

Plaintiffs argue that the statement of Attorney Jerrie Hayes (“Hayes”) in a March 7, 2008, hearing must be confined to a 1998 real estate deal. However, logically, Hayes was orally responding to Defendants’ reference to an IRS criminal investigation in an affidavit under consideration in that same hearing. (Doc. 49 ¶ 11). Then and afterwards, Defendants thought Hayes meant that there wasn’t any investigation at all. (Doc. 89 p. 38; Doc. 63-37 p. 2; Doc. 62 p. 11; Doc. 63 ¶ 18). Regardless, Hayes isn’t privy to what complaints are filed or what the IRS is investigating. Only the naïve could think that by March 2008 no one had yet told the IRS about a transaction publicized on the internet since mid-2007. (Doc. 63-30 pp. 10–27; Doc. 127 ¶ 33).

A. re: Plaintiffs’ response to “... 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).

Plaintiffs fallaciously assert, without evidentiary support, that the booklets published by Pacific Press Publishing Association (“PPPA”) in 2001 and 2002 were later published by a higher-priced publisher, Remnant Publications, Inc. (“Remnant”). (Doc. 188 p. 5).

PPPA has always been the publisher and Remnant never has been. (Affidavit of Robert Pickle (“Pickle Aff.”) ¶¶ 1–13, Ex. A–I). Remnant doesn’t even offer the booklets for sale on its website. (Pickle Aff. ¶ 10, Ex. H). Though Remnant produced publishing contracts in response to Defendants’ subpoena, none were for the booklets published by PPPA in 2001 and 2002. (Doc. 76-2 p. 41; Pickle Aff. ¶ 12).

Of course, Plaintiffs know all this, and their response is but a last ditch effort to blatantly misrepresent kickback payments as royalties. Their effort miserably fails.

B. re: Plaintiffs’ response to “... a matter which would have been rectified had it been brought to the attention of counsel.” (Doc. 175 p. 8).

Plaintiffs admit receiving Defendants’ June 25, 2008, letter about the three missing *3ABN World* issues, and admit never rectifying the matter. (Doc. 188 pp. 7–8). That June 25 letter stated that the three issues were missing from 3ABN’s website, and requested that Plaintiffs produce

them. (Doc. 81-11 p. 40). The implication of the above uncorrected statement is therefore false.¹

C. re: Plaintiffs' response to "... including a simple request to 3ABN for back issues of their magazine." (Doc. 175 p. 8).

The December 14, 2007, order that Defendants "only contact a party ... by going through counsel," including any "officers or directors or employees" of 3ABN (Doc. 144 p. 19), is clear enough, needs no clarification, and says nothing about subpoenas as Plaintiffs falsely state.

By September 23, 2007, Defendants made public their interest in the three missing, destroyed² issues. (Pickle Aff. Ex. J). Since Plaintiffs knew both what they were hiding and what Defendants wanted, a request other than a request to produce would have been unavailing.

D. re: Plaintiffs' response to "What that 'bearing' may be is not explained, presumably being reserved for the reply memorandum ..." (Doc. 174 p. 1).

Since Plaintiffs' statement was not qualified, it clearly and falsely suggested that the bearing of the exhibits in question was not explained, even in the motion to which the exhibits pertained. Yet, by calling Defendants' "writings ... painful to slog through" (Doc. 188 p. 11), Plaintiffs affirm Defendants' decision not to refile identical matter in two motions filed on the same day. The question at issue is whether Defendants explained the bearing of the exhibits, not whether Plaintiffs consider Defendants' explanations convincing.

E. re: Plaintiffs' response to "... Plaintiffs have not been made aware of exactly what documents Defendants seek to file ..." (Doc. 174 p. 3).

Plaintiffs' citation of "Doc. 171 ¶¶ 18, 25" (*Id.*) shows that the above statement refers only to Exhibits Q–R, X–Y. Simpson asked that Plaintiffs' documents be identified by Bates number. (Doc. 92 pp. 12–13). Simpson noted that Defendants were contemplating filing five

¹ Regarding Plaintiffs' irrelevant points: (a) Simpson's later request that Defendants' detail all of Plaintiffs' production deficiencies, some of which were clearly intentional, was an obvious attempt to harass and increase Defendants' costs. (b) Defendants requested Plaintiffs to produce even *3ABN World's* that Defendants already had in order to ease their entry into evidence. (c) Plaintiffs clearly sought to produce a mass of non-substantive material, and thus should have produced PDF's easily obtained from 3ABN's website. Plaintiffs' failure to do so suggests that they were trying to hide something. (d) Defendants' September 8, 2008, affidavit, was filed before Magistrate Judge Hillman's September 11 ruling on the motion to compel, not after.

² If the issues had not been destroyed, they would not have needed to be recreated. (Doc. 178 ¶¶ 13–14).

“TABN” documents. (Doc. 180-2 pp. 3–4). A glance at those five 3ABN documents would have confirmed that four of them were Exhibits Q–R, X–Y. (Doc. 180 ¶¶ 2–4). Simpson does not explain how Defendants’ notice failed to identify which documents Defendants sought to file.

F. re: Plaintiffs’ Response to “... *In re Boston Regional Medical Center, Inc.*, 328 F.Supp.2d 130, 143 (D. Mass. 2004) ...” (Doc. 175 p. 3).

Simpson fails to address the issue: *In re Boston Regional Medical Center, Inc.* found that the new arguments in question should have been raised in a *reply brief*. 328 F.Supp.2d at 142. As for First Circuit appeal case rules, reply briefs cannot contain “matter repetitive of the main brief,” but the new matter should be in reply to the appellee’s response. 1st Cir. Loc. R. 31(a)(1).

G. re: Plaintiffs’ Response to “This Court’s order indicates that it considered the arguments raised by the Defendants in their reply brief ...” (Doc. 175 p. 4).

The issue is, Is there anything in the order that “*indicates*” that the Court considered the arguments in question, not whether or not those arguments were considered. Since Plaintiffs quote no such language from the order of April 13, 2009, in their response (Doc. 188 p. 11), Defendants are not the only ones who cannot find such language.

H. re: Plaintiffs’ Response to “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 cite absolutely nothing to demonstrate that every court unanimously and universally rejected Defendants’ arguments. (Doc. 188 pp. 11–13). Defendants cited four facts, supported with citations to orders of and statements by the courts (Doc. 184 pp. 5–6); Plaintiffs make no attempt to rebut these. Plaintiffs’ assertion is therefore without evidentiary support.³

I. re: Plaintiffs’ response to: Defendants’ appellate “briefs string

³ Regarding Plaintiffs’ irrelevant points: (a) Plaintiffs again misuse a January 20, 2008, email to “Bille” (not to “R. Pickle”) which refers to expanding the case in the future by adding parties. (Doc. 188 p. 12; Doc. 149 pp. 12–13). (b) The email in question cannot refer to yet future discovery abuse, for Defendants’ requests to produce and subpoenas, except for the subpoena for Kathy Bottomley, were all initially served before January 20. (Doc. 63-20 p. 16; Doc. 63-21 p. 17; Pickle Aff. ¶¶ 15–17, Ex. K–M). (c) Simpson represented to Defendants that the issue of scope of discovery was already resolved by Magistrate Judge Hillman’s September 11, 2008, order. (Doc. 125 ¶ 4).

together hearsay from unsourced emails” (Doc. 175 p. 6).

Nothing in Plaintiffs’ response remotely attempts to justify Plaintiffs’ use of the word “hearsay” in the above statement. Therefore Defendants’ contention stands unrebutted, and Plaintiffs had no basis in law or fact for calling such material “hearsay.”⁴

J. re: Plaintiffs’ response to “The merits had never been at issue before; thus there had been no opportunity to present evidence on that topic” (Doc. 175 p. 7).

Plaintiffs admit that there were opportunities, but make it clear that their strategy was to not take advantage of them.⁵ (Doc. 188 pp. 13–14). Thus, the statement is false. Plaintiffs weren’t avoiding prematurely showing their hand, for Defendant Pickle’s November 2007 requests to produce sought the same reimbursement-for-personal-travel documents that Plaintiffs could have filed in September 2008. (Doc. 63-20 def. 16(e), req. 26; Doc. 110 p. 5; Doc. 113 p. 9).

K. re: Plaintiffs’ response to “... a tape recording ... about something that is not material to the case” (Doc. 175 p. 7).

Defendants demonstrated that the tape recording is material to *the case*. (Doc. 184 p. 7). Plaintiffs offer no rebuttal regarding the recording’s materiality to *the case*. (Doc. 188 p. 14). Thus, Plaintiffs’ uncorrected statement is demonstrably false.

L. re: Plaintiffs’ response to “... this tape ... they have had it since before the lawsuit started.” (Doc. 175 p. 8).

Plaintiffs fail to provide any evidentiary basis for saying that Defendants had the tape before the lawsuit started, nor does Doc. 184 p. 7 imply that Defendants had it before June 2008.⁶

M. re: Plaintiffs’ response to “... every one of which is said to demonstrate fraud, but every one of which is demonstrably accurate.” (Doc. 175 p. 9).

Plaintiffs made the above assertion about the statements below on May 11, 2009. (Doc.

⁴ Plaintiffs have never denied these emails’ authenticity. Still, Defendants do not oppose an evidentiary hearing, provided that it also concerns “evidence” (at issue in the pending motions) that Defendants have contested.

⁵ Though Plaintiffs once claimed Mollie Steenson’s May 2007 affidavit was such an opportunity taken advantage of (Doc. 10 pp. 6–8), they now ignore that it was.

⁶ Regarding Plaintiffs’ irrelevant point: Defendants previously clarified this matter in their reply brief for their motions to reconsider, including showing that Simpson knew or should have known when Defendants got the tape. (Doc. 177 p. 6).

175 p. 12). The age of some of the statements below, which Plaintiffs complain about, is irrelevant to the question of whether Plaintiffs had an evidentiary basis for the above assertion. Plaintiffs have not demonstrated and cannot demonstrate the accuracy of the statements below.

1. re: Plaintiffs’ response to “The Complaint identified 24 specific defamatory statements ...” (Doc. 140 p. 2).

Simpson argues that some of the 24 statements can be both broad and specific “at the same time;” he also argues, contradictorily, that “the scope of the complaint was narrow.” (Doc. 188 p. 15). It can’t be both ways. Either some of the statements are broad, or all are narrow.

Since on October 22, 2008, Simpson admitted that ¶ 46(g) of Plaintiffs’ complaint was a “sweeping allegation[]” rather than a “specific allegation” (Doc. 152-6 p. 10), his assertion that “specific” and “broad” are not antonyms is without merit.

The record shows that this issue isn’t new. Plaintiffs stated that all 24 statements were “pinpoint” and “specific.” (Doc. 89 p. 10). But a court determined that ¶ 46(g) was so broad, it would never “get to a jury,” and had to be “narrow[ed] ... down to some specific statements.” (Doc. 152-6 p. 11). Simpson fails to demonstrate that that court’s finding was clearly erroneous.

2. re: Plaintiffs’ response to “They were given ... virtually all of 3ABN’s corporate records and tax filings ...” (Doc. 140 p. 3).

Did Plaintiffs produce to Defendants “virtually all” of 3ABN’s corporate records and tax filings? Since the answer is no, Plaintiffs’ statement is false.

Plaintiffs suggest that “virtually all” meant all that existed (not yet destroyed?). But a reasonable person would not take Plaintiffs’ statement that way, especially since Plaintiffs asserted that Defendants had “demanded virtually every imaginable record ... ever generated or obtained by the Plaintiffs.” (Doc. 67 p. 1). Certainly 3ABN’s 2006 Form 990 existed.

3. re: Plaintiffs’ Response to “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 was written *after* most of Defendants' discovery efforts had been initiated, and *before* Plaintiffs produced any documents. (*supra* 4 n. 3). Since Plaintiffs do not attempt to explain how that email was written *before* Defendants adopted the alleged discovery strategy and *after* Plaintiffs produced documents, Defendants' contention stands entirely unrebutted.

4. re: Plaintiffs' Response to "In other words, Plaintiffs' efforts to narrow the scope of discovery were justified." (Doc. 140 p. 4).

Plaintiffs admit that Magistrate Judge Hillman rebuked Plaintiffs for their efforts to limit the scope of discovery. (Doc. 188 pp. 16–17). By Plaintiffs' own logic (Doc. 175 p. 5), because those efforts to limit scope to certain topics and time periods were denied (Doc. 74 p. 2; Doc. 67 pp. 10–11; Doc. 107 p. 5), Plaintiffs' efforts were "rejected." While Plaintiffs' efforts were denied outright, Defendant Pickle's motion to compel was denied *without prejudice*. (Doc. 107 p. 5). The Court did not order Defendant Pickle to reserve his requests by granting Plaintiffs' motion, but because of fault on all sides. (Doc. 107 pp. 4–5). Since bringing discovery into line with the scope permitted by Fed. R. Civ. P. 26(b)(1) is not the same as narrowing that scope under Rule 26(c), Plaintiffs' efforts to limit the scope of discovery achieved absolutely nothing.

5. re: Plaintiffs' Response to "... 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).

Contrary to Plaintiffs' assertion, the above is not self-evident: The language, "any limitations that this Court might place on their factual foraging" (*Id.*), is suggestive of Plaintiffs' June 25, 2008, motion to limit the scope of discovery, before which all of Defendants' third-party subpoenas were already served. The sole limitation Plaintiffs sought in their motion for a confidentiality order, of limited applicability to Defendants' subpoenas, was a prohibition of discovery of donor information. (Doc. 41 pp. 3–4). Plaintiffs' request that discovery be stayed until a "contemplated" motion for a protective order was resolved was denied by this Court.

(Doc. 144 pp. 11, 22). Plaintiffs themselves issued subpoenas from other courts despite their pending/contemplated motions. (Doc. 81-10 pp. 6, 11, 17). Doing so was hardly an end-run.

6. **re: Plaintiffs' Response to "... 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' unsubstantiated assertion that the 16 other Save 3ABN websites are not owned by either Defendant is irrelevant, for Plaintiffs sought the following, primary, *unattained* goal:

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.

(Doc. 1 p. 20 at ¶ 3, emphasis added). Plaintiffs never engaged in the discovery required to prove that neither Defendant, or any of Defendants' allies, own, use, or manage any of the 16 websites. The serious plaintiff would have asked how the 1757-page "Initial Tax Case Public Record" that Defendants personally obtained in late April 2008 suddenly was "Added 5/23/2008" on Save-3ABN.com. (Doc. 132 Table 1; Doc. 152 ¶ 35; Doc. 96-11 p. 46).

7. **re: Plaintiffs' Response to "... and by obtaining favorable rulings from the governmental agencies that had been investigating the Plaintiffs' conduct."** (Doc. 140 p. 6).

Plaintiffs entirely evade the point. The above statement cannot be *demonstrably* accurate, since Plaintiffs long ago asserted that they could not *demonstrate* its accuracy: Plaintiffs asserted that the IRS does not provide letters to *demonstrate* that a criminal investigation has concluded favorably. (Doc. 123 ¶ 5). Plaintiffs suggest no other way to *demonstrate* the accuracy of the above assertion, an assertion refuted by documented private inurement and tax evasion, and IRS confirmation that a whistleblower's claim is still open. (Doc. 126 pp. 12–13; Doc. 178-18).

8. **re: Plaintiffs' Response to "... the bankruptcy judge closed down the web site that had taken 3abn's name and was using it to malign 3abn."** (Doc. 171-21).

The email in question was sent from Thompson's home and email account. (Pickle Aff.

¶¶ 19–21, Ex. N). But the email’s authenticity is irrelevant to the question of whether the above statement is demonstrably accurate as Simpson originally claimed but now denies.

The trustee’s motion to sell the domain names was continued to January 31, 2008, on which day Judge Rosenthal’s order approving the sale was signed. (Doc. 185-4 p. 8; Pickle Aff ¶ 22, Ex. O–P). Plaintiffs’ explanation that Thompson in his January 5 email misunderstood a yet-unissued order is not helpful at all in demonstrating the accuracy of the above statement.

9. re: Plaintiffs’ Response to “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).

Rather than demonstrate the statement’s accuracy, Plaintiffs charge Defendants with “idle speculation.” But it is no speculation that James Gilley sought to raise \$5 million in 9 days by October 17, 2008 (Doc. 127-46), indicating that 3ABN was suffering severe financial distress. It is no speculation that 3ABN’s assertion of a restoration of reputation requires that 3ABN publicize the EEOC determination, and that Defendants know of no such public notice before October 23, 2008.⁷ (Doc. 171 ¶ 26).

Plaintiffs declare, “Defendants cannot rebut the evidence in the record with mere conjecture.” But there is no evidence in the record to rebut. Plaintiffs have never provided any evidence regarding real, public donation levels, and donors that were affected by Defendants (except for one who was swayed by “documentation”). All there is to rebut is Thompson’s cursory reference to unknown figures prepared by unknown person(s). (Doc. 123 ¶ 8). The fact that the voluntary dismissal was a ploy to escape liability for abuse of process and malicious prosecution argues against the truthfulness of Thompson’s assertions, and Simpson’s ability to ever demonstrate the accuracy of the above statement.

10. re: Plaintiffs’ Response to “... documents that had no

⁷ That 3ABN kept the wrongful termination investigation entirely under wraps is further indicated by 3ABN’s declaring confidential two case closure letters produced on June 27, 2008. (Pickle Aff. ¶ 23).

relevance to the underlying lawsuit” (Doc. 158 p. 2).

Plaintiffs make no attempt to demonstrate the legal or factual accuracy of the above statement. Since Shelton reported no royalty income in his July 2006 financial affidavit (Doc. 49-2 pp. 33–34; Doc. 63-32 p. 25), and since Plaintiffs admit that the Remnant documents disclose payments by Remnant to Shelton, it is legally and factually impossible that these documents are irrelevant to the question of whether Shelton committed perjury in his divorce-related proceedings by failing to report his huge royalty income. (Doc. 154 p. 3). Also, the Remnant documents are relevant to one side or the other, depending on whether they exonerate or condemn Shelton in regards to kickbacks, excessive royalties, private inurement, and perjury.

N. re: Plaintiffs’ Response to “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)

Plaintiffs elsewhere assert that context is important. (Doc. 188 p. 4). The above statement is from a paragraph of eight sentences, in which Plaintiffs assert that Defendants’ arguments were universally “rejected” by four magistrate judges, and that “Plaintiffs prevailed every time.” (Doc. 175 p. 10). It is as if the mere lack of a court’s explicitly stated acceptance of Defendants’ argument constitutes a rejection of that argument, while a rejection of Plaintiffs’ arguments as not well-founded must be explicitly stated. This is inconsistent.

Contrary to Plaintiffs’ assertion (Doc. 188 p. 19), four magistrate judges most certainly did find “Plaintiffs’ position to lack a legal or factual basis”:

- **Magistrate Judge Boylan:** Shelton had no legal basis for his position that Shelton had standing to object to Defendants’ subpoena of MidCountry documents pertaining to DLS Publishing, Inc. (Doc. 155 ¶ 3; Doc. 185 ¶¶ 14–16, Doc. 185-12 p. 3).
- **Magistrate Judge Carmody:** The Remnant documents were so “clearly relevant” that Magistrate Judge Carmody said, “I can’t imagine that they’re not relevant.” (Doc.

185-13 pp. 22–23; Doc. 127-38).⁸

- **Magistrate Judge Frazier:** Simpson argued that the underlying case contained financial allegations concerning “certain transactions,” and that discovery should be limited to those transactions, but the court found instead that ¶ 46(g) of Plaintiffs’ complaint was “pretty broad.” (Doc. 152-6 pp. 4–5, 33, 9, 11).
- **Magistrate Judge Hillman:** The order clearly concludes that Plaintiffs had no legal basis for declaring as irrelevant documents which put “the specific statements they allege were defamatory ... in context,” or which are “relevant on the issue of whether the plaintiffs have actually been damaged by the alleged statements.” (Doc. 107 p. 3). This at least alludes to Plaintiffs’ seeking to prohibit discovery pertaining to Tommy Shelton and donor information. (Doc. 75 pp. 12–13, 15–16).

O. re: Plaintiffs’ Response to “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)

The record is clear, which Defendants cited: Plaintiffs did not “prevail[] every time.” This is evidenced by Plaintiffs’ efforts to covertly revoke ¶ 7 of the confidentiality order and impose non-party return requirements upon parties. (Doc. 161 pp. 4–7; Doc. 174 pp. 3–4; Doc. 179 pp. 1–3, 10). In order to have truly prevailed, Plaintiffs would have had to have obtained a protective order to their liking, and they clearly failed to do so. This Court’s prohibiting Plaintiffs from issuing any subpoenas without first obtaining leave of court (Doc. 107 pp. 4–5), something Plaintiffs never asked for, can hardly be considered prevailing.

As a totally separate issue, MidCountry’s records were “funneled” to Massachusetts to ensure that they complied with the yet future confidentiality order of April 17, 2008, not for “consideration of their relevancy.” (Doc. 63-36 pp. 2–3). Since Plaintiffs’ motion for a

⁸ Plaintiffs (and Remnant) never gave a legal or factual basis for their impossible position, that records pertaining to Shelton’s royalties from Remnant are irrelevant to the question of Shelton’s royalties from Remnant.

confidentiality order explicitly reserved questions of relevancy (Doc. 41 p. 3), a protective order pertaining to relevancy wasn't even under consideration at the time.

P. re: Plaintiffs' Response to "They also offer a tape recording of Danny Shelton saying something they, without apparent justification, consider a lie." (Doc. 175 p. 11).

Though Plaintiffs admit that they "they misunderstood the thrust of Defendants' argument" (Doc. 188 p. 19), Plaintiffs still advocate the above misrepresentation of Defendants' position by referring to "an allegedly false statement by Shelton" in the recording. (Doc. 188 p. 14). Defendants have thus far not alleged any such false statement. (Doc. 184 p. 15). Plaintiffs' excuse that they "misunderstood" is meritless, for no attorney familiar with the history of the parties' disputes would need Defendants' description of the tape recording's significance (Doc. 170 p. 6) clarified. This suit was conceived in retaliation for Defendants exposing Shelton's cover up of the child molestation allegations. (Doc. 62 pp. 3-4; Doc. 80 p. 12; Doc. 126 p. 2).

CONCLUSION

Plaintiffs distracted from and evaded the issues at bar. Plaintiffs' comments about common law copyright and Remnant being the publisher for the PPPA booklets constitute new Rule 11 violations. The motion for sanctions should be granted following an adequate review of the documentary evidence at issue, including the Remnant documents.

Respectfully submitted,

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