
UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

Case No. 07-40098-FDS

Plaintiffs,

v.

Gailon Arthur Joy and Robert Pickle,

Defendants.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF
MOTION FOR PROTECTIVE ORDER**

INTRODUCTION

Plaintiffs Three Angels Broadcasting, Inc. ("3ABN") and Danny Lee Shelton ("Shelton") have moved, pursuant to Federal Rule of Civil Procedure 26(c), for a protective order to ensure that discovery and disclosure of trade secret and confidential information in this proceeding is appropriately limited. At the same time, the proposed order affords the parties and the parties' experts full access to relevant confidential materials and establishes a clear procedure for disclosure of confidential materials to potential and actual trial witnesses. Entry of the proposed protective order will make it possible to complete discovery in a timely and efficient manner and to eliminate the need for the parties and the court to deal with multiple requests for protective orders.

FACTS

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). [Affidavit of Jerrie M. Hayes at ¶ 2 (hereinafter “Hayes Aff. at ¶ ___”). 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. [Hayes Aff. at ¶ 3].

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. [Hayes Aff. at ¶ 4]. The Court issued a Scheduling Order on July 24, 2007 that was silent as to a protective order governing pre-trial discovery. [Id.] While discovery is still in the early stages, three pre-trial discovery events have prompted Plaintiffs to file the instant motion.

First, 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. [Hayes Aff. at ¶ 6]. Both sets of discovery seek documents, information and materials that are highly sensitive, confidential and private and that constitute trade secrets and confidential commercial information, the disclosure of which would be harmful to Plaintiffs. Before responding to these requests, Plaintiffs desire to ensure the circumspect discovery and/or disclosure of the requested information in order to maintain its confidentiality and competitive value.

Second, Defendant Pickle has caused at least four subpoenas to issue in this case that seek similarly confidential information from third parties. [Hayes Aff. at ¶ 7]. Before Defendants do an “end run” to obtain these highly sensitive materials, Plaintiffs desire to ensure that production by third parties does no more damage than production by the Plaintiffs themselves.

Third, Plaintiffs want to remove any barrier to Defendants’ production of relevant documents and material. Pursuant to the Scheduling Order, Plaintiffs served interrogatories and requests for production on Defendants on August 20, 2007. [Hayes Aff. at ¶ 5]. Defendant Joy has not responded to those requests¹ and Defendant Pickle’s responses are deficient. [Id.] Plaintiffs are in the process of preparing a demand for supplementation from Pickle. To the extent either Defendant intends to object to any of Plaintiffs’ discovery requests by claiming a concern over the disclosure of confidential information, Plaintiffs seek the issuance of a protective order to preempt the need for such objections and the delay they would entail.

Thus, Plaintiffs submit this memorandum in support of their motion for a protective order to manage the access to, and the use of, trade secret and confidential information that has been or will be requested and/or produced by both the parties and non-parties. This motion follows Plaintiffs’ unsuccessful good faith attempt to reach agreement with the Defendants on a stipulated protective order to be proposed to the Court for entry in this action. [Hayes Aff. at ¶¶ 10-11]. Plaintiffs have narrowly tailored the recovery sought by this motion in two important ways.

First, without waiving relevance and other discovery objections, Plaintiffs presently propose that only one category of information—namely 3ABN’s trade secret donor

information—be subject to an outright prohibition on discovery. *See* Proposed Order at ¶ 2. Second, rather than requesting a blanket order, Plaintiffs have instead proposed a designation system for classifying confidential information. *See* Proposed Order. Under Plaintiffs’ proposed protective order, parties producing materials in connection with this litigation may in good faith designate information as “Confidential.” *See id.* at ¶ 3-6. Material designated as “Confidential” could only be disclosed to the named parties, their attorney(s) of record, necessary employees of the attorney(s) of record, experts designated by a party to provide opinion at trial and the necessary employees of experts designated by a party to provide opinion at trial. *See id.* at ¶ 11-12. Additionally, a procedure would be established to provide for disclosure of Confidential Information to actual or potential witnesses. *Id.* at ¶13, 19.

ARGUMENT

I. **RULE 26(c)(7) STANDARD**

Federal Rule of Civil Procedure 26(c)(7) expressly provides for the Protective Order that Plaintiffs seek. That Rule sets forth, in pertinent part, as follows:

(c) Protective Orders. Upon motion by a party . . . and for good cause shown . . . the court . . . may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: . . .

* * *

(7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way; . . .

Plaintiffs must establish “good cause” for the protective order. *See May Coating Technologies, Inc. v. Ill. Tool Works*, 157 F.R.D. 55, 57 (D. Minn. 1994). But if Plaintiffs do so by showing the information is a proprietary trade secret or is otherwise confidential and that the

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.

disclosure of the information would be harmful, the burden then shifts to the Defendants to establish that the disclosure of the confidential information without the requested protection is both relevant and necessary. See *MOORE'S FEDERAL PRACTICE 3D*, § 26.105[8][a], 26-277, 278; *Kaiser Aluminum & Chemical v. Phosphate Engineering*, 153 F.R.D. 686, 688 (M.D. Fla. 1994). Rule 26(c) “confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required.” *May Coating*, 157 F.R.D. at 57 (citations omitted).

II. PLAINTIFFS ARE ENTITLED TO A PROTECTIVE ORDER PROHIBITING DISCOVERY OF TRADE SECRET DONOR INFORMATION.

Plaintiffs can easily meet their burden of showing “good cause” for the requested protective order under Rule 26(c)(7). Rule 26(c)(7) specifically provides for protection of a “trade secret.” Under Massachusetts law,² a trade secret may consist of “any formula, pattern, device or compilation of information which is used in one’s business, and which provides an opportunity to obtain an advantage over competitors who do not know or use it.” *Touchpoint Solutions, Inc. v. Eastman Kodak Company*, 345 F.Supp.2d 23, 27 (D.Mass. 2004)(citing *Burton v. Milton Bradley Co.*, 763 F.2d 461, 463 (1st Cir. 1985)).

In determining whether business information constitutes a trade secret, Massachusetts courts look to (1) the extent to which the information is known outside that business, (2) the extent to which the information is known by employees and others involved in the business, (3) the extent of measures taken by the employer to guard the information’s secrecy, (4) the value of

² Illinois law concerning trade secret, while statutorily determined, nonetheless parallels Massachusetts law, defining “trade secret” as “information, including but not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list of actual or potential customers or suppliers, that (1) is sufficiently secret to derive economic value, actual or potential, from not being generally known to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.” 765 ILCS 1065 § 2(d). As Plaintiffs are Illinois residents and operate under the laws of that state, the Court may look to both the

the information to the employer and its competitors, (5) the extent of the resources expended by the employer in developing the information and (6) the ease or difficulty with which others could properly acquire or duplicate the information. *See id.* at 27-28 (citing *American Science and Engineering, Inc. v. Kelly*, 69 F.Supp.2d 227, 238 (D.Mass.1999)).

“Trade secrets include compilations of information, that when used in one’s business, gives a person an opportunity to obtain an advantage over competitors who do not have access to such information.” *Burlington N. R.R. Co. v. Omaha Public Power Dist.*, 888 F. 2d 1228, 1231-32 (8th Cir. 1989). *See also Southwest Whey, Inc. v. Nutrition 101, Inc.*, 117 F.Supp.2d 770 (C.D. Ill. 2000)(holding “trade secret” may specifically include a compilation of confidential business and financial information). Specifically, customer lists [or donor lists in the non-profit context], can be considered trade secrets. *See Jillian’s Billiard Club v. Beloff Billiards*, 619 N.E.2d 635 (Mass.App.Ct. 1993).

Plaintiffs’ confidential donor and donation information clearly meets this definition. It derives independent economic value to Plaintiffs. [Affidavit of Mollie Steenson at ¶ 3 (hereinafter “Steenson Aff. at ¶ ____”). It represents a source of information that is not generally known or readily ascertainable without significant time and expense (it took 3ABN and its founder Shelton nearly twenty years to assemble the database of donors and donation information that Plaintiffs seek to protect from discovery in this lawsuit). [Steenson Aff. at ¶ 4]. Moreover, Plaintiffs took reasonable steps to protect its secrecy from others, even from those working for the ministry itself. [Steenson Aff. at ¶¶ 5-6]. The donor information certainly qualifies as a “trade secret.” Moreover, in light of the damage that will likely result to Plaintiffs

Illinois statute and Massachusetts common law definitions as helpful in determining the protectability of 3ABN’s donor and donation information.

were Defendants allowed to discover that information, the donor information is entitled to protection under Rule 26(c)(7).

If Defendants are allowed to discover 3ABN's donor information, they will undoubtedly contact all, or at least many, of those donors seeking to discuss the specific details of the donations and contributions those donors made to 3ABN, and likely seeking to disparage 3ABN and Shelton to those donors to discourage the donors' future financial support of the ministry. [Stenson Aff. at ¶¶ 7-8]. Defendants have already approached supporters and persons involved in the ministry and made veiled threats to involve them in the instant litigation or to subject them to deposition in this lawsuit, if the approached party does not "cooperate" by providing adverse information about 3ABN or Danny Shelton. [*Id.*]. Defendants will also undoubtedly publish and disseminate the information on the internet, as they have already done with other information they have widely distributed. [Hayes Aff. at ¶¶ 8-9]. Moreover, Defendants publication of such data is usually accompanied by self-serving mischaracterizations of the information that would tend to strongly dissuade a reasonable person from donating to the ministry. [Hayes Aff. at Exs. G and H]. Aside from the certain effect of reducing donations to the ministry, the inevitable publication of 3ABN's donor information by the Defendants would constitute a violation of the donors' privacy and would interfere with their constitutional right of free association, particularly since many of 3ABN's donors consider their support of a Seventh-Day Adventist-based ministry as a faith obligation that is an integral part of their religious practice. [Stenson Aff. at ¶ 5].

Defendants' foreseeable publication of the donor information would additionally harm 3ABN by providing competing ministries with invaluable data concerning actively donating individuals. Defendants' defamatory and infringing conduct has already 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. [Stenson Aff. at ¶ 8]. A competing ministry would, with 3ABN donor information either gleaned from Defendants' internet publication or possibly provided directly to the competing ministry by the Defendants themselves, capitalize on supporters' albeit unfounded and unsubstantiated concerns to lure donations and ministry patronage away from 3ABN. [Stenson Aff. at ¶ 9]. 3ABN's donor information, painstakingly assembled over two decades and fiercely protected from public disclosure, constitutes a trade secret, the disclosure of which would decidedly harm Plaintiffs and the discovery of which should be prohibited by this Court pursuant to Rule 26(c)(7).

III. PLAINTIFFS ARE ENTITLED TO A PROTECTIVE ORDER PROHIBITING DISCLOSURE OF PLAINTIFFS' CONFIDENTIAL FINANCIAL, AUDIT AND ACCOUNTING INFORMATION.

Rule 26(c)(7) also allows for protection of "other confidential research, development or commercial information." "The subject matter of confidential business information is broad, including a wide variety of business information." *Miles v. Boeing Co.*, 154 F.R.D. 112, 114 (E.D. Pa. 1994) (citation omitted). Federal courts have routinely entered orders that restrict the use of various financial and other confidential commercial information so that it may be disclosed only to the requesting party's attorneys and experts.³ *See Covey Oil Company v. Continental Oil Company*, 340 F. 2d 993, 999 (10th Cir. 1965) (restricting disclosure of pricing information to attorneys and experts); *GTE Products Corp. v. GEE*, 112 F.R.D. 169, 172 (D. Mass. 1986) (finding "no basis in law for the Defendant's contention that they have the right to have confidential commercial information of competitors disclosed to them in addition to having

³ In this case, both Defendants are acting *pro se*. Accordingly, while Plaintiffs would have requested a two-tiered protective order limiting access of highly confidential materials to attorneys only, Plaintiffs have instead requested a single-tiered protective order that nevertheless limits disclosure beyond the parties, their attorneys (on Plaintiffs' side) and their experts.

the information disclosed to their attorneys.”); *Chesa Intern., Ltd. v. Fashion Associates, Inc.*, 425 F. Supp. 234, 237 (S.D.N.Y. 1977) (upholding the Master’s ruling that names of Defendant’s customers could be disclosed only to Plaintiff’s attorneys); *Maritime Cinema Service Corp. v. Movies En Route, Inc.*, 60 F.R.D. 587, 590 (S.D.N.Y. 1973) (disclosure of Defendant’s fees and oral agreements with customers limited to Plaintiff’s counsel). Plaintiffs’ financial, audit and business accounting information certainly falls within this category of commercial documents warranting protection.

A. Plaintiffs’ Financial, Audit and Accounting Information is Extremely Sensitive and Confidential.

The subject matter of information constituting a trade secret or confidential business information is generally recognized as being broad in scope, and as “including a wide variety of business information.” *Miles v. Boeing Co.*, 154 F.R.D. 112, 114 (E.D. Pa. 1994). Hence, a wide variety of information, which, if disseminated, could cause competitive disadvantage, is protectable. Rule 26(c)(7) protects a broad variety of commercial information, including marketing strategies, financial information and sensitive third-party information originally shared with the company in confidence. *See Brittain v. Stroh Brewery Co.*, 136 F.R.D. 408, 415-16 (M.D.N.C. 1991).

In determining whether information is confidential, a court will examine the nature of the information, whether measures were taken to protect its security and the extent to which the information is known to both outsiders and insiders. *See Brittain*, 136 F.R.D. at 415. “Other general factors applicable to all protective orders are: the danger of abuse if a protective order is granted, the good faith of the various parties’ positions, the adequacy of the protective measures provided by a protective order, and the availability of other means of proof.” *Id.* at 415. Where a party shows that the information at issue is not shared with anyone outside the company and is

only provided to those inside the company on a “need to know” basis, a *prima facie* showing of confidentiality has been made. *See id.*

In the instant case, Plaintiffs’ financial, audit and accounting information qualify as confidential. Plaintiff 3ABN is a private, non-profit corporation that relies almost entirely upon voluntary contributions for its ongoing operational existence and takes extensive, reasonable precautions to protect the security, confidentiality and secrecy of those contributions and its financial operations. [Stenson Aff. at ¶¶ 3 and 10]. Sworn testimony establishes that 3ABN uses many methods to protect and maintain the confidentiality of its financial, audit and accounting information. These efforts include compartmentalized accounting and bookkeeping operations, 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. [Stenson Aff. at ¶ 11].

Plaintiff Danny Shelton takes similar precautions to protect the confidentiality of his personal financial, audit and accounting information. Shelton does not disclose his income, net worth or financial condition to 3ABN employees or third parties, he has his personal income tax returns prepared by an outside accounting agency and not by 3ABN, he maintains personal checking and savings accounts that are not accessible to or shared with 3ABN or other third

parties and he carefully guards the privacy of his financial affairs by not discussing such matters with persons outside his immediate family. [Affidavit of Danny Shelton at ¶¶ 2-3 (hereinafter “Shelton Aff. at ¶ ____)]. Thus, Plaintiffs have made a *prima facie* showing that their financial, accounting and audit information is confidential commercial information under Rule 26(c)(7).

B. Disclosure of Plaintiffs’ Commercial Information Would Be Harmful

Once the party seeking a protective order has established the confidentiality of the information at issue, they must then show the need for the protective order and the harm that would result without one. *See Brittain*, 136 F.R.D. at 415. Generally, in determining whether there is good cause for a protective order, the federal courts primary inquiry is to balance the interests of the party seeking the information against that of the party seeking to keep the information confidential. *See Farnsworth v. Procter & Gamble Co.*, 758 F.2d 1545 (11th Cir. 1985). The court must weigh the right of the requesting party to examine the relevant evidence against the right of the producing party to protect its confidential data. *See Ares-Serono, Inc. v. Organin Intern. B.V.*, 151 F.R.D. 215 (D. Mass. 1993)(citations omitted). It is up to the party seeking the order for protection to demonstrate good cause for such relief. *See Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 789 (1st Cir. 1988), *cert. den’d.*, 488 U.S. 1030 (1989). The good cause requirement is satisfied by a showing a cognizable harm. *See Anderson v. Cryovac, Inc.*, 805 F.2d 1, 7-8 (1st Cir. 1986).

Competitive disadvantage is a cognizable harm that would support issuance of a protective order. *See Miles v. Boeing Co.*, 154 F.R.D. 112, 114 (E.D. Pa.1994). If embarrassment from the release of information would cause harm to a party’s competitive and financial position, it also constitutes a cognizable harm warranting protection. *See Cooper Hospital/University Medical Center v. Sullivan*, 183 F.R.D. 135, 143 (D.N.J. 1998)(refusing to

grant protective order). In deciding whether confidential business information is deserving of protection, courts have also looked to whether disclosure of the information will violate any privacy interests, whether the information is being sought for a legitimate purpose or for an improper purpose and whether disclosure of the information will embarrass a party. *See Glenmede Trust Co. v. Thompson*, 56 F.3d 476, 483 (3rd Cir.1995). In light of these various factors, this Court has good cause to issue the protective order sought by Plaintiffs.

1. Plaintiffs Interests Weigh Strongly in Favor of Protection

Though it is a non-profit enterprise engaged in an altruistic mission with benevolent purposes, 3ABN nonetheless competes with other Seventh-Day Adventist and Christian broadcast ministries for a finite pool of donor funds and for finite space on satellite and broadcast bandwidth. [Stenson Aff. at ¶ 9]. 3ABN would suffer a distinct disadvantage in that marketplace if its 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. [Id.]. If competitors discovered this information, 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. [Stenson Aff. at ¶ 12]. The competitive disadvantage 3ABN would suffer from disclosure of its financial, accounting and auditing information is a cognizable harm warranting issuance of the protective order. Additionally, disclosure of the information would embarrass 3ABN by implying that the company does not safeguard their donors' private financial information, an implication that itself

would likely erode the public's confidence in the ministry and cause a further reduction in donations, another cognizable harm that would result if the protective order did not issue. [Stenson Aff. at ¶ 5].

Such disclosure would also likely violate the privacy interests of 3ABN's donors as well, virtually all of whom entrust their funds to the ministry with the understanding that their contribution will be held in confidence. [Stenson Aff. at ¶ 5]. It is also quite likely that the disclosure of 3ABN's donor income could cause the donors embarrassment when, for example, the donor's family or congregation discovers the donor has given to 3ABN more money than to their own children or has contributed more to 3ABN's ministry than to their local church. These factors, weigh overwhelmingly in favor of issuance of the protective order preventing Defendants from disclosing 3ABN's financial accounting and auditing information from disclosure to non-parties.

Regarding Plaintiff Danny Shelton, an individual to whom the competitive advantage analysis is not applicable, the disclosure of his private financial information would be an embarrassing invasion of his personal privacy unwarranted either by the facts of the case or by the defenses asserted in Defendants' Answer to the Complaint. The nature of Shelton's private financial information is inherently personal, intimate and delicate and he is entitled to safeguard such information from prying, newsmongering eyes. The improvident disclosure of such information would be invasive, embarrassing and distressing. [Shelton Aff. at ¶ 4].

The cognizable harm, annoyance, burden and embarrassment that Plaintiffs would suffer as a result of the disclosure of their private financial, auditing and accounting information weighs overwhelmingly in support of the issuance of a protective order to maintain the invaluable confidentiality of that information.

2. Defendants' Interests Do Not Weigh Against Protection

As discussed *supra*, the court's primary inquiry in determining the appropriateness of a protective order is to balance the interests of the parties seeking protection against the interest of the parties seeking disclosure. *See Farnsworth*, 758 F.2d 1545. In the instant case, Defendants have no interest in disclosing the information to third parties. Allowing discovery, subject to relevance and other valid objections, but prohibiting third party disclosure of financial, auditing and accounting information fully enables Defendants to pursue pretrial fact-finding, engage in motion practice and prepare for trial. Since discovery disclosures need not be made public to be of use to the litigating parties, in the case of sensitive information, such disclosures are properly restricted to the parties unless and until the documents are made part of the public trial record in the case. *See Dellums v. Powell*, 561 F.2d 242 (D.D.C. 1977).

Additionally, the protective order proposed here is narrowly tailored to provide appropriate protection and security without unduly limiting either party from conducting vigorous and thorough discovery. The district courts have broad discretion in determining the appropriateness of a protective order and in fashioning the terms and degree of protection of such an order. *See Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 532 (1st Cir. 1993); *Brennan v. International Brotherhood of Teamsters*, 494 F.2d 1092 (D.D.C. 1974). The type of protective order proposed by Plaintiffs has been approved by federal courts as an appropriately tailored means of protecting trade secrets and confidential business information. *See Uniroyal Chemical Co. v. Syngenta Crop Protection*, 224 F.R.D. 53 (D.Conn. 2004).

C. There is No Presumption of Public Access to Such Discovery Material

In anticipation of Defendants' likely arguments that public access to the courts and the first amendment right of free speech factor against issuance of the protective order, it should be

noted that there is no presumption of public access to information and materials unearthed in discovery.

Civil cases in federal courts between private persons are largely private matters. The materials produced in discovery, although produced in a regimen of court rules in a dispute that will be tried in a public courtroom are nonetheless private. There is, for example, no right under the First Amendment to publish materials produced in discovery and a protective order is not a prior restraint of free expression.

6 *Moore's Federal Practice*, § 26.101[1][a] (Matthew Bender 3rd Edition)(citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 29 (1984)). To temper the liberal scope of discovery, Rule 26(c) empowers a district court to issue an order to protect a person from annoyance, embarrassment, oppression or undue burden or expense. *Id.* Because the public has no inherent right to discovery information, in determining the appropriateness of a protective order the court's consideration focuses solely on balancing the needs of the parties.

D. Defendants' History Justifies the Proposed Limitations

Finally, and perhaps most importantly, the Defendants' history of publishing—typically with mischaracterizing and innuendo-laden commentary—court documents and litigation-related information in this case provides a compelling additional reason for the court to issue the requested protective order.

Because liberal discovery is permitted for the sole purpose of helping the parties prepare for trial or for the settlement of litigated disputes, a party generally cannot use discovery for a purpose not related to the pending litigation. ...[Specifically,] liberal discovery has significant potential for abuse when litigants seek information that is not only irrelevant, but potentially damaging to reputation and privacy.

Id. (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34-35 (1984) and *Jennings v. Peters*, 162 F.R.D. 120, 122 (N.D. Ill. 1995)).

Just two examples of Defendants' outrageous and insupportable activities include recent internet posts by Robert Pickle. In the first, Pickle, providing links to various court documents and attorney correspondence, falsely states that Plaintiffs violated the Court's Scheduling Order in this case, mischaracterizes Magistrate Hillman's Order regarding the imaging of Defendants' hard-drives and suggests that Plaintiffs have made misrepresentations of fact and law concerning Defendant Joy's bankruptcy. [Hayes Aff. Ex. G]. In the second, Defendant accuses Plaintiffs of engaging in a 'cover up,' merely because 3ABN has executed its right to purchase proprietary assets—the infringing internet domains at issue in the instant litigation—from Joy's bankruptcy estate. [Hayes Aff. Ex. H]. Other examples for the Court's judicial notice are amply available at www.BlackSDA.org and www.save3abn.com.

Defendants' demonstrated specious and spurious use of court documents and case information on the internet to fuel a campaign of disparagement, not only against Plaintiffs but their counsel as well, provides compelling evidence that they will do the same with Plaintiffs' sensitive, confidential information if not properly held in check. The nature of discovery makes it unfair to allow the recipient of disclosed information a virtually unlimited right to disseminate those materials. *See Koster v. Chase Manhattan Bank*, 93 F.R.D. 471 (S.D.N.Y. 1982).

E. Defendants Were Provided A Good Faith Opportunity to Fashion Voluntary Protection of the Confidential Information at Issue.

Finally, Plaintiffs have brought this motion as a last resort and only after having made a good faith effort to work with Defendants in fashioning voluntary protection of the parties financial, audit and accounting information. As early as the parties' Rule 26 conference, Plaintiffs proposed a reasonable protective order to govern disclosure in the instant case. Since the bulk of the defamatory statements at issue in the case revolve around the financial management and fiscal operations of the ministry, a protective order is warranted to prevent the

publication and dissemination of potentially relevant, but highly sensitive and confidential trade secrets and business, commercial and financial information. [Hayes Aff. at ¶ 10]. Nevertheless, Defendants rejected a protective order without discussion. Id.

More recently, Defendant Pickle made informal requests for documents identified in Plaintiffs' Rule 26(a)(1) Initial Disclosures, and Plaintiffs, despite having no obligation to provide those documents absent a formal request, agreed to provide such materials on the condition the parties executed a protective order to prevent third-party disclosure of the information. [Hayes Aff. at ¶ 11]. After exchanging at least six correspondence concerning the issue, Pickle still refused to stipulate to a confidentiality agreement or protective order governing the materials. [Hayes Aff. at ¶ 11]. Unable to obtain Defendants' agreement as to information confidentiality, Plaintiffs have been forced to seek the protection of the Court before responding to written discovery recently served by Defendant Pickle.

In light of the relevant considerations, good cause has been established for a protective order limiting disclosure of Plaintiffs' confidential financial, audit and accounting information. Plaintiffs' interests in maintaining the confidentiality of the information vastly outweigh Defendants' interests in obtaining and disseminating such information. Defendants' ability to conduct discovery, participate in motions practice and prepare for trial is in no way impaired by the proposed protective order and Defendants will be in no manner prejudiced by compliance therewith. Moreover, the very real and cognizable harm that would be suffered by Plaintiffs upon disclosure of the relevant confidential information compels the circumspect handling and extremely limited disclosure of the information. Plaintiffs' proposed protective order, which narrowly prohibits disclosure of trade secret donor information and prohibits third-party disclosure of sensitive financial information, should be entered.

CONCLUSION

The interests of Plaintiffs in maintaining the invaluable confidentiality of their trade secrets and private financial, accounting and auditing information vastly outweighs Defendants interests in obtaining or disclosing such information. The cognizable harm that would be suffered by 3ABN and the embarrassment and burden that would be suffered by Danny Shelton if such information were discovered or disclosed provides good cause for the information to be shielded from discovery or, at a minimum, withheld from third-party disclosure.

Plaintiffs have proposed a protective order that appropriately limits the discovery and disclosure of material designated as trade secret or confidential. The order nevertheless affords the parties full access to relevant confidential information and establishes a workable procedure for disclosure of the material to experts and other potential and actual trial witnesses. Accordingly, the Court should enter Plaintiffs' proposed protective order.

Respectfully Submitted:

Dated: December 18, 2007

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Certificate of Service

I, J. Lizette Richards, 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 18, 2007.

Dated: December 18, 2007

/s/ J. Lizette Richards

J. Lizette Richards