

---

---

**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

information concerning Plaintiffs' responses to Pickle's Requests for Production of Documents. A copy of my email from Ms. Richards forwarding Pickle's January 4, 2008 correspondence is attached hereto as **Exhibit D**.

9. I was on vacation and away from the office the entire week of December 31; I did not receive Ms. Richards' email (Exhibit D) until Monday morning, January 7, 2008. My reading of Pickle's letter indicated that there might be some confusion or dispute as to Plaintiffs' Responses to Pickle's Requests for Production and that Pickle was seeking a good faith discovery conference.

10. I immediately sent Mr. Pickle a letter agreeing to a discovery teleconference and proposing my first available date to so meet. A copy of my letter to Mr. Pickle is attached hereto as **Exhibit E**.

11. Pickle sent an email agreeing to the January 10 discovery conference. Part of that email, which read, "[o]ne thing that would be quite helpful in preparation for the discovery conference would be the expeditious sending my way of plaintiff 3ABN's response," made me investigate service of the 3ABN responses. I then realized that the written discovery responses had mistakenly not been served in my absence. By his email, however, I understood Pickle was requesting that the January 10 discovery conference be expanded to also include discussion of Shelton's Responses, which were not yet due, and was agreeing to accept service of both the 3ABN and Shelton responses as timely, so long as they were both sent to him in advance of the discovery teleconference. I complied with Pickle's request and agreed with the service arrangements, and served both 3ABN and Shelton's written responses to Pickle's document requests by facsimile

and mail on January 9, 2008. A true and correct copy of Mr. Pickle's email acknowledgement is attached hereto as **Exhibit F**.

12. A true and correct copy of additional emails evidencing the parties' agreement as to Pickle's acceptance of service of the RPD responses and the agenda for the January 10 discovery teleconference are attached hereto as **Exhibits G and H**.

13. A true and correct copy of my correspondence to Mr. Pickle, evidencing service of both Plaintiffs' Responses to Requests for Production of Documents on January 9, 2008 is attached hereto as **Exhibit I**.

14. On January 10, 2008, I participated in a teleconference with Mr. Pickle and Mr. Joy lasting more than four hours, during which the parties discussed three discovery issues: (a) Plaintiffs' relevancy objections and the general scope and relevance of Pickle's document requests; (b) Plaintiffs' confidentiality objections and a potential Stipulated Confidentiality Order governing the production of sensitive trade secret, proprietary or otherwise confidential information; and (c) the specific discovery of 3ABN donor-identifying information.

15. As to donor information, Plaintiffs initially refused to produce any donor information, but after discussion with Defendants, agreed to provide donor information without the donor's address, social security number or other identifying information, and with the donor's name replaced with a numerical code, the key to which would be provided to the presiding judge for *in camera* verification. Defendants would not agree to coded donor information and promised to provide an alternative proposal concerning donor information after the phone conference.

16. The discussion of confidential information and a Stipulated Protected Order revolved around a Confidentiality Agreement drafted and proposed by Plaintiffs. The parties discussed the nature of information Plaintiffs' believed was sensitive confidential or trade secret information and the mechanism by which Plaintiffs could agree such information could be provided to Plaintiffs without publication or dissemination to the public at large. The parties agreed that Plaintiffs would modify their proposed Confidentiality Agreement, circulate the new version to Defendants and that the parties would reconvene by teleconference to discuss whether an agreement could be reached on a Stipulated Protective Order.

17. The parties' discussion of scope and relevance consisted of analyzing Pickle's written discovery, definition-by-definition and request-by-request, and attempting to reach a mutual agreement as to what the request was seeking (clarification), whether the request sought information that was material to the claims and defenses in the case (relevance) and whether the request sought information protected from production or disclosure (privileged, trade secret, etc.). Not once during this discussion did either Defendant suggest in any fashion that they believed Plaintiffs had waived or otherwise abandoned their rights to object to Pickle's Requests for Production for any reason, including an allegedly "tardy" service of the Responses thereto. In point of fact, Plaintiffs' various relevance, privilege and confidentiality objections—and how they might be mutually resolved by the parties—were the primary topic of the parties' conversation.

18. As a result of the parties' discussion, Defendants agreed that certain of their definitions were unclear and could be clarified by making the definition narrower or more

specific. Defendants also agreed that certain requests were overly broad or sought information that was irrelevant to the case or privileged from discovery. Defendants agreed that such requests could be refined to seek only relevant, discoverable information. As the conference had gone on for many hours, Defendants asked for time to review their requests and attempt to clarify and refine them and it was my understanding Defendants planned to serve amended Requests for Production with some of the requests appropriately narrowed. No specific deadline was set for the service of amended Requests, but the parties had made plans to meet telephonically again in a week or so, and it was anticipated that the issue of the revised Requests would be discussed at that time.

19. The parties met again by telephone to discuss their discovery disputes on Tuesday, January 22, 2008. However, only the donor-identifying information issue and the Confidentiality Agreement issue were discussed; there was no further dialogue concerning Plaintiffs' various relevancy objections and no discussion or resolution concerning what, if any, of the information sought was relevant to the claims and defenses in the case. Defendants stated they would not agree to the revised proposed Confidentiality Agreement and I requested that Defendants propose a confidentiality agreement with which they would agree that might, upon review, also be agreeable to Plaintiffs. Defendants wanted to speak about the situation between them, so the parties agreed to terminate the telephone conference. I asked Defendants to provide a deadline by which they would get back to me about the issue of a Stipulated Protective Order and Defendants agreed to contact me with a date by which they would agree to respond.

20. The next day, January 23, 2008, I received an email from Mr. Pickle proposing February 1 as the deadline by which Defendants would provide a response concerning a mutual Confidentiality Agreement. A true and correct copy of Mr. Pickle's January 23 email is attached hereto as **Exhibit J**.

21. In the subsequent exchange of emails, which focused exclusively on the donor and confidentiality issues and did not involve any additional dialogue concerning Plaintiffs' various relevance objections, the attempt at resolving the two issues came to an ultimate impasse when, after having rejected two different proposed Confidentiality Agreements proposed by Plaintiffs, Defendants refused to provide Plaintiffs with a Confidentiality Agreement to which Defendants' would agree that could then be either agreed upon by Plaintiffs or, at least, used at the basis of further dialogue. Copies of the various email exchanges are attached hereto as **Exhibits K through V**. By the end of this exchange, on January 24, 2008, it was clear that the parties had reached an impasse on the donor and confidentiality issues.

22. While waiting for the Court to decide the parties' confidentiality/donor information dispute, which became the subject of a Motion for Protective Order that was filed with the Court in 2007, but not heard by the Court until March 7, 2008, there was no further dialogue between the parties as to Plaintiffs' various relevancy objections and no revised Requests for Production were ever served by Defendant Pickle. Plaintiffs anticipated that, once the Court issued its order on the Motion for Protective Order, the parties would once again address the dispute concerning the scope and relevance of Pickle's Requests for Production.



23. On March 28, 2008, Plaintiffs produced approximately 12,575 pages of documents that they had identified in their Rule 26(a)(1) Disclosures that they did not deem confidential or privileged. A true and correct copy of the letter serving these documents is attached hereto as **Exhibit W**.

24. On April 17, 2008 Magistrate Judge Hillman issued a Protective Order governing the production of confidential, proprietary and trade secret information in the case, yet Defendants still did not serve revised RPDs and there were no discussions among the parties concerning the Plaintiffs' outstanding scope and relevancy objections.

25. On April 25, 2008, Plaintiffs produced approximately 2500 additional pages of discovery information related to Defendants alleged internet activities. A true and correct copy of the letter serving these documents is attached hereto as **Exhibit X**.

26. On May 7, 2008, a status conference in the case was held before Judge Saylor. When Defendants raised the issue of Plaintiffs' Responses to Requests for Production, I informed the Court that Plaintiffs had objected to the majority of the Requests on relevance grounds and that, having reached neither agreement or impasse on the Plaintiffs' relevancy objections, and not having discussed the matter for over three months, the parties' good faith effort to resolve that dispute had not completed. I also informed the Court that, while good faith dialogue concerning the relevance objections would be pursued by Plaintiffs, they were not optimistic about resolving the dispute. Rather, I explained, Plaintiffs anticipated the filing of a Motion for a Protective Order to limit the scope of discovery, though Plaintiffs did not believe the filing of such a motion to be so certain as to require a change in the Court's scheduling order. Defendants, who were both in attendance, made no objection to these characterizations of the situation and

did not claim they had satisfied the good faith requirements of the discovery rules concerning the relevance objections.

27. In the days immediately following the status conference, I worked to prepare a document production in conformance with Magistrate Hillman's Protective Order that would provide information and materials to Defendants that Plaintiffs agreed were relevant but confidential.

28. On May 14, 2008 Plaintiffs produced, in accordance with the protocol of Magistrate Judge Hillman's Confidentiality and Protective Order, approximately 200 pages of documents identified in Plaintiffs 26(a)(1) Disclosures which contained confidential, proprietary or trade secret information. A true and correct copy of the letter serving these additional documents is attached hereto as **Exhibit Y**.

29. Since receipt of the Confidentiality Order, Plaintiffs have been working diligently to assemble relevant requested documents, to determine whether the documents contain sensitive information and to appropriately redact sensitive data while leaving enough information to satisfy any legitimate need Defendants might have for it—all while conducting the myriad of other pending discovery activities, including reviewing and appropriately challenging third party subpoenas Pickle has caused to issue in Minnesota, Michigan, California and Virginia. In light of the broad, rambling language of the requests (and the lengthy, fact-assumptive, and sometimes indecipherable definitions incorporated therein), none of which had been narrowed or clarified by Defendants' service of Amended Requests for Production, discerning and preparing the relevant, non-privileged documents has been an onerous and time-consuming process.

30. Just a week after the status conference before Judge Saylor, without any further dialogue concerning Plaintiffs' relevancy objections, Defendant Pickle served the instant Motion to Compel.

31. Following receipt of the instant Motion, I provided Pickle with a proposed schedule for production of relevant, responsive documents pursuant to the Confidentiality and Protective Order. Pickle has not yet responded to the proposal, but the production contemplated therein may moot some or all of the present motion. A true and correct copy of the proposal letter is attached hereto as **Exhibit Z**.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: May 29, 2008

/s/ Jerrie M. Hayes

---

Jerrie M. Hayes, Esq.

Subscribed and sworn to me  
this 29<sup>th</sup> day of May, 2008.

/s/ Gabrielle K. Helmbrecht

---

Notary Public

My Commission Expires Jan 31, 2010