

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

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|---------------------------|---|--------------------------|
| ALEX WALKER, |) | |
| |) | |
| Plaintiff, |) | No. 11 CV 4177 |
| |) | |
| v. |) | Judge Robert M. Dow, Jr. |
| |) | |
| THREE ANGELS BROADCASTING |) | Magistrate Susan E. Cox |
| NETWORK, INC., and TOMMY |) | |
| SHELTON |) | |
| |) | |
| Defendants |) | |

**DEFENDANT, THREE ANGELS BROADCASTING NETWORK, INC.'S
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION;
OR IN THE ALTERNATIVE, FOR IMPROPER VENUE**

COMES NOW defendant, THREE ANGELS BROADCASTING NETWORK, INC. (hereinafter 3ABN), by and through its attorneys, JOHNSON & BELL, LTD, and as and for it's MOTION TO DISMISS PLAINTIFF'S COMPLAINT, pursuant to Federal Rules of Civil Procedure 12(b) (1) for lack of subject-matter jurisdiction, 12(b) (6) failure to state a claim upon which relief can be granted or in the alternative, pursuant to Federal Rule of Civil Procedure 12(b) (3) for improper venue, states as follows:

Plaintiff asserts federal question exists based on co-defendant, Tommy Shelton's alleged travel in interstate commerce for the purpose of engaging in illicit sexual conduct with a minor in violation of 18 U.S.C §2423. (*See Plaintiff's Complaint, Count IV*). Illicit sexual conduct with a person under 18 years of age as used in §2423 is defined in section 2246. The allegations of sexual abuse contained in the complaint do not meet the definition of a sexual act set forth in § 2246. Therefore Count IV fails to state a valid cause of action and it must be dismissed. The dismissal of Count IV defeats federal court Jurisdiction and therefore the entire action must be dismissed. Moreover, Count IV was

not filed within the applicable statute of limitations for civil actions brought pursuant to 18 U.S.C §2423 and Count IV is subject to dismissal on that alternative basis, again resulting in the dismissal of the entire Federal Court action.

Pleading in the alternative, in the event the Court deems that a federal question, exists, then 3ABN moves to dismiss this action pursuant to Federal Rule of Civil Procedure (12)(b) (3) on the basis that the Northern District of Illinois is either an improper venue, pursuant to 28 U.S.C § 1391 (b) or is an inconvenient forum pursuant to 28 U.S.C. § 1404 and the matter should be dismissed with leave to re-file in the Federal District Court for the Southern District Court of Illinois.

3ABN a separate Memorandum in Support of this Rule 12(b) Motion to Dismiss is submitted herewith.

WHEREFORE, defendant, THREE ANGELS BROADCASTING NETWORK, INC. respectfully requests that this Honorable Court dismiss Plaintiff's Cause of Action pursuant to Federal Rule of Civil Procedure 12(b) (1), 12(b) (3) or 12 (b) (6).

Respectfully submitted,

s/Patrick T. Garvey
Patrick T. Garvey
Counsel for 3ABN

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