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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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

Case No.: 07-40098-RWZ

Plaintiffs, )

v. )

Gailon Arthur Joy and Robert Pickle, )

Defendants. )  
\_\_\_\_\_)

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**DEFENDANTS' MEMORANDUM IN SUPPORT OF  
DEFENDANTS' MOTION TO FILE UNDER SEAL**

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Pursuant to Local Rule 7.2, Defendants seek leave of the Court to file under seal the affidavit and accompanying documents that Defendants provisionally filed under seal in the U.S. Court of Appeals for the First Circuit on November 19, 2009. Defendants seek to file these as **Exhibits A–B** to Doc. 234.

All but three of the accompanying documents were produced by Remnant Publications, Inc. (“Remnant”) (“Remnant documents”). The affidavit and Remnant documents conclusively and indisputably demonstrate the fallacious nature of the following three assertions that Plaintiffs made in their response (Doc. 231) to Defendants’ objections (Doc. 229) to the electronic orders of January 29, 2010, and Defendants have referenced these materials in their reply to Plaintiffs’ response (Doc. 233 pp. 5, 8):

1. Plaintiffs’ assertion of irrelevance concerning copies of bank statements produced by MidCountry Bank (“MidCountry”) (“MidCountry records”). (Doc. 231 pp. 1, 6).

2. Plaintiffs' assertion that Defendants' "contention that the [MidCountry] records contain anything unflattering is pure conjecture ..." (Doc. 231 p. 6).

3. Plaintiffs' assertion that Defendants' Rule 11 motion was "a baseless motion." (Doc. 231 p. 7).

Regarding assertion #1, Plaintiffs have repeatedly asserted that entire classes of documents are irrelevant. In particular, Plaintiffs also asserted that the Remnant documents were irrelevant to the instant case. (Doc. 184 pp. 11–12; Doc. 220 pp. 28–29; Doc. 158 pp. 1–2; Doc. 188 p. 18). Even a cursory review of the affidavit and Remnant documents proves the utter falsity of that assertion. Therefore, Plaintiffs' assertion that the MidCountry records are irrelevant must also be fallacious.

Regarding assertion #2, the affidavit and accompanying Remnant documents conclusively demonstrate that Danny Lee Shelton ("Shelton") received large sums in kickbacks and royalties that were not reported on his July 2006 affidavit, and that Shelton manipulated bank balances in order to evade reporting his true assets on that same affidavit. (Doc. 224-13 pp. 3–4, 8). Since the financial transactions described in the Remnant documents reveal what the MidCountry records must contain, Defendants' contention that the MidCountry records contain unflattering information is anything but "pure conjecture."

Regarding assertion #3, Defendants' Rule 11 motion concerns mischaracterizations by Plaintiffs and their counsel regarding, *inter alia*, the Remnant documents. A cursory review of the affidavit and Remnant documents proves that Shelton's kickbacks were not "perfectly proper royalty payments," and that it is not demonstrably accurate that the Remnant documents "had no relevance to the underlying lawsuit." (Doc. 174 p. 4; Doc. 175 p. 9; Doc. 170 pp. 9–10; Doc. 158 p. 2). Therefore, Defendants' Rule 11 motion was not baseless.

Plaintiffs designated the documents accompanying the explanatory affidavit as

confidential under the confidentiality order of the instant case. (Doc. 60). Plaintiffs have opposed the filing of these documents (or papers explicitly citing the information these documents contain) in any way but under seal.<sup>1</sup> (Doc. 180-2 p. 2; Doc. 127-5). Thus, in order for this Court to view the explanatory affidavit or accompanying documents, Defendants believe that they must file them under seal.

At the same time, as Defendants outlined for the court of appeals in what was filed in this Court as Doc. 224-12, it is questionable whether many or most of these documents filed with the court of appeals ever qualified for protection under § 1 of the confidentiality order (Doc. 60), and/or whether the designating parties have standing to object to the public filing of many of these documents. (Doc. 224-12 pp. 18–20).

On July 8, 2007, Walter Thompson (“Thompson”), board chairman of Three Angels Broadcasting Networking, Inc. (“3ABN”), wrote regarding the instant case:

We have nothing to hide. We want truth to be known. The law suit does nothing to hide truth. ... This is NOT about hiding truth, and ALL about exposing it as rendered under oath.

(Doc. 114-4 p. 2). On July 16, 2007, Thompson wrote:

The law suit has only one purpose, i.e., to expose the truth at a time when false accusations are spreading around the world against 3abn in ways that

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<sup>1</sup>However, since Plaintiffs’ counsel has represented that he opposes this motion (Doc. 236 p. 3), he will argue against the filing of these materials even under seal, demonstrating that Plaintiffs’ purpose was to use confidentiality designations in connection with Local Rule 7.2(d) to unconstitutionally prevent Defendants from bringing relevant information before the Court. Defendants cannot explicitly describe the “confidential” information except under seal, but cannot file under seal without convincing the Court to grant leave.

Local Rule 7.2 is admirable in that it endeavors to lessen the burden upon the Court of impounding materials merely at the whim of parties, and it endeavors to allow as much public access as possible to the legal process. However, under the rule in its present form, plaintiffs can use their own confidentiality designations in connection with their opposition to motions to file under seal to prevent defendants from getting relevant material before the Court.

1st Cir.Loc.R. 11(c) similarly discourages filing under seal more than necessary, but does allow for the provisional filing under seal of documents and explanatory affidavits along with a motion to file under seal. Thus, the First Circuit rule does not raise the due process concerns that Local Rule 7.2 in its current form appears to raise.

are seriously affecting our ability to fulfill the mission we have been called to do.

(RA 114-5 p. 1).

Defendants have always preferred, as Thompson stated above, that the truth be exposed in the instant case. Thus, Defendants request that only those documents that qualify for protection under § 1 of the confidentiality order (Doc. 60), and which are designated as confidential by someone who has standing to so designate, remain under seal, to be returned to Defendants at the conclusion of all related litigation, including appeals and suits alleging abuse of process and/or malicious prosecution in the instant case. Defendants request that the remaining documents that do not so qualify for protection be allowed to become part of the public record, once such a determination is made by the Court.

Defendants hereby incorporate the specific facts and arguments regarding “Desired Duration of Sealing Order” found in Doc. 224-12 pp. 18–20, and direct the Court to those pages for discussion of the standing of the Plaintiffs, the present availability to the public of much of the information in these documents, and the lack of a legitimate expectation of confidentiality of these materials by Plaintiffs.<sup>2</sup>

Since Plaintiffs refuse to abandon their confidentiality designation of material that “does not fit the qualifications of the confidentiality order” (Doc. 224-11), the parties on their own cannot resolve the issue of what should remain impounded until the conclusion of all related litigation. Therefore, Defendants request that Exhibits A–B remain under seal until further order of the Court.

For the reasons outlined above, Defendants seek to file under seal Exhibits A–B, and seek for these materials to remain impounded until further order of the Court.

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<sup>2</sup>References to “RA” in Doc. 224-12 are to the docket entry number used in this case in this Court.

Respectfully submitted,

Dated: February 26, 2010

/s/ Gailon Arthur Joy, *pro se*  
Gailon Arthur Joy, *pro se*  
Sterling, MA 01564  
Tel: (508) 872-8000

and

/s/ Robert Pickle, *pro se*  
Robert Pickle, *pro se*  
Halstad, MN 56548  
Tel: (218) 456-2568