IN THE UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In Re Gailon Arthur Joy, Debtor. Gailon Arthur Joy,, Plaintiff, v. Three Angels Broadcasting Network, Inc., Danny Lee Shelton, John P. Pucci, Esq., Jerrie M. Hayes, Esq., Gerald S. Duffy, Esq., Fierst, Pucci & Kane, LLP., and Siegel Brill Gruepner Duffy & Foster P. A. Defendants.	Case No. 07-43128-JBR Chapter 7 Adversary No. 07-04173

Now Comes GAILON ARTHUR JOY, Debtor, and submits the following in Opposition to the Motions filed [#25, 26] filed by the Defendants, with the primary motion denominated as being on behalf of all Defendants and #26 specifically stating its assent thereo:

Answering the Allegations and Assertions of the Motion thusly:

1. Undisputed.

2. Undisputed.

3. Undisputed.

4. Objected to as irrelevant.

5. Objected to as irrelevant, except as it indicates the extraordinarily

profitable nature of Defendant 3ABN's business.

6. Disputed particularly to the characterization of primary revenues being from "donations".

7. Objected to as irrelevant.

8. Objected to as irrelevant.

9. Objected to as irrelevant.

10. Objected to as irrelevant and as containing false accusations which the Defendants, despite having conducted intensive formal and informal discovery for over a year in the case they are prosecuting, have been unable to uncover any evidence tending to prove the accusation - or at least have failed to turn the same over to the opposing parties despite discovery orders that they do so.

11. Objected to as irrelevant and prejudicial.

12. Objected to as irrelevant and not tending to have bearing on a Motion to Dismiss.

13. Objected to as irrelevant to a Motion to Dismiss a Complaint for Violations of the Automatic Stay.

14. Objected to as irrelevant.

15. Objected to as irrelevant and duplicitous of other pleadings of the Defendants.

16. Objected to as irrelevant, and in further answer the Motion for Relief from the Automatic Stay was not filed until after the violations complained of or the relief from the Automatic Stay was not granted until after the facts alleged as violations had occurred, the debtor appeared to oppose the Motion for Relief from the Automatic Stay and it was only when the Defendants agreed to waive any prepetition claims that the Debtor agreed to allow relief from the Automatic Stay, as the Defendants were only limiting their activities to matters which they had a colorable chance of obtaining and collecting judgment on.

17. Admitted, but in further answer the Code specifies that a debtor shall recover "actual damages, including costs and attorney fees" for a willful violation of the Automatic Stay, and a strict statement of the measure of the fees is thus mitigated. However, the United States Supreme Court, in Bell Atlantic v Twombly, 550 US ___, 125 S. Ct. 1955 (2007) announced a slightly higher standard for pleading, namely that all the elements must be alleged, which is to say that facts must be alleged in the pleading that will, if proven,

establish the decision requested of the Court. Thus, the Court should not need to use its judgment, as here, that there will be costs and attorney fees to include into damages, but the fact that there are such damages should be alleged.

18. Admitted.

19. Denied that the Debtor failed to file an amended complaint satisfactory in all particulars to the concerns of the Court.

20. Admitted that the Debtor suffered at least the loss alleged, and further alleged that the Debtor's recurrence of his pleurisy was related to the need to attend the hearing in Boston when he was just recovering from his illness, and as a consequence was unable to perform his work duties for two weeks thereafter.

21. Admitted.

22. Denied that the Amended Complaint failed to satisfy any heightened pleading requirements as enunciated by the Supreme Court. In Bell Atlantic Corporation v. Twombly, 550 US ____, 127 S. Ct. 1955 (2007), the Court addressed the need to specify a *conspiracy* in sufficient detail to avoid the need to imagine the details of any elements of the cause. Such fact-based pleading is the norm in many jurisdictions, including Illinois, and what the Defendants complained in their first motion to dismiss was essentially a failure to repeat the language of the statute, namely that damages include costs and attorney fees. Instead, the Defendants continue to insist that actual damages must have occurred as a prima facie matter before a Debtor may bring his case, when the same is clearly not the law of this Circuit. In Heghmann v. Indorf et al., 316 BR 395 (BAP 1st Circuit 2004) the Court affirmed the recharacterization of a contempt proceeding under 11 U. S. C. 105(a) as one for damages under 11 U.S.C. 362(h), where the debtor sought specific relief and the Court found that assessing damages was more appropriate, holding "The words 'shall recover' indicate that Congress intended that the award of actual damages, costs and attorney's fees be mandatory upon a finding of a willful violation of the stay."[citations omitted]. The idea that the Debtor must allege emotional distress is specious. While damages for emotional distress may certainly be awarded for violations of Sections 105 or 362, In Re. Nosek, 363 B.R. 642 (Bankr. Mass. 2007), they are merely within the purview of the damages which may be awarded, and while the Debtor specifically did not want to allege emotional distress at the time, in retrospect he was ill for the two weeks following the hearing complained of, which is wholly sufficient to be alleged as an objective

manifestation of the emotional distress.

23. Denied that this Paragraph, which blends an allegation that the Amended Complaint does not describe "bankruptcy related matters that are to be brought by Adversary Proceeding" to a statement that "the Defendants believe that the Amended Complaint does not describe any real economic or emotional injury suffered by the Plaintiff" has any relationship to proper argument, but the reasons for bringing the matter as an Adversary Proceeding were addressed in the Memorandum in Opposition to the First Motion to Dismiss [#16], paragraphs 10 and following, in which the procedural need to bring additional defendants who had not been served in the bankruptcy case was given as the real impetus to establish this as an Adversary Proceeding.

24. Objection that this paragraph of the Motion to Dismiss has any relation to the need to dismiss the case, and indeed, the description of the documentation and its implications itself implies that the parties need a formal discovery process, which, if amenable to summary decision, may be treated under Rule 9014 at that time.

25. Objected to as putting the cart before the horse, or, rather, arguing from facts before the facts have been put in evidence. The Defendants have equated the assertion of actual damages by the Debtor to zero, and then gone from that cross-eyed assertion to a conclusion that the Debtor has not done what he has done -- and in the next paragraph they assert that they have not done what they have done.

26. Denied in that the Defendants claim that there is no willful violation ignores the plain and simple standard, namely that a willful violation only requires that there be knowledge of the Automatic Stay and a violation. This is an action of the Defendants, not a reaction of the Debtor, for the Court to consider.

27. Denied that the hearing in question was not a willful violation of the Automatic Stay because it was carried out following the objection of the Debtor's Counsel. The case cited by the Defendants, In Re Sullivan, 357 B.R. 847 (Bankr. Colo. 2006) is inapposite because in that case the finding was that there was no violation of the Automatic Stay at all. A standard that the vicissitudes of life should be tolerated by the debtor does not include the need to participate in further court proceedings which the Automatic Stay is intended to bring to a halt.

28. This paragraph is conclusory and requires no answer, except that the Debtor has clearly shown that the Complaint should not be dismissed, by alleging sufficient facts whose ultimate proof will establish the relief requested.

29. Denied that there will be no significant dispute of facts. The Defendants seek to recharacterize even the most trivial and indisputable of facts. In particular, the Debtor is concerned that the Defendant attorneys and their firms have profited from these intentional violations of the Automatic Stay, by billing their clients for the prohibited conduct - and these fees should be disgorged.

30. Denied that the instant case would be more properly dealt with as a Contested Matter under Rule 9014, and to further distinguish the Defendants *ad hominem* argument a discussion was made in In Re Khachikyan, 335 B.R. 121 (B.A.P. 9th Cir. 2005) of the differences between an Adversary Proceeding and a Contested Matter, contrasting the two procedural avenues. It has been mentioned already by the Debtor that the Adversary Proceeding Complaint (and thus its Answers) were the necessary procedural vehicles to use along that particular avenue, and in the Khachikyan case it is noted that both Adversary Proceedings and Contested Matters allow for discovery, which is the next step in determining the scope of the dispute - or if there is a factual dispute. It should be noted that the Defendants here have used the procedural vehicle of a Motion to Dismiss against the Adversary Complaint - and should it be denied they would have the Court switch to a different highway system and coincidentally prevent the Debtor from having any advantage he might by bringing his own motions.

31. The Debtor asks the Court to deny the Motion and, if the matter is to be brought to summary disposition or treated as a Contested Matter, only after the Defendants have disclosed the exact scope of the willful nature of their conduct, which the Debtor believes was wholly cynical and intentional, and deserving of greater sanction than the Debtor currently can ask for on the facts as they are known.

WHEREFORE, the Debtor requests that the Motions [#25, #26] of the Defendants be denied.

RESPECTFULLY SUBMITTED

Gailon Arthur Joy, Debtor
By His Attorneys,

/s/ Laird J. Heal
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