth."); *HNH Int'l, Ltd. V. Pryor Cashman Sherman & Flynn LLP*, ___ N.Y.S.2d ___, 2009 WL 1687489 (N.Y.A.D. 1 Dept.) (June 18, 2009) (noting that plaintiffs in legal malpractice action had been sued and found liable for common law copyright infringement). In any case, the letter was an out-of-court communication to which the requirements of Fed. R. Civ. P. 11 do not apply.

The second factual contention offered to show a pattern of unethical conduct by Plaintiffs and their counsel is even less compelling. Defendants say that another of Plaintiffs' counsel, Jerrie M. Hayes, "denied in open court that a criminal investigation was going on even though her own proposed protective order referred to an investigation by the Department of Justice." [Doc. 184 at p. 1]. The cited portion of the transcript of the hearing, which was before Magistrate Judge Hillman on March 7, 2008, shows Hayes arguing in support of Plaintiffs' motion for a protective order. Specifically, she was addressing the appropriate scope of

discovery as to Defendants' allegation that the Plaintiffs had improperly reported a particular real estate transaction on tax returns. (Doc. 89 at pp. 32-33). Hayes states:

> There is absolutely no reason to believe that *this transaction* was incorrect or improperly reported to the IRS. There's been no finding by the IRS. There's been no criminal investigation, no complaint. There's been absolutely no finding by any determinative body from the Illinois Attorney General to the Department of Revenue that any of these documents contain any errors of fact whatsoever.

[Doc. 89 at p. 33 (emphasis added)]. In other words, Hayes' statement was in reference to a single real estate transaction at issue in the case.

Defendants, however, use this passage to support their contention that Hayes "denied in open court that a criminal investigation was going on." [Doc. 184 at p. 1]. They imply that Hayes stated that there was no investigation by the IRS of any kind, when the record actually has her saying that there was no criminal investigation of a *specific* real estate transaction. The transcript reveals that the Court was informed that there was a government tax review of 3ABN at the time. [Doc. 89 at p. 38]. The IRS investigation ultimately concluded with the IRS notifying Plaintiffs that the investigation had ended with no findings of wrongdoing, or even a request to refile tax returns. [Affidavit of Walt Thompson, Doc. 123 at ¶¶ 4-5]. This is another example of how these Defendants use the absence of contextual information to convey a false impression. "Context matters." *Cf. Grutter v. Bollinger*, 539 U.S. 306, 327, 123 S. Ct. 2325 (2003). Defendants understand this all too well, and use the absence of context to make the mundane appear sinister.

The third factual contention in Defendants' Introduction is a personal attack on the undersigned attorney for the Plaintiffs, and states that despite his "alleged high ratings for ethics," he "has continued this pattern of questionable conduct." [Doc. 184, pp. 1-2]. No citation to the record is supplied, thankfully, but none is needed. The undersigned has indeed

continued the pattern set by his co-counsel of accurately marshaling the facts and law to the best of his ability in his presentations to this Court. To be characterized as ethically questionable by these Defendants is a sad but inevitable result of coming into contact with them.

2. *Allegedly Erroneous Statements in Plaintiffs' Memos.*

Defendants next set forth a shotgun blast of what they call sanctionable statements in Plaintiffs' legal memos. Each will be answered as briefly as possible.

A. *"Perfectly proper" royalty payments.*

The first supposedly erroneous statement in Plaintiffs' brief is one opposing Defendants' motion for leave to file some irrelevant exhibits under seal (which motion remains pending), in which Plaintiffs advised the Court that despite its order that the Defendants return confidential documents, the Defendants had not done so. Ignoring the point of that sentence, i.e., that Defendants are currently ignoring this Court's order to return all confidential documents, defendants zero in on two words in the sentence which characterize the royalty payments to Shelton from Remnant Publications as "perfectly proper." [Doc. 174 at p. 4]. Defendants contend those two words merit sanctions. [Doc. 184 at p. 2].

Their "evidence," however, is not evidence as much as a web of guesswork and speculation that begins and ends with the assumption that the payments were kickbacks. The reason they must be kickbacks, say the Defendants, is that the booklets for which royalties were paid were at one time published by a different publisher at a lower cost. Defendants say "the only logical reason for such an arrangement is that it was a kickback scheme." In other words, Defendants' logic goes, moving to a higher cost publisher is proof of a kickback scheme because they can't think of any other reason for it. Of course, speculation is not evidence. There are any number of legitimate business reasons to switch to a different publisher. Since the factual record

has long since been closed without this issue being raised or litigated, no further information is available on this point.

Without belaboring the issue, the "perfectly proper" statement was in reference to the fact that the Plaintiffs' financial activities were reviewed by outside experts including accountants and, for the maximum audit period allowed by law, the IRS. Nothing was found to be out of place. The payments can be fairly characterized as proper.

B. "A matter which would have been rectified had it been brought to the attention of counsel."

Defendants next find fault with a statement in Plaintiffs' brief opposing Defendants' motion for reconsideration of the Court's order denying litigation costs, i.e., that the matter of issues of *3ABN World* that were missing from Plaintiff's document production would have been rectified had it been brought to the attention of counsel. It is useful to recall the context in which this statement was made, despite Defendants' preference that sentence fragments they disagree with be reviewed in a vacuum. Defendants moved for an award of their litigation costs; this Court denied the motion. Defendants have now moved for reconsideration of that order, on the theory that "newly discovered" evidence of litigation misconduct by Plaintiffs would induce this Court to reconsider. One of these "new facts" was that in June of 2008, Plaintiffs had failed to produce three issues of 3ABN's monthly magazine, *3ABN World*, which Defendants had sought along with Plaintiffs' other publications. Plaintiffs' brief opposing the motion for reconsideration responded to this argument, in part, by stating that the matter of the missing magazines "would have been rectified had it been brought to the attention of counsel." [Doc. 175 at p. 8]. Defendants, demonstrating their unique facility with language, say that "Simpson thus denies that he was ever contacted about the missing" magazines. [Doc. 184 at p. 3]. This supposed misrepresentation is said to be the basis for an award of Rule 11 sanctions.

Defendants have again used selective citations to the record, leaps of logic and creative omission of context to give a false impression. The story of the discovery skirmishes in this case, which involved numerous issues in addition to the three missing magazines, has been told before and is partly set forth in the Affidavit of Kristin Kingsbury [Doc. 92]. Before Plaintiffs' document production was even complete, Defendants began peppering Plaintiffs with letters pointing out supposed deficiencies in the document production. [*See* Doc. 92, Exhibits 2-3]. One of these, dated June 25, 2008, claimed that three issues of *3ABN World* were missing from Plaintiffs' document production. [Doc. 81-11 at p. 40]. This letter was one of four letters sent by Pickle to Plaintiffs *on that day* raising issues relating to discovery. [Doc. 92, Exhibits 23-26].

Defendants' document requests had sought "all issues of *3ABN World* (or its predecessor newsletter) and *Catch the Vision* from all years of 3ABN's existence…." (Doc. 63-20 p. 10). Current and back issues of *3ABN World* are available on 3ABN's web site at http://www.3abn.org/magazine.cfm. In the assessment of counsel, Defendants were asking 3ABN to produce copies of all of 3ABN's publications for no conceivable reason other than harassment. Plaintiffs told Defendants by letter dated June 20 that the magazines were available online, and that they would not be producing materials that could just as easily be obtained from a public source. [Doc. 81-2 at p. 118].

In an effort to consolidate all the discovery issues and deal with them in an orderly fashion, Plaintiffs issued Defendants a letter dated July 9, 2008, which explained the meet and confer process. [Doc. 92 at p. 12-14]. The letter began: "This letter is to respond to your numerous letters to me and Kristin Kingsbury regarding miscellaneous discovery issues and other matters." It then goes on to address the process of creating a written record of disputed discovery issues, so that they could be addressed or, as a last resort, brought before the Court.

Near the end of the letter is the following: "You have also complained about deficiencies in our production that I believe have been addressed in our pending motion to narrow the scope of permissible discovery. If you believe there are any categories of documents which have been requested but not produced, with respect to which we have not sought protection from the court, please identify those documents and I will respond." [Doc. 92 at p. 13]. Defendant did not raise the issue of the missing magazines again. The parties eventually submitted their disputes over the range and scope of discovery to Magistrate Judge Hillman, who denied the Defendants' motion to compel and granted in part Plaintiffs' motion to narrow discovery. [Doc. 106].

Judge Hillman agreed that the Defendants' discovery requests were overbroad and ordered them stricken. The request for issues of *3ABN World* was among the discovery requests stricken by Judge Hillman. The motion for voluntary dismissal was filed before responses to the revised discovery requests became due, and the case was dismissed before any further discovery disputes came before the Court. Any implication that 3ABN was under a duty to produce the missing issues of *3ABN World* is false.

The subject of the supposedly missing magazines came up again on September 8, 2008, when Defendants filed an affidavit in connection with their motion to extend discovery, which stated that Defendants had received "No issues of *3ABN World*…." [Doc. 103 at p. 7]. Defendants thus falsely implied to the Court in a sworn affidavit that they had been unable to obtain *any* issues of *3ABN World*, when in fact they got all but three issues online and at some point got the other three issues at a library.

This concrete example illustrates the linguistic acrobatics that these Defendants are capable of performing to mislead the Court, and how easy it is for Defendants to say something false and misleading – in this instance just one short paragraph – and how onerous it is for

Plaintiffs to supply the omitted context, correct the misstatements of fact and explain the circumstances fully. These Defendants are absolutely reckless with their submissions to this Court. Plaintiffs' statement that the missing magazines would have been rectified had the matter been brought to counsel's attention was accurate.

C. "Including a simple request to 3ABN for back issues of their magazine."

Defendants next complain about another fragment of Plaintiffs' response to their gripe about the missing issues of *3ABN World*. [Doc. 184 at p. 3]. They say that a statement that Defendants could have made a request to 3ABN for back issues of their magazine merits sanctions because the Court had directed the Defendants to stop issuing subpoenas to Plaintiffs' witnesses – one of several tactics they employed to circumvent the Court's management of case discovery -- which order could be construed as broad enough to prevent them from submitting an on-line request for missing copies of *3ABN World*. If Defendants had a concern about what they could and could not do, all they had to do was ask 3ABN's counsel or as a last resort bring the issue to the Court.

D. "What that bearing may be is not explained."

The next sentence fragment that the Defendants disapprove of is one from the Plaintiffs' memo opposing the motion for leave to file some exhibits under seal. [Doc. 184 at p. 4]. Plaintiffs had observed that the motion to file under seal did not explain what the exhibits would show. [Doc. 174, p. 1]. Although the truth of this remark is apparent merely by looking at Defendants' memo, *see* Doc. 173, Defendants say this comment merits sanctions because they explained the relevance of the exhibits in a different filing, Doc. 170, although review of that memo leaves the reader even more perplexed as to what the relevance of the exhibits might be. The broader point, which Defendants willfully ignore, is that these documents are no longer

relevant to any issue in the case because the case has been voluntarily dismissed without ever reaching the merits. The proffered exhibits relate to the merits of the litigation, not to the issue for which they were offered – reconsideration of a motion for an award of litigation expenses under Fed. R. Civ. P. 41(a)(2).

The challenged statement is literally true because Defendants did not explain in their motion for leave to file under seal why the exhibits were relevant, nor did they incorporate by reference whatever explanation may be found in Doc. 170. Whether the Defendants explained the relevance of the exhibits in Doc. 170 is debatable, but that is a matter for argument.

E. "Plaintiffs have not been made aware of exactly what documents Defendants seek to file."

Defendants next lament that Plaintiffs said they were not informed of precisely which documents were at issue in the motion to file exhibits under seal. [Doc. 184 at p. 4]. They are again counting on the Court not checking the facts. Their citation to the record is an email they sent to the undersigned on April 20, 2009, which lists some 87 documents which the email states "we may seek to file…in connection with our motion to reconsider." [Doc. 180-2, p. 4]. There is nothing indicating that these *are* the documents the Defendants moved to file under seal labeled Exhibits Q-R, X-Y and BB. Plaintiffs said they had not been made aware of exactly what documents were encompassed by the labels Exhibits Q-R, X-Y and BB because such was the case.

F. Citation to *Boston Regional Medical Center* case.

Defendants next contend that Plaintiffs improperly cited a case. [Doc. 184, p. 5]. Plaintiffs' brief cited *Boston Regional Med. Center v. Ricks,* 328 F.Supp.2d 130, 143 (D. Mass. 2004), as one of two First Circuit authorities for the proposition that new arguments raised in a reply brief should not be considered. Defendants say that the facts of the *Boston Regional*

Medical Center involved arguments raised for the first time in a *supplemental brief.* They apparently don't dispute that the other case cited for the proposition, *Rivera-Muriente v. Agosto-Alicia*, 959 F.2d 349, 354 (1st Cir. 1992), involved a reply brief. The *Boston Regional Medical Center* case quoted the *Rivera-Muriente* case for the proposition that "It is well settled in this court…that a legal argument made for the first time in an appellant's reply brief comes too late and need not be addressed." In other words, both cases support the proposition for which they were cited.

G. "This Court's order indicates that it considered the argument raised by the Defendants in their reply brief."

Proving that nobody is above their suspicions, Defendants claim that this Court did not read their briefs. More specifically, they say that Plaintiffs should be sanctioned under Rule 11 for suggesting that the Court *did* read Defendants' reply brief. [Doc. 184, p. 5]. One doubts that this particular argument has previously been advanced in the annals of Anglo-American jurisprudence, at least not before the very judge who is accused of not reading the brief. In any case, Plaintiffs did not presume to say that the Court *read* Defendants' reply brief, since their writings are painful to slog through and anyone would be excused for giving them a miss. Rather, Plaintiffs confined their remark to the objectively verifiable fact that the Court had *considered* the arguments raised in the reply brief, and cited to the parts of the Court's order [Doc. 166 at pp. 3-4] that proved it. The Defendants have also argued to the First Circuit Court of Appeals that this Court erred by dismissing the case without reading Defendants' opposition brief, despite the fact that the Court stated on the record that it had reviewed it and, more importantly, demonstrated during oral argument that it understood the parties' positions.

H. "These claims have been raised and rejected…by every judge to consider them."

Defendants next take issue with Plaintiffs' statement in Doc. 175 at p. 5 that the litany of complaints about the discovery conduct by the Plaintiffs have been rejected by every judge to consider them. Here, Defendants confuse the normal disagreements regarding appropriate scope of permissible discovery that inevitably arise in litigation with sanctionable discovery misconduct. It is a matter of record that there are no findings of discovery misconduct by the Plaintiffs. Defendants vigorously denounced every effort of the Plaintiffs to restrict their access to the Plaintiffs' records. At the same time, Defendants had acknowledged to themselves that they were using the lawsuit to gain access to records that went beyond the merits. [*E.g.*, Doc. 76-5 at p. 33 (email from G. Joy to R. Pickle dated January 20, 2008, including the following: "Unfortunately, because of the very narrow charges pressed by 3ABN and Danny Lee Shelton, we must substantially expand the case to bring in the most damaging and certain to sway the jury details. I have deliberately dragged my feet hoping the IRS would move a bit quicker and finish their investigation before we would have to become extremely aggressive.")].

True to their word, Defendants caused satellite litigation in Minnesota, Illinois and Michigan and served other subpoenas elsewhere that never made it into court because they got the documents they wanted without a challenge. The courts in Michigan and Minnesota ordered discovery disclosures subject to the protective order issued in this case. The Illinois court simply referred the matter to the Magistrate Judge Hillman for resolution, to the same effect. There was nothing improper or even unusual about the disagreement between the parties as to the appropriate extent of discovery, despite the frequent bombastic claims of the Defendants that they amounted to a "fraud on the court." The scope of permissible discovery was never judicially resolved because the case was dismissed before the issue was ripe. The point remains

that each of the courts that heard the grousings of these Defendants about supposed bad faith misconduct by their opponents found no merit in them.

I. Defendants' appellate briefs string together hearsay from unsourced emails.

Defendants next disapprove of a sentence fragment in the memorandum opposing reconsideration in which Plaintiffs observed that Defendants' appellate briefs were being used to try the merits of the underlying action, in the guise of an appeal. [Doc. 184, pp. 6, 17]. Defendants apparently do not understand that they cannot simply submit to the court emails and other exhibits that they obtained from various sources and claim that they are what they purport on their face to be, and that the authors are as indicated in the emails. A review of their appellate brief fact section [Doc. 171-3, pages 10-22] shows the Defendants spinning their theory of the case using emails and other exhibits about which no witness has testified, as if there had been a trial on the merits. There has not been a trial on the merits, nor were there even any depositions. These Defendants are not competent to testify to the "facts" contained in their appellate briefs.

J. "The merits had never been at issue before…."

Defendants next object that in explaining why the record was ill-equipped to debate the merits of the case, since the only issues presented to the Court were procedural ones, Plaintiffs stated that "the merits had never been at issue before." Defendants assert that they twice "invited Plaintiffs to submit such evidence," and wax poetic about "What golden opportunities wasted!" [Doc. 184, p. 7].

They miss the point. The pretrial motions before the Court involved the *character* of the claims and defenses, because that determines the scope of relevant discovery, but the motions never involved the *truth* of the claims and defenses. Truth is what the trial is for, and the case never got that far because the Plaintiffs got all the relief they could hope for without a trial.

Defendants never appreciated that point, and blithely took their best shots at the Plaintiffs in every filing and motion in the case, submitting generally unopposed affidavits to the general effect that the Plaintiffs and their counsel are scoundrels. Plaintiffs took care not to burden the Court with irrelevant information by responding to these premature and irrelevant ramblings of *pro se* parties. However, when Defendants used their appellate briefs to try the merits of the case to the First Circuit Court of Appeals, Plaintiffs felt it necessary to explain why they would not be responding by citation to the record to the savage but baseless attacks contained in the Defendants' brief. This is why the Plaintiffs said that the merits had not been at issue before.

K. "Tape recording…not material to the case."

Defendants next seek sanctions because Plaintiffs stated in Doc. 175 that a tape recording containing an allegedly false statement by Shelton was "about something that is not material to the case." [Doc. 184, p. 7]. Defendants claim the recording is material because their "exposé" in late 2006 of the Dryden phone call is the "only … thing [that] could possibly substantiate" Plaintiffs' claim of a donation level drop in December of 2006. But as usual, they completely miss the point that "even if the tape recording was evidence of dishonesty…it doesn't show litigation misconduct." [Doc. 175, p. 8]. The point of the whole exercise, which Defendants never seem to get around to discussing, was to show litigation misconduct that might justify an award of litigation expenses. An out-of-court statement made years ago can't perform that function, and in that sense is not material.

L. Defendants had the tape since before the lawsuit started.

Defendants next gripe about a fragment of a sentence suggesting that Defendants did not really acquire the Dryden tape recording as "new evidence," which they had asserted in order to justify their failure to bring it to the Court's attention in the initial motion. [Doc. 184, p. 7].

Although their moving papers did not indicate when they received the Dryden tape, a fact which is material to a motion to reconsider, they use their Rule 11 motion to clarify that they got the tape "after June 2, 2008." [*Id.*]. From the previous paragraph, in which they boast of exposing a cover up of the child molestation allegations, it appears they already knew the contents of the recording and implied that they had it in late 2006. The Pickle affidavit, Doc. 171 at ¶ 10, says that "Dryden gave me recordings of two messages left by Danny Shelton on the Ezra Church of God's answering machine on May 23, 2003…." Pickle admits that he realized as early as January or February of 2009 the supposed significance of the recording. [Doc. 171 ¶13]. Yet he claims this recording was "newly discovered" evidence that justifies reconsideration of the order denying litigation expenses. Clearly it is not, nor is it violative of Rule 11 to state otherwise.

M. "Every one of which is said to demonstrate fraud, but every one of which is demonstrably accurate."

Defendants next dispute a succinct paragraph in Plaintiffs brief opposing the motion for reconsideration, in which Plaintiffs characterized a portion of Defendants' brief [Doc. 170, pp. 7-10] as a "more or less random series of nitpicky complaints about statements made by Plaintiffs or their counsel, in briefs or argument, every one of which is said to demonstrate fraud, but every one of which is demonstrably accurate." [Doc. 175, p. 9]. That sentence captured the gist fairly well, but Defendants characterize it as sanctionable so a bit more will be required.

1. The Complaint identified 24 specific defamatory statements.

Defendants complain that the brief characterizes the 24 allegations of defamation as "specific," when they are actually "broad." [Doc. 184, p. 8]. Defendants themselves acknowledged that the scope of the complaint was narrow as they devised their plan to use the discovery process to gain access to irrelevant information. [Doc. 76-21]. "Specific" and "broad" are not antonyms like "specific" and "general." A thing can be both at the same time.

2. "They were given access to thousands of pages of records in discovery…."

Although initially promising to confine their motion to the two most recent briefs of the Plaintiffs, Defendants expand their grievances to include statements made in motions that were heard and decided long ago. They protest that in a memo opposing Defendants' motion to impose costs submitted *last November*, Doc. 140, Plaintiffs wrote that Defendants had been given access to thousands of pages of financial records of 3ABN. [Doc. 184, p. 8]. Defendants replied to Doc. 140 by suggesting that some of the requested tax documents had not been produced, but it is just their conjecture that many of the records they say were absent from the production actually exist. [Doc. 149 at p. 12]. Further, since the document requests were stricken by Judge Hillman, there was never a finding that any of the requested documents were not produced. Undoubtedly discovery was not complete, but the case ended before the disputes reached resolution. Plaintiffs were within their rights to describe their document production as voluminous and comprehensive, since that is objectively verifiable fact.

3. "Finding little help…"

Defendants next take issue with a sentence in the November 26, 2008 filing [Doc. 140] in which Plaintiffs wrote that Defendants adopted a strategy of seeking oppressively large amounts of irrelevant documents. Plaintiffs cited an email between the Defendants that proves the point. [Doc. 76-21]. Nothing more need be said.

4. "In other words, Plaintiffs' efforts to narrow the scope of discovery were justified.

Defendants next protest a statement by Plaintiffs that the ruling by Judge Hillman striking Defendants' discovery as overly broad demonstrated that the efforts to narrow discovery was justified. [Doc. 184, p. 9]. Defendants quote a passage in which Judge Hillman observed that

Plaintiffs were taking an overly narrow view of the appropriate scope of discovery. However, Judge Hillman did not identify any specific respect in which Plaintiffs were being too restrictive. His ruling was to grant Plaintiffs' motion for a protective order, to scrap Defendants' discovery requests, and to order that new ones be served that were more carefully limited to the issues in the case. Thus, Plaintiffs' position was substantively justified.

5. "Defendants sought to circumvent any limitations…"

Defendants next disagree with a statement to the effect that their third party subpoenas constituted an "end run" around the Massachusetts district court. This rather self-evident observation derives from the fact that the subpoenas were served seeking the very information for which protective orders were pending and/or contemplated in the Massachusetts court. It is not remotely sanctionable.

6. "The goals of the lawsuit had been met…"

Defendants next argue that Plaintiffs' statement that the goals of the lawsuit have been resolved by other means merits Rule 11 sanctions. [Doc. 184, p. 10]. They say that 16 other internet domain names are using the logo 3ABN to defame the Plaintiffs. What they do *not* mention is that this lawsuit could not do anything about websites that the Defendants in this lawsuit do not own. The primary objectives of *this* lawsuit were achieved by other means.

7. "And by obtaining favorable rulings…"

Defendants next dispute a statement in the November 2008 filing in which Plaintiffs wrote that they had received favorable rulings from the governmental agencies that had been investigating them. [Doc. 184, p. 10]. This non-controversial statement derives from the facts set forth in the Thompson Affidavit, including that the IRS terminated their investigation, and the state and federal civil rights agencies found no reasonable cause to believe that discrimination

had occurred. [Doc. 184, p. 10]. Defendants' contrary opinion does not mean that Plaintiffs' view of the facts violates Rule 11.

8. "…the bankruptcy judge closed down the web site…"

Defendants next take issue with a statement *in an email* by 3ABN officer Walt Thompson to an unnamed correspondent in which Thompson (or somebody writing in his name, since no foundation is provided) appears to state that the bankruptcy judge closed down the infringing web site. It would have been more accurate to say that the bankruptcy judge approved the trustee's sale of the infringing web sites to 3ABN, which then shut them down, but for a layperson describing the event to another layperson, the gist of the communication was true. In any event, out-of-court statements don't implicate Rule 11.

9. "When it became apparent…"

Defendants argue that the November 2008 brief is sanctionable because they disagree with the statement in it that donations levels were restored. As usual, the evidence is their idle speculation. Plaintiffs submitted direct evidence in the form of the Walt Thompson affidavit, Doc. 123, regarding the fact that the Defendants had ceased to have a significant impact on the Plaintiffs' fundraising activities, despite their gadfly activities. Defendants cannot rebut the evidence in the record with mere conjecture.

10. "…documents that had no relevance…"

Defendants next complain about a sentence in Doc. 158 (filing date 12/22/2008) in which Plaintiffs opposed a motion to file the Remnant Publications documents under seal because they were irrelevant. [Doc. 184, p. 11]. That was, and remains, the Plaintiffs' position. It is not an issue of fact, however, and is not appropriately raised as a basis for sanctions.

N. "Defendants told anybody who would listen….

Defendants complain about a sentence in which Plaintiffs said the courts did not agree that Plaintiffs' discovery positions were not well-founded. [Doc. 175, p. 10]. Defendants again fail to recognize the distinction between a well-founded argument and one that the Court accepts and adopts. It is a matter of record that not one court found Plaintiffs' position to lack a legal or factual basis, even if the Plaintiffs did not win every argument. None of the examples listed by Defendants show otherwise.

O. "To the contrary, Plaintiffs prevailed every time…"

Defendants quibble with Plaintiffs' contention that they prevailed in each of the out-of-district subpoena skirmishes because they succeeded in getting the documents to be subject to the protective order issued in this case. The basis for the quibble is not clear, but the record is. The statement is accurate.

P. "They also offer a tape recording…"

Defendants next argue that Plaintiffs wrote a sentence which indicated they misunderstood the thrust of Defendants' argument about the Dryden tape recording. [Doc. 184, p. 15]. Plaintiffs confess to being perplexed by much of Defendants' written work, but it is hard to see how that would violate Rule 11. Defendants are clearly using their Rule 11 memo to clarify their arguments in pending motions, rather than to identify sanctionable conduct.

CONCLUSION

Defendants' "Argument" section is a rehash of the misunderstandings and distortions that infect the "Fact" section of the brief, but with a more scolding tone directed at the undersigned counsel for Plaintiffs. This brief has demonstrated that each assertion of sanctionable conduct was nothing of the sort. To paraphrase the Defendants, "the number of glaring, factual

misrepresentations contained in [Defendants' brief] that are devoid of evidentiary support is truly astounding." [Doc. 184, p. 18]. Defendants' motion for sanctions should be denied.

Respectfully Submitted:

Dated: July 8, 2009

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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. I have been involved in printing, publishing, and book resale since the early 1990's, and thus am familiar with various facets of the layout, manufacture, distribution, marketing, and retail of books.

2. "ISBN" stands for "International Standard Book Number." R.R. Bowker LLC ("Bowker") is a company that is the exclusive provider of ISBN's in the United States. ISBN's are 10 or 13 characters long, are paid for and obtained by publishers, and identify each specific book (or book edition) and which specific publisher published it. Distributors and bookstores use ISBN's, which are typically printed on a book's back cover, to identify and order books.

3. Attached hereto as **Exhibit A** is a web page from Bowker's website which outlines the rules for ISBN's. Pages 2–3 make it clear that the holder of an ISBN "cannot sell,

give away or transfer one of their ISBNs" to someone else. Only when the company holding the ISBN is bought by another company, or when an estate is inherited, can a transfer be made. But in those cases all ISBN's are transferred, not just one or some. (*Id.*). In other words, when an author chooses a new publisher, that new publisher must affix its own ISBN to the republished book, not the same ISBN used by the previous publisher.

4. Bowker provides a database called "Books in Print" by which one can search for book, publisher, and author information. The printouts from this database in this filing are of searches I made during the last week using North Dakota State University's Books in Print subscription. Bowker allows one to search for in-print, out-of-print, and/or forthcoming books, and I specifically searched for all three at one time.

5. Attached hereto as **Exhibits B–C** is Bowker's list of items authored or performed by Danny Lee Shelton ("Shelton"), identified in the list as "Danny Shelton." Exhibit B is sorted by title, and Exhibit C is sorted by date.

6. Attached hereto as **Exhibit D** are pages from AdventistBookCenter.com describing all the booklets offered for sale that are authored by Shelton, as of this filing. AdventistBookCenter.com is owned in part by Pacific Press Publishing Association ("PPPA"). (Ex. D p. 19). All of the eight titles listed, except *Antichrist Agenda*, are identified as being published by PPPA. Three of the titles are Spanish editions of three English booklets published in 2001 and 2002 (*Forgotten Commandment*, *Can We Eat Anything?*, and *Does God Love Sinners Forever?*), and two of those Spanish editions are copyrighted 2005. A fourth booklet, *After the Storm*, is also identified as being published by PPPA, and is copyrighted 2005.

7. Attached hereto as **Exhibit E** are pages from Bowker's database for items identified in Exhibits B–D, arranged in alphabetical order. Additional information is included for some titles, such as "Publisher Information" and "Other Formats."

8. Of interest is the fact that Three Angel's Broadcasting Network, Inc. ("3ABN") and PPPA both have separate ISBN's for a number of the PPPA booklets, which likely reflects the fact that 3ABN and PPPA are by contract co-publishers of the three English booklets published in 2001 and 2002. (Doc. 96-11 pp. 1–3 at ¶ 8).

9. Attached hereto as **Exhibits F–G** is Bowker's list of 115 items published by Remnant Publications, Inc. ("Remnant"). Exhibit F is sorted by title, and Exhibit G is sorted by date. None of the titles of Shelton's PPPA booklets are found among this list of Remnant's published titles, but they should be listed if Remnant had ever published any of those booklets.

10. In the last week, I searched by author and title (the titles listed in Exhibits B–D) on Remnant's website for materials authored by Shelton. Attached hereto as **Exhibit H** are printouts of all the results of that search. Shelton's PPPA booklets cannot be found, for sale or otherwise, on Remnant's website, even though they should be if Remnant was the publisher.

11. Attached hereto as **Exhibit I** are printouts from Bowker's database of company details for PPPA, 3ABN, and Remnant. Of particular interest is that Bowker identifies on these pages what ISBN prefixes each company possesses. The prefix is what identifies the publisher of a book. PPPA has the ISBN prefix 978-0-8163, while Remnant has the prefixes 978-1-883012, 978-1-933291, and 978-0-9777445. The "978" in front is used in a 13-digit ISBN, but not in a 10-digit ISBN. Since the ISBN's given in Exhibit D for the books identified as being published by PPPA all begin with "08163," PPPA must be the publisher.

12. The documents Remnant produced to Defendants in response to Defendants' subpoena were organized into six categories. The first category was "Contracts & Memos – Shelton." I have carefully looked at this category of documents, and I can say with certainty that there are no contracts or agreements or memos regarding any of Shelton's booklets which were published by PPPA. Thus, Remnant could not have been the publisher for any of them.

13. As a publisher and book retailer, it is clear to me that PPPA has always been the publisher for the PPPA booklets, and that Remnant never has been the publisher for those booklets. Remnant doesn't even offer them for sale on their website. While Plaintiffs' counsel alleged that Remnant had begun publishing the PPPA booklets in 2005, in reality 2005 was the year that PPPA first published *After the Storm*, as well as Spanish editions for two of the first three English booklets. This is contrary to what would be expected if Shelton had switched from PPPA to Remnant in 2005.

14. Attached hereto as **Exhibit J** is a post I made on BlackSDA.com on September 23, 2007, seeking help in obtaining the three missing *3ABN World* issues. This was about two months or more before I served my requests to produce upon 3ABN and Shelton.

15. Attached hereto as **Exhibit K** are returns of service for four subpoenas issued by the District of Massachusetts and served on November 30, 2007, and December 4, 10, and 11, 2007. These subpoenas sought documents from Remnant, Grey Hunter Stenn LLP, MidCountry Bank, and Century Bank and Trust. The first three were later reissued from the correct court. Attached hereto as **Exhibit L** is the return of service for the reissued subpoena served upon MidCountry Bank on January 16, 2008.

16. The subpoena served upon Glenn Dryden seeking documents pertaining to child molestation allegations against Tommy Shelton, former pastor of the Community Church of God, was issued from the Western District of Virginia. An earlier subpoena had been issued from the District of Massachusetts and sent to the chairman of the board of trustees of the Community Church of God on December 12, 2007. That email along with the subpoena is attached hereto as **Exhibit M.**

17. Thus, the only subpoena which was not initially served prior to January 20, 2008, was the one served upon Kathy Bottomley.

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 **NOTICE OF APPEAL**

DEFENDANTS' NOTICE OF APPEAL

Notice is hereby given that Gailon Arthur Joy and Robert Pickle, defendants in the above named case, hereby appeal to the United States Court of Appeals for the First Circuit from (a) an order denying Defendants' Motion to Impose Costs entered in this action on the 13th day of April, 2009; (b) an order denying Defendants' Motion to File Under Seal entered in this action on the 15th day of April, 2009; (c) an order denying Defendants' Motions to Reconsider and Motion to Amend Findings, Defendants' Motion for Leave to File Under Seal, and Defendants' Motion for Sanctions entered in this action on the 26th day of October, 2009; and, (d) only to the extent that Plaintiffs are correct that the order(s) entered in this action on the 31st day of October and/or the 3rd day of November, 2008, were not appealable until Defendants' Motion to Impose Costs was resolved, from the order(s) granting in its several parts Plaintiffs' Motion for Voluntary Dismissal without prejudice entered in this action on the 31st day of October and/or the 3rd day of November, 2008.

Respectfully submitted,

Dated: November 23, 2009

/s/ Gailon Arthur Joy, *pro se*
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and

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AFFIDAVIT OF SERVICE

Under penalty of perjury, I, Bob Pickle, hereby certify that this notice of appeal, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). Those registered participants are all the counsel of record for Plaintiffs Danny Lee Shelton and Three Angels Broadcasting Network, Inc., the parties to this appeal other than Defendants Gailon Arthur Joy and Robert Pickle. Those registered participants are as follows, with their last known address:

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Dated: November 23, 2009

/s/ Bob Pickle
Bob Pickle

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc., et al., Plaintiffs,

vs. Case No. 07cv40098-FDS

Gailon Arthur Joy, et al., Defendants.

BEFORE: The Honorable F. Dennis Saylor, IV

Motion Hearing

United States District Court
Courtroom No. 2
595 Main Street
Worcester, Massachusetts
June 21, 2007

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Official Court Reporter
United States District Court
595 Main Street, Room 514A
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speak. I am -- on the motion for a permanent impoundment, I have considered this at great length, and there are lots of different strains of case law and rules and so forth that affect this decision, but the bottom line is that I'm going to lift the impoundment order and unseal the case and the pleadings, and I will explain myself as best as I can on the record.

I ordered a temporary impoundment to ascertain the nature of the issues and to try to figure out what the underlying law was. As I think everyone agrees, lawsuits are presumptively public. Portions of lawsuits or occasionally entire lawsuits can be made nonpublic for compelling reasons, and if narrowly tailored.

Under our local rules, particularly local Rule 7.2, blanket impoundments are not permitted and a separate motion for impoundment is required each time a document or a group of documents is to be filed.

And I note also that impoundment imposes a significant burden on the Court and the clerk's office, even individual docket -- documents, never mind the entire case.

Parties do not have license to file or to state in pleadings or to attach anything that they please, among other things, under Federal Rule of Civil Procedure 12 on motions may be made to strike redundant, immaterial, impertinent, or scandalous material. Certain types of information, such as

for defamation, by which I mean the mere fact that you've said something and stapled it as an exhibit to a pleading does not mean that it's not defamatory or that it's not privileged.

So the bottom line is I am not unsympathetic to plaintiffs' concerns, but as I read the case law and the rules, a blanket impoundment is not warranted under the circumstances, and we will take each item as it comes.

I'm also willing to entertain, among other things, the possibility of a reasonably expedited schedule and/or trial to bring the matter to a head more quickly than it might otherwise be done.

Quickly on defendant's motion to strike supplemental pleadings for sanctions, there's -- there was an issue as to whether service was improper. I'm going to deny the motion without prejudice meaning that if there was a future service problem that that can be part of the mix.

And the second piece of it was that the plaintiff submitted redacted exhibits. There is nothing improper in my judgment in submitting redacted exhibits under the circumstances here. Plaintiff may need to produce unredacted exhibits in discovery, and I'm not making any judgment one way or the other, but it's possible that they may, and there may be a need for a protective order in place. That's an issue for another day, but under the circumstances, I saw no -- nothing improper or inappropriate about the redacted exhibits, and so

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc., et al., Plaintiffs,

vs.

Gailon Arthur Joy, et al., Defendants.

Case No. 07cv40098-FDS

BEFORE: The Honorable F. Dennis Saylor, IV

Motion Hearing

United States District Court
Courtroom No. 2
595 Main Street
Worcester, Massachusetts
July 23, 2007

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Mechanical Steno - Transcript by Computer

[THE COURT]

is that a case of ordinary complexity ought to be ready for summary judgment in about a year. I will grant the parties here additional time beyond a year. I'm not entirely convinced this is more complicated than a normal case, but I will provide some additional time; and I'm going to call -- as I indicated, I'm going to have a couple of status conferences, one toward the end of '07 and then one again in the spring of '08. And if it looks like the case needs more time, if it reasonably needs more time, I'll grant it, but I do think that the proposed timetables, which take us out into late '08 and early '09, is -- is -- is more languid than I went the pace to be, at least as I see it. Sometimes things are a lot more complicated than they look, and I'll be reasonable if you're reasonable on both sides.

I was also a little concerned that the parties are already indicating that they think everything is going to be contentious, and that's going to drag things out. That -- it may be true that the parties are contentious. I just want to say up front that I expect counsel to act professionally at all times, and none of you are relieved from your ordinary duties to try to resolve disputes under Rule 7.1 and otherwise.

I recognize not everything can be resolved, but I do expect professional conduct; and however upset the underlying parties may be, I expect counsel to be professional.

So let me do the following: I'm going to set a

MR. HEAL: I think the timetable is reasonable, Your Honor, although we agree with the plaintiffs, to a large degree, that additional time will be needed on this case.

THE COURT: Okay. And I'm giving you a more generous timetable than usual. I -- my -- my intention is as follows: I want you all to keep the case moving forward. One of the things I find is the longer the timetable, the more people put everything on hold and wait until the end, and I'm not picking on any of you. I'm just saying that is natural human tendency is to put everything on the back burner that can be put on the back burner, and I do expect you to begin doing the work; and if the case winds up being sufficiently complex, or it requires additional time, additional depositions, I will hear you, but let's get started on it and see what it looks like. Cases often look very different midstream than they do at the beginning.

Mr. Joy, you're appearing pro se.

Anything from your standpoint?

MR. JOY: I am pro se, your Honor.

I'm sorry. What was the question?

THE COURT: Is there anything from your standpoint on the timetable or discovery or motion practice schedule that you wish to address?

MR. JOY: I think the appropriate thing to do is let's try it. I doubt it will work, but let's try it.

The parties should look at the local rule concerning the filing of things under seal. The Court collectively in the clerk's office look with great disfavor on matters under seal, because it's very burdensome to the Court, and so however you address that, you need to take into account the local rule and to be thinking about ways to minimize it; but otherwise, if you can't agree on a joint protective order, you can submit competing versions, and I'll do the best I can or it may get referred to the magistrate judge.

All right. Let me take up the subject of mediation and/or settlement conferences. I have the strong sense that this is not a matter that is ripe for mediation at this time. I'm not going to require anyone to go to either a settlement conference or a mediation, who is not in a position to discuss it.

What I do want the parties to do is to, if you're not going to settle it or mediate it, move the case forward, that is, litigate it. If you're not going to talk settlement, you're going to have to litigate it. I don't want the case to just sit there.

And secondly, I will ask you at the status conference is whether the matter is appropriate for mediation. If it looks like mediation would not be a fruitless exercise, I will refer it, but I'm not going to do it unless there is some reasonable basis that it might result in settlement.

defendants would like to include a discussion of electronic production; and so, since that appears to be the case, I'd like to --

THE COURT: You mean electronic discovery?

MS. HAYES: Yes. Yeah, and the -- essentially the form of electronic production. We did have some discussion of the fact -- the matter over our 26(f) conference, and the plaintiffs are adamant, I suppose to say the least, about getting electronic discovery in the form in which it's typically -- it's typically stored.

And we have already retained computer experts to do that for us, and they have explained to us that in order to properly analyze the data, they need to be able to have access to the materials in their original form, not translating, not copied, not converted via software to another form.

The expert that we've retained who is an expert and does a lot of litigation work has -- is willing to do any sort of range of disclosure that needs to be done on that, and beginning with taking the materials that he receives first and doing an in camera review with your Honor before disclosing it even to our side of the bar, and then moving forward from there based on what the Honorable Judge sees on that record and decides if it is inappropriate to the case, it can be culled out before the material is even produced to us.

So we have security measures in place and having

consulted with that expert understand some of the concerns that defendants certainly have about disclosure of material that's not relevant to this case, and we're certainly not looking for that, but we do believe it's important to receive information in its originally maintained format to avoid any loss of data or amended data. So that's one issue I did want to raise to the Court. I have to make sure that we were at least good on that.

THE COURT: Okay. Mr. Heal, any response to that?

MR. HEAL: Your Honor, what they're proposing is that the computers be taken off line and delivered to the expert for as long as the expert needs to look at them, effectively, shutting down the website, taking Mr. Pickle's commercial operation, which he does for money, you know, just turning that off for a while, and -- when there's no showing that we're not providing complete copies of everything that's relevant.

What's relevant here? They can obtain, if necessary, subpoenas from the email providers and say, "oh, you didn't provide all the emails." Well, we are providing those emails, and that's the allegation that somehow there was a posting on a website that was defamatory, and we're giving them all the background.

To take the computers, you know, there's no need for it. There's confidential information from his customers, from other people's customers. His computer -- you know,

that's -- you know, it's completely not -- not just, you know, unreasonable, but it's abusive, you know. What's wrong with just taking a copy, producing everything that's responsive to the request and being done with it, and producing it in computer readable form. They assured me that no matter what computer readable form we supplied, they would be able to read it.

THE COURT: Ms. Hayes?

MS. HAYES: Two issues, your Honor: First of all, it's absolutely untrue that we intend to use our computer consultants as a means of shutting down the website. The computer consultant has explained to me that he can go in while the system is active with absolutely zero disruption to service whatsoever, make a mirror image of the hard drive and all the relevant information on site without unplugging or moving a single thing with, of course, the defendant and defendants present, if that need be.

So it's -- it's frankly a red herring to suggest that we would try to shut the website or any of Mr. Joy or Mr. Pickle's personal information down by doing discovery.

Second of all, as to Mr. Heal's question concerning what's wrong with taking a copy? Two issues: The first being that metadata can be lost when taking a copy, and our expert has informed us that it's -- the easiest thing for him to do is take a mirror image of the data, the disk, whatever computer

electronic source is at issue.

Second of all, there can be chain of custody problems when the consultant or expert, who needs to read and discuss the data later, is not the person who took the original copy of the material in the first place, which is, again, why we would ask our computer consultant have access to the original files on site. They don't have to be shipped anywhere, sent anywhere. We can send our consultant in to do that electronic discovery without any disruption to either of the defendants, which is, again, why we served -- made this request.

THE COURT: All right. Here's what I'm going to do: I'm going to refer that to -- the issue to the magistrate judge, and I'm going to set it for a conference on electronic discovery issues. He is out this week, and I'm going to give what, in substance, is a plug date. I'm going to set it for a date like three weeks out is what I was -- before the magistrate judge, and I will notify the clerk, who will contact you and indicate whether the date works, and it may not work for all of you because we're getting into vacation time, but I think this is something that needs to be addressed up front.

One advantage I have of Magistrate Judge Hillman is he is far more facile than I am on electronic discovery issues, not that that's a very high standard to meet.

THE CLERK: August 16th.

THE COURT: All right. Let's say August the 16th.

THE COURT: Let's -- let's not preargue it. I'm going to leave it for the magistrate judge to work out. I'm confident that there are legitimate issues on both sides that need to be thrashed out, and particularly when you're talking about individuals, as opposed to the computer systems of General Electric or General Motors, there may be more personal data than usual. I'm going to leave that for the conference.

Ms. Hayes, was there some other issue that you wanted to raise?

MS. HAYES: Yes, your Honor, not to abuse the generosity of the Court's time today, but just one more matter that I wanted to bring to your Honor's attention, and that is during our 26(f) conference, we were informed by defendants that they have learned somewhere, somehow, through some party that there is destruction of evidence happening either at Three ABN or related to employees of Three ABN.

We asked repeatedly for the name or some sort of identifying information that we could track this down. We take it extremely seriously. We have spoken to the employees of the company, and Mr. Shelton remembers saying about evidence destruction. We certainly do not want to be behind the eight ball on this; and so if, for whatever reason, defendants won't disclose that to us voluntarily, we would ask, at a minimum, they volunteer that information to you in camera and that you somehow review that so that we can chase this down and make

sure that there is not going to be any spoliation problem now or in the near or far future.

THE COURT: Mr. Heal?

MR. HEAL: Your Honor, during that conference I initially objected that it was at deposition with Mr. Joy, but he mentioned the name of one of the management of Three ABN that was observed shredding documents from before the year 2000, and the question was who told you that? Who was your source?

One thing that happens at Three ABN is if somebody is identified giving information out, they get fired; and Mr. Joy, for whatever reason he chose, would not say who had told him.

THE COURT: Mr. Joy?

MR. JOY: Your Honor, that information will be in the discovery information, because frankly it came to us by email from a very reliable source inside Three ABN, and they specifically identified a director and a CFO as being the party who had ordered the destruction of documents. That CFO is a fellow by the name of Mr. Larry Ewing. Now that document came to us. We brought it up as a matter of course, and the reason it is significant is because they had made a big deal about the fact that we will never be able to produce a copy of a $10,000 check that we had two sources on verifying that that check was actually sent from the period 19 -- I believe it was '99 to the brother, Tommy Shelton in Virginia, and we found it profound

that they would all of a sudden decide to destroy all documents prior to 2000, particularly given the fact that there's an outstanding appeal pending.

THE COURT: Let -- let me stop you. Is that the individual who is alleged to have engaged in document destruction? The CFO?

MR. JOY: The CFO, yes.

THE COURT: Okay. Is that enough for present purposes?

MS. HAYES: That's all I need, your Honor. Thank you.

THE COURT: Okay. I'm going to leave it where it is. I'm sure counsel is aware, and, Mr. Joy, you should become aware, if you're not, of the grave risks of altering or destroying evidence; and, again, I don't have anything before me, and I'm going to expect that the parties will comply with their obligations as lawyers or as litigants, as the case may be.

Ms. Hayes, anything else?

MS. HAYES: No thank you, your Honor.

THE COURT: -- you wish to raise?

Mr. Heal, anything further?

MR. HEAL: No, your Honor. Thank you very much.

THE COURT: Mr. Joy?

MR. JOY: Nothing, your Honor.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THREE ANGELS BROADCASTING . CIVIL ACTION NO. 07-40098-FDS
.
V. . BOSTON, MASSACHUSETTS
. JULY 26, 2007
GAILON ARTHUR JOY, et al .
Defendants .
. . . . . .

TRANSCRIPT OF TELEPHONIC CONFERENCE
BEFORE THE HONORABLE TIMOTHY S. HILLMAN
UNITED STATES MAGISTRATE JUDGE

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trail.

Now, what we anticipate there's going to be discovery related to here are three issues, the electronic emails, the electronic documents and chat or web log material. And what happens is when you conduct the capture and collection phase, skip over the inventory phase and produce the information in a read ready format on a CD-ROM or a disc as Mr. Heal and My Joy suggest, is that you can lose very important metadata which gives history about the document, the email or the website conversation that may or may not have occurred in conjunction with that material. That's why it's important that we don't receive the information in a read ready form but that we receive it in a native format and that the expert has an opportunity to collect and capture that information without any translation done.

Now, it is possible that we could have the two parties or the two sides of the case, if you will, have their computer experts speak to one another about the quickest, easiest means of doing that. I don't have any issue with that, and we are certainly not anticipating that the defendants are going to have to shut down their computers or mail us their hard drives or anything of the sort. But then what will happen is those two experts could get together and talk about the easiest way of doing that, of providing the information in raw data form that has not been translated. But we feel very

strongly that there is going to be very important historic information, information relating to persons who may have received emails, documents, who were parties to conversations held on websites in chat rooms that would not appear in material that is produced in read ready form for either of the parties. And that's why for us it's so important that we have access to that.

Now, we are very cognizant of the recent amendments to the rules from December of 2006 which provide for a cost ship when a party wants direct access. We are perfectly willing to assume that burden. But we believe because of the nature of the information and the fact that so much of the defamation that is at issue in this case has occurred by persons using pseudonyms, anonymous postings and information that Mr. Joy refuses to provide to us based on a press privilege of some sort that it's going to be necessary that we can track down this information and trace the other individuals who have been involved in some of these defamatory statements. That's why it's so important to us, Your Honor.

And again, we're not attempting to burden the defense. We're perfectly willing to have our expert work with their expert. We're perfectly willing to do the cost assumption that's necessary for this. It's just a matter of the new federal emphasis on electronic discovery being open source material that can then be used and translated by the

party that receives it.

THE COURT: Mr. Heal, what is the, what confidential information is on the drives?

MR. HEAL: Well, there are at least four separate E businesses that are run by Mr. Pickle which he doesn't own. He simply does website management for at least four. There are, you know, the customer information which come in through his Pickle Publishing for, you know, all the orders will have credit card information, et cetera. And as far as the hidden historical kind of information, you know, I haven't heard anything there that we couldn't just be asked for, you know, in an interrogatory to provide and, you know, and find if it's there.

This plaintiff has a history of employing private investigators to get the goods on anyone he knows and employing it. You know, this sounds like the same kind of fishing expedition, Your Honor.

THE COURT: Well, I mean metadata is going to be, it sounds like it's going to be an important part of the discovery process and who knows. All right, let me make - and before I do that, Mr. Joy do you want to chime in at all on that?

MR. JOY: Yes. First of all, any metadata that would be available on the, coming in from emails obviously would be available through third party sources. And anything that was not available through third party sources would not be

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THREE ANGELS BROADCASTING	.	CIVIL ACTION NO. 07-40098-FDS
	.	
V.	.	BOSTON, MASSACHUSETTS
	.	JULY 24, 2008
GAILON ARTHUR JOY, et al	.	
Defendants	.	

. . . . . .

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE TIMOTHY S. HILLMAN
UNITED STATES MAGISTRATE JUDGE

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less use their number of paragraphs throughout the answer. Answer of defendants to 14 upon, toward the end though it says upon information and belief the actions of the plaintiff Danny Lee Shelton purportedly a founder and either a current or former president of 3 ABN 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.

And I just want to point out that we did not limit that to specific topics or time periods. The U.S. Supreme Court has held in *Oppenheimer Fund, Inc. v. Sanders* that discovery is not limited to issues raised by the pleadings for discovery itself is designed to help define and clarify the issues nor is it limited to the merits of the case for a variety of fact oriented issues may arise during litigation that are not related to the merits.

Now, we reserved our request to produce by the plaintiffs on August 20th. And I entered my appearance pro se mid-November and one of the first things that I did after doing that was to prepare these requests to produce. In preparing my request to produce, I modeled them to some extent after the ones that plaintiff had served on us. They used the word all, all this, all that, and so I used the word all. The idea of

putting plaintiff related issues in the definitions I got that from the plaintiff cause they had identify, define statements of fact in their definitions and then referenced that throughout their request to produce and that's what gave me the idea to do the plaintiff related issues to try and make it more efficient, you know, to produce this document in a more efficient way.

In my opening paragraph of my instruction for my request to produce, I asked for a time period through the present thereafter on a continuing basis and to the disposition of the trial of this matter. That wording was borrowed directly from the plaintiffs' request to produce that they served upon us. They asked for a document through the present thereafter on a continuing basis until the disposition of the trial of this matter.

In mid-November they filed two motions in U.S. Bankruptcy Court, November 13, 2007, their motion for relief from the automatic stay and their motion for expedited determination of their motion for relief from the automatic stay. In both those motions they referred to continuing defamatory conduct or ongoing defamatory conduct. So they didn't limit this just to events between 2001 and January 2007.

The plaintiffs would like to handcuff us so that we can't prepare our defense. What they originally said regarding the request to produce that everything that we asked for was

privileged, confidential or irrelevant. However the magistrates in Minnesota and Michigan that have heard some of these issues have ordered production of the documents that we requested by our third party subpoenas. We were all set to, but we retained the services of three auditors, two auditors and a certified fraud examiner. And two of those individuals were to meet us in Marion, Illinois on June 24th to go over the auditors' records that we had subpoenaed. We've been told by our experts that they need the auditors, particularly the auditors' work papers and they were going to go over these records and determine what could be used for our defense and then they were, these documents were to be copied on our own equipment in order to save expense to the auditor. So we tried to be responsible and reasonable in our request and our experts have said they need this material.

How we came up with what we requested in the request to produce, we interviewed many current, former employees of 3 ABN, many of them management, and we took the various allegations of wrongdoing and impropriety and we tried to craft relevant requests to produce material that would lead to admissible evidence. Once the Court ordered in March the plaintiffs to produce their Rule 26(a)(1) material, and once we went through those materials, we discovered that, you know, a lot of these printouts of web pages, internet web pages they contained the same allegations that we had put into our request

to produce. At least we put into our request to produce looking for documents dealing with these various allegations, well those same allegations are found in the plaintiffs' Rule 26(a)(1) material, these printouts of web pages from internet forums.

Either – if the plaintiffs' Rule 26(a)(1) materials are relevant then our request to produce are relevant. If our request to produce are not relevant, then that majority of the material that the plaintiff gave us in the Rule 26(a)(1) material are not relevant either.

THE COURT: Fair enough. Let me ask you this.

MR. PICKLE: Okay.

THE COURT: Have you received the initial disclosures under Rule 26 from what purports to be initial disclosures form the plaintiffs?

MR. PICKLE: Yes. Your Honor, that's what I was just referring to.

THE COURT: Okay. And have you, have you served your own initial disclosures upon the plaintiffs?

MR. PICKLE: We did that in August--

THE COURT: Okay.

MR. PICKLE: --of last year.

THE COURT: All right. Thank you. And have you served any interrogatories on the plaintiffs?

MR. PICKLE: We have not served any interrogatories

at this point.

THE COURT: Have the plaintiffs served any interrogatories upon yourself?

MR. PICKLE: Yes.

THE COURT: Okay. And what's the status of those please?

MR. PICKLE: I, I served my responses I think in September.

THE COURT: Okay. And then have you served, I mean, I'm sorry, have the plaintiffs served any Rule 34 requests upon you?

MR. PICKLE: And Rule 34 would be?

THE COURT: That's a request for production of documents.

MR. PICKLE: Yes, they served those on August 20th, and mine were modeled after those, theirs in the way that I described and I responded to those requests to produce in September. And one of things I put in there was my phone records.

THE COURT: Okay.

MR. PICKLE: Among other things. We turned over thousands and thousands of documents to them in our initial disclosure. I guess I'm getting a little mixed up. We have already turned over everything in our initial disclosures and so there wasn't much to turn over in the, in response to the

log after that. And I'll - it's actually in the records so I would stand corrected if it's, there's a letter that sets forth what we were going to do and we did that.

THE COURT: Mr. Pickle, did you, when did you get that latest round of documents and the privilege log?

MR. PICKLE: We got the privilege log on July 10th and we received that by fax. The last actual documents that were served upon us or served upon me were served by mail on June 27th, and then I would have received them after that.

THE COURT: June 27th?

MR. PICKLE: That is correct, Your Honor.

THE COURT: And what was the volume of that package?

MR. PICKLE: The total of the three, the first one was 199. Let me see if I can find quickly the second.

THE COURT: No, you don't - just give me a rough idea. I'm just trying to get a sense--

MR. PICKLE: Well the total, the total that were served between June 13th and June 27th totaled 3,585 pages. So that's--

THE COURT: And have you had a chance to go through those documents and assess the responsiveness to your requests?

MR. PICKLE: I have. It has been a time consuming process, Your Honor, because these were delivered totally un-indexed without any way for me to know what was responsive to what. And so I have gone through those. I would like to point

out request No. 9 that was a number of different accounting type documents and we have, just for example, we have over 280 invoices or pages of invoices for Smith & Butterfield. And I was kind of at a loss to know how those were responsive at all. But, you know, request No. 9, I'm turning there now. One thing it asks for is documents containing detail that would break down the categories on the financial statements and the Form 990 that pertain to auto, expense, bad debt, cost of Good Soul, love gifts and such. You know, they tie it, it goes to the question of private inurement. Okay, love gifts we know we have, we had a I think we'd call him a level former employee of 3 ABN who claims to have seen a $10,000 check in 1999 that went to Tommy Shelton who wasn't even an employee at 3 ABN at the time.

THE COURT: Wait a minute, stop for a minute. I'm looking at your request for production of documents--

MR. PICKLE: Yes.

THE COURT: And you're directing me to request No. 9?

MR. PICKLE: That is correct, Your Honor.

THE COURT: Okay.

MR. PICKLE: And so--

THE COURT: And where in there what are you referring to, please?

MR. PICKLE: Okay, down toward the bottom of the request--

THE COURT: Yep.

MR. PICKLE: --there is a bunch of categories there, auto, bad debt--

THE COURT: Yep.

MR. PICKLE: --cost of Good Souls and Love gifts. I'd like to point out just those two categories.

THE COURT: Yeah.

MR. PICKLE: Okay, so you got these luck categories, these lump figures on the financial statements and 990s. I wanted the breakdown for those. I wanted the breakdown of what, I wanted something giving me, documents giving me the detail of what that total figure for love gifts was because I want to know about, I wanted thereby whether or not that $10,000 check was sent to Tommy Shelton as a love gift in `99. That would be just one example for Love gifts, but I didn't get anything giving detail for Love gifts that I could find.

THE COURT: Let me ask you this, and I'm getting a little bit off of task but why wouldn't you just specifically ask the question what was the check for and where was it, and where was it entered into the bookkeeping system?

MR. PICKLE: I believe, well our understanding is that's just one example of, that this is not the only type of love gift problem that there is.

THE COURT: Well what is it that leads you to believe that it was filed under love gifts?

MR. PICKLE: A former high level employee has told us that that is, that is where some of these things are hidden.

THE COURT: I see. Okay.

MR. PICKLE: Now, I'd like to point out one thing about the cost of Good Souls. I did get one document that comes close to breaking down the details for the cost of Good Souls figure that is on both the form 990 and the financial statement. And this document deals with just the year 2006 and it lists satellite sales, satellite systems sales, $1.162 million worth of sales which corresponds with the figure that's on the 990s and the financial statement. It's about a $2,000 difference between the two figures, but it looks like that's the figure. Okay, the cost of Good Souls here on this document that I received says $640,809 giving a 44.9% profit. And the problem is is that the figure for cost of Good Souls on the 990s and the financial statements for 2006 for satellite system sales is over 1 million and so we've got a $350,000 discrepancy with no explanation.

THE COURT: Well that's, and I'm not going to tell you how to prepare your case, but there's another form of discovery that you can utilize called either an interrogatory or a deposition where you get to specifically ask those questions but we can, we're going to talk about that in a bit.

All right, thank you. That's - your answers were helpful. All right, let's move to Document 74 and that is the

statement? And the answer I think would be all of the minutes that the - cause this is about failure of oversight by the Board so all of the information that was in front of the Board is what would be responsive to that for the period, specific a period of time beginning in the early 2000, 2001 timeframe and extending until the time of the lawsuit.

Now let's compare that to what Mr. Pickle has asked for which is in his request for production of documents. Let's just go to the first one, request No. 1, all minutes and other documents of the 3ABN Board, so far so good, but it goes on, for the entire length of time of 3ABNs existence and on an ongoing basis. So I mean that would go back 20, 25 years and the allegation in the complaint only deals with events dating back to 2001.

So what we're saying, and this is the simplest example. It gets hairier as you go through these but the simplest example is we've made an allegation about something they said that relates to a specific point in time. Documents we agree would be discoverable and we've given them all the minutes back to 2001. Every scrap of paper that the Board had in front of it at the Board meetings has been produced is my understanding and, back to 2001. And we are asking to have their request narrowed to reflect that, what I think is an obvious limitation.

Another example, take the next one in line, Danny

specific transactions that they allege as personal inurement. And those are the allegations in the complaint and they're trying to use the discovery mechanism to find new instances of personal inurement and that's an improper expansion of the issues in the case. I can go through and do that same analysis with each of these. There's just no match between the allegations in the complaint which are narrow and the broad, really unlimited request for documents.

Now, you might wonder why they're doing this. Well, I touched on it earlier. The defendants consider themselves ecclesiastical journalists and that it's part of their mission to expose, to investigate 3ABN. That's what they do. And they post all their findings on the internet and that's what started this whole thing in the first place. And they have actually exchanged correspondence which is in Ms. Kingsbury's affidavit discussing the fact that the complaint is fairly narrow and they need to come up with creative ways of expanding the scope so they can get more information for their broader goal. So there's, it actually is their intent. It's not just that they don't know how to craft narrowly tailored requests. They actually want everything so that they can find more instances of wrongdoing.

So what should the order say and that's really the challenging part. We believe that the brief and I've asked for what think would be an appropriate order with respect to each

name of Glenn Dryden for his records relating to Tommy Shelton who was a pastor at a church. Glenn Dryden replaced him when he left that church. And Tommy Shelton is not a party to this lawsuit and there's allegations that he was engaged in sexual misconduct with underage boys and terrible allegations. Nothing, there's been no criminal prosecution, no lawsuits that I'm aware of but he was employed by 3ABN. When those allegations came to light they terminated the employment. He's no longer connected with 3ABN. So the allegations in, the alleged defamatory remarks were that 3ABN didn't fire him soon enough if I'm summarizing that correctly. They knew but didn't fire him. Should've known about his conduct but didn't fire him soon enough.

And what these folks are doing is taking that incident or that - I would agree that what 3ABN knew and when they knew it is relevant, but it's not relevant to go to third parties and just kind of snoop about what Tommy Shelton was up to and that's what they're doing. That's what these subpoenas are all about. And when I asked them for these records they wouldn't even produce to me the records that they obtained through use of these subpoenas. Mr. Joy took the position that it wasn't relevant, that they weren't relevant and that therefore I couldn't ask for them. Well, what are you using Rule 45 to obtain records for if they're not relevant and they eventually gave them to me. So - and I haven't looked at them

Otherwise, we've been entirely forthcoming. The problem we have is we have a plaintiff who clearly doesn't intend to be forthcoming and frequently misrepresents or mischaracterizes the underlying issues.

And let me say too, Your Honor, that it is in fact true that the judge magistrate in Michigan initially said well I'm going to produce these but I'm going to produce them under seal to Judge Hillman in the Commonwealth of Massachusetts. And then she very pointedly notes that upon reconsideration, obviously having looked at the record and the transcript and the allegations, et cetera, she notes that they were relevant. She doesn't have any question there's relevance here. And then they go back and say whoa, we want you to reconsider because we're filing this new motion to try to block this covering scope and relevance. That's the foundation of what their claim is in Michigan for reconsideration.

The other fraud upon this Board is that Bottomley, Ms. Bottomley in the state of California filed a complaint with the EEOC - actually let's go back a step. She filed a complaint with the state of California version of the EEOC which is the Department of Housing and something, I can't remember the exact title for it. And 3ABN quickly alleged that they had no jurisdiction. Counsel for the state of California said gee, I think you're right. This is a religious issue. It's outside the purview of our mandate and therefore if you

have a complaint you have to go to the federal EEOC. And that's exactly what happened, Your Honor, and there's an ongoing investigation of the federal EEOC relating to this very issue because a complaint was filed.

Now that issue as far as I know they have never, the EEOC in the federal level has never issued a letter to sue. They are still as far as I know ongoing field investigation relative to the complaints. And I'm sure counsel knows this, how could they not be aware of what's going on, on such a critical issue. But it really characterizes an example of the fraudulent misrepresentations of counsel in this case.

Now, there's reference to the subpoena to Pastor Glenn Dryden. Your Honor, some of the allegations relating to the conduct of Mr. Tommy Ray Shelton, okay, actually occurred on the premises of Three Angels Broadcasting Network. Some of those parties have told us that they went to the president of Three Angels Broadcasting Network and they made very specific allegations and made it clear to the president that they were not interested in continuing their employment unless this issue was dealt with. These were males who had been approached by a superior member of the staff and they gave us this very specific information. Now it is true that there were other allegations outside of Three Angels Broadcasting Network dealing with underage students that were in a school that he managed. And those issues, well there's a whole story there

and I won't bore the Court with that whole story, but the fact is we know that Three Angels Broadcasting Network and specifically Danny Lee Shelton and specifically the chairman of the Board of Three Angels Broadcasting Network, a Dr. Thompson I believe, were absolutely aware of these issues and Dr. Thompson was relegated the responsibility of "investigating them." And now they claim they did a thorough investigation and yet we have statements from Dr. Thompson which clearly show that he did not do a thorough investigation. That obviously goes to Board oversight, Your Honor. Clearly relevant, clearly addressed in the complaint and clearly an issue in - matter of fact, Your Honor, I'd point out that when we initially started the website the very first issue that we addressed was the allegations relating specifically to Tommy Ray Shelton.

And in fact if we said we're going to cut this case off as of January 2007, we did a look back and said what's that going to include, okay. And ironically it virtually cuts off everything from Tommy Ray Shelton forward. Most of the website was constructed after January of 2007, and yet they've sought an injunction against that website and the information that's on that website. They've sought that in their complaint.

Now, they make another fraudulent statement. They claim plaintiffs have not made claims to ongoing defamation. Your Honor, in the court downstairs in this very building in the bankruptcy court motion for relief and the automatic stay

November 11th, 13th I'm sorry, November 13, 2007. It addresses his ongoing continuing conduct, referring to me, and goes on to say his ongoing defamatory conduct towards 3ABN and Shelton, quote, okay, motion for expedited determination, motion for relief in the automatic stay, okay.

In addition to that Ms. Hayes when she was managing the case, which is part of our problem here, Ms. Hayes in fact went about seeking also third party subpoenas. And for example, she sought third party subpoenas which went to places like Blue House which happens to be the website, and they ask for information on completely irrelevant third party identifications of people who did use – now in all of the postings that I have ever done on the internet, I have never used anything other than the surname that I was given at birthday and the same for Mr. Pickle as far as I know, all right. They know that. We made that very clear. And the bottom line is they went around looking for identifications for people like sister and there's a whole litany of people that they were looking for. Clearly beyond the scope and relevance of this case.

What does black SDA and people posting on the internet on Advent Talk or on, what's the other one, I can't remember what it is, it's on the west coast, how's that relevant to this case, but yet they sought the information? And furthermore they used that identifying information once

they had it. They set up their own cite and turned these people's pseudonyms. I'd say that far more outweighs conduct than anything we have ever done, we have ever done.

In summary, Your Honor, we believe that we covered the relevance and the scope in nearly six hours of conversation in January of 2008. We absolutely covered to a T every single item, every single request to produce with Ms. Hayes. We talked about the relevance. We talked about the scope. We talked about everything you could possibly think of including the issues of confidentiality. Those were all discussed. There's no question we couldn't agree on much, all right. In their opinion everything was irrelevant, everything was confidential and obviously everything was beyond the scope of the present case. Despite the allegations, and they finally came across with production on 14, 14 of these requests to produce, they couldn't figure out for the life of them, over the course of six months they could not figure out for the life of them despite correspondence, communications and on and on what it is we were looking for that was specific to this case in the other request to produce. A virtual ludicrism and fraud upon this Court to say the least.

I believe that we clearly established the relevance of each request in that conversation and we clearly established both relevance and scope and explained it through obviously the complaints of defamation, defamation per se and the other

specific allegations made in the underlying claim.

We also have allegations regarding governments and oversight and oversight which again, that goes over the entire lifespan of Three Angels Broadcasting Network. As financial allegations for some reason or other they claim it includes the Board. Now there are three members of the Board who are also employed - well there were four members of the Board who are members of the, are also employees of 3ABN. If they refer to those, that's fine. I, you know, I don't recall us making allegations beyond Mr. Shelton and of course just general Board oversight but they claim we have. But that would clearly cover the entire 25 years again from inception to the current period. The relevance of the third party is that these parties clearly had documents--

THE COURT: I'm going to give you just a minute to wrap up.

MR. JOY: Okay.

THE COURT: I've got a verdict.

MR. JOY: They had documents that 3ABN clearly did not have. The, obviously the documents that the accountant, the auditor has would be documents that they would not have in their possession. The information that Mr. Dryden had in the great state of Virginia was the information that 3ABN would not have had. The information from the Bottomleys is information they wouldn't have had. The information from - or at least

they'd only have part of the information. The information from obviously regarding the accounts, we were told very specifically that all records prior to 2000 were destroyed by the plaintiffs to give them that information a year ago. The bottom line is we know that only part of that is there. But regardless, the point is they question relevance and scope and the fact is that we have a situation where our experts tell us that they need the, obviously the checking account information, they need the information found in the auditor's statement and they clearly need the information from Remnant Publication in order to make a clear, decisive opinion regarding defamation, defamation per se and some of the other allegations in the complaint.

THE COURT: Thank you. Mr. Joy? I'm sorry, Mr. Pickle, I'll let you - what do you want to add?

MR. PICKLE: Yes, Your Honor. In the, this relates to this motion. In the plaintiffs' opposition to my motion to compel on page 11 at the very bottom it says a single defamatory statement remotely related to Danny Shelton's personal finances would make relevant only the title, purchase documents and payment history for a Toyota Sequoia automobile. And I just think that's just, when we're talking about private inurement that is just a ludicrous statement cause nothing having to do with that Toyota Sequoia has to do with private inurement.

But more importantly I want to point out that they specify payment information for the Toyota Sequoia automobile. See the complaint says inter alia and it lists a bunch of example statements but it says inter alia so it could include other statements. Well there's nothing in their complaint that specifically talks about the payment information for that Toyota Sequoia. There is an allegation that defendants have made based on payment history of that vehicle and statements by Walt Thompson and that information, our allegations are that they gave a report about that was included in the plaintiffs Rule 26(a)(1) material. So this does demonstrate that the plaintiffs do not mind going beyond the allegations that are explicitly stated in their complaint. They will go beyond that when it suits their purpose.

I also want to point out that, this addresses the question of limiting the scope to a particular time period, the problems with this can result in. In my request to produce in definition 16(d) I, you know, one of the plaintiff related issues is allegations of embezzlement regarding, you know, any employees, officers, records of 3ABN. And I got nothing in regards to that other than there was a brief blurb in a January 2001 Board minutes which referred to Alan Lovejoy, the 3ABN auditor giving a report, an update on Pete Croxer (ph).

Now what we had been told was that Pete Croxer had been associated with the 3ABN auditor, with the auditing firm

and that he had been to see CFO of 3ABN. And in the plaintiffs' Rule 26(a)(1) materials there is some material written by sister, a former employee of 3ABN referring to Pete Croxer. Now, as CFO he was running his personal expenses through 3 ABN, paying for his house with 3ABN funds. He was given a van as like a hush payment because, you know, what sister is suggesting or indicating is that he was helping Danny Shelton embezzle funds or inappropriately direct funds. But - and he was given this van. You know, one of the documents we did receive did reference a van that was sold to Pete Croxer or given to Pete Croxer in December of `99. And through some documents filed with the state of Illinois for the 2000 tax year mentioned that their CFO was fired in December of 2000.

So you see if we limit the scope of discovery just to events occurring from January 2001 onward, then we'd totally miss the embezzlement, alleged embezzlement that took place under CFO Pete Croxer and all the issues, intertwined issues with that.

Now, one thing the sister did say regarding why there was never any prosecution of Pete Croxer by 3ABN or the plaintiffs because Danny Shelton in running his operation there wants to avoid at all costs the transparency that a court case would result in over the finances of 3ABN. And I think we see that, an example of that kind of thing in their current litigation. They want to avoid financial transparency. I mean

this is, the issue with Pete Croxer isn't the only example of somebody that has embezzled funds or stolen funds that were to go to 3ABN and that it didn't result in prosecution allegedly in order to avoid the kind of investigation that litigation would result in.

What Mr. Simpson said about how 3ABN didn't fire Tommy soon enough, that's just ludicrous. Our understanding is that the Board did say that Tommy needed to go around 1991 after he had propositioned or gone after this one employee. He went after him and the guy had to flee his car, flee the car that he was riding in with Tommy. And after that incident our understanding is that the Board did say Tommy had to go. Well then he shows back up in 2001 and when these allegations resurface in 2003 nothing was done. And when they surfaced again in 2006 nothing was done. We have no indication that Tommy was terminated over these allegations. And in 2006 what was officially reported publicly is that he was retiring early because of alleged health problems. So this idea that 3ABN didn't fire Tommy soon enough is just ludicrous.

THE COURT: All right. Thank you everybody.

MR. PICKLE: And I guess, I guess, you know, the book royalties, on page 11 - I'll mention just a couple of other things. On the top of page 11 of the plaintiffs' opposition to my motion to compel they mentioned book royalties earned by and paid to 3ABN. That just garbles the issue because I don't know

that either, I know I have never accused 3ABN of supposedly having royalties paid to them that then were inappropriately paid to Danny Shelton. The issue is that Danny Shelton did not properly disclose his royalties on his financial affidavit or to the court of royalties that he was earning from his book deals with Remnant. That was the issue.

On the bottom of page 10 of their opposition which is Document 67 it says 3ABN donations to Shreve Peters Ministry the records of any orders issued by 3ABN for revenues that donation. Well that totally garbles the issue. That's not the issue. The allegation that we received from a high level 3ABN individual was that Danny was, the Board had said that Brandy Elwick (ph) Murray who became Brandy Shelton, Danny's wife, the Board did not want her to be paid and that then Danny arranged for money to be paid through a, to her anyway through a third party non-profit. Whether that third party nonprofit was Shreve Peter's Ministry or not, don't know. But I don't know of any allegation that the 3ABN Board ever prohibited donations to Shreve Peter's Ministry. So the plaintiffs are garbling the issues that, of this controversy.

And just one other thing which is a key point, we're approaching, I guess we're about a year now after the beginning of discovery and I still do not have documents that we can use to verify that former donors stopped giving to 3ABN because of alleged lies that we were telling. And that plaintiffs want to

prevent us from being able to verify those kind of things, verify the truth or falsity of their claims that we have lied, that we've made statements that are definitely false and that our activity rather than other peoples activity has caused a decline in donations. The plaintiffs by trying to restrict scope of discovery are trying to prevent us from finding, from discovering documents that directly pertain to those questions. I think that's it, Your Honor.

THE COURT: All right, thank you everybody. Under advisement.

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THREE ANGELS BROADCASTING NETWORK, INC., and DANNY LEE SHELTON,	)	
Plaintiffs,	)	**Civil Action No. 07-40098-FDS**
v.	)	
GAILON ARTHUR JOY and ROBERT PICKLE,	)	
Defendants.	)	

ORDER OF RECUSAL

SAYLOR, J.

Defendants Robert Pickle and Gailon Arthur Joy have filed a complaint of judicial misconduct against me in connection with this matter. An order of dismissal was entered on November 3, 2008, but the litigation has continued thereafter and certain matters remain pending. Under the circumstances, and because my impartiality might reasonably be questioned by an objective observer, I hereby recuse myself from presiding over this matter.

So Ordered.

/s/ F. Dennis Saylor
F. Dennis Saylor IV
United States District Judge

Dated: January 15, 2010

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

THREE ANGELS BROADCASTING	. CIVIL ACTION NO. 07-40098-FDS
	.
V.	. BOSTON, MASSACHUSETTS
	. NOVEMBER 13, 2007
GAILON ARTHUR JOY, et al	.
Defendant	.
. . . . .	.

TRANSCRIPT OF CONFERENCE
BEFORE THE HONORABLE TIMOTHY S. HILLMAN
UNITED STATES MAGISTRATE JUDGE

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equipment by email on November 8th.

THE COURT: Okay, thank you. All right, Mr. Pucci or Mr. Duffy, what, if anything, do you want to say about this specific issue and then we can go into anything else that you want to talk about.

MR. PUCCI: Well, Your Honor, I want to pick up compliance with the Court's status conference order.

THE COURT: Uh-huh.

MR. PUCCI: And I want to leave this courtroom today with something that can work in terms of trying to preserve a status of what's been purged from electronic data--

THE COURT: Uh-huh.

MR. PUCCI: So what I would like to do is have a dialogue and get some guidance from the Court as to trying to find a reasonable time, place and manner where we can comply, they can comply with the Court's order of November 2nd. We have our expert Mark Landergin (ph) on standby. Our preference is that the second paragraph of having them making equipment available that it does get FedEx'd out to him in Minnesota which is a frequently used means of transmitting the holding devices for the electronic data.

THE COURT: How many devices are we talking about?

MR. PUCCI: There are five different lists. If it would it would help the Court I can give you a copy of the list that was emailed. It's my only copy but--