UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Three Angels Broadcasting Network, Inc., an Illinois non-profit corporation, and Danny Lee Shelton, individually, Plaintiffs, v. Gailon Arthur Joy and Robert Pickle, Defendants.	Case No.: 07-40098-RWZ

DEFENDANTS' REPLY TO PLAINTIFFS' UNTIMELY RESPONSE TO DEFENDANTS' MOTION FOR LEAVE TO FILE TWO SUPPLEMENTAL EXHIBITS: (A) WARRANTS FOR THE ARREST OF TOMMY SHELTON, AND (B) PRESS RELEASE ISSUED BY FAIRFAX COUNTY POLICE DEPARTMENT

REPLY TO PLAINTIFFS' INTRODUTION

Plaintiffs' Citation of District of Minnesota Case (Doc. 249 pp. 1–2)

Plaintiffs cite a Minnesota federal case as a basis for sanctions against Defendants, a case that found that proposed documents cannot be attached to motions seeking leave to file. (Doc. 249 pp. 1–2, 7–8). *Hartford Fire Ins. Co. v. Clark*, No. 03-cv-3190 (PJS/JJG), Order (D. Minn. Jan. 29, 2010). However, unlike the District of Minnesota, this district requires that proposed documents be attached to motions for leave to file. CM/ECF Admin. P. § O. Thus, Plaintiffs' argument is frivolous. At best, Plaintiffs' counsel failed to conduct reasonable inquiry, and failed to correct his error. (Doc. 256 pp. 4–5). Can his *pro hac vice* status be maintained?

Plaintiffs' Motion to Strike Defendants' Status Reports in the First Circuit (Doc. 249 p. 2)

On April 18, 2010, Defendants filed a response in the First Circuit to Plaintiffs' motion to

strike Defendants' status reports. (Affidavit of Robert Pickle ("Pickle Aff.") Ex. A). Defendants also moved for sanctions against Plaintiffs for Plaintiffs' frivolous motion to strike. (*Id.*). In that grossly inaccurate motion to strike, which tests the limits of zealous advocacy, Plaintiffs (a) cited no authority for their motion, (b) acknowledged that the First Circuit's August 19, 2009, order required Defendants to file status reports every sixty days, (c) cited no court order vacating that requirement, (d) moved the First Circuit to strike even a status report that Plaintiffs admitted was ordered by that court, (e) admitted that the exhibits attached to Defendants' status reports were already part of the district court record, (f) requested the First Circuit to physically destroy part of the district court record, (g) falsely and unethically asserted that Defendants took Plaintiffs' three damaging admissions out of context, and (h) falsely and unethically asserted that those three admissions were not damaging admissions of any sort. (Pickle Aff. Ex. B).

REPLY TO PLAINTIFFS' FACTUAL BACKGROUND

A. Plaintiffs Falsely State: Plaintiffs "Felt They Had Achieved All of Their Non-monetary Objectives" (Doc. 249 p. 2)

Despite Plaintiffs' frivolous claims, malicious prosecution, and abuse of process, by the time Plaintiffs filed their motion to dismiss, Plaintiffs had achieved essentially none of their non-monetary objectives, would never do so, and very well knew it. As Defendants' opposition stated:

> The Plaintiffs pretend that the objectives of their suit have already been achieved (Doc. 123 ¶ 3), and yet only ¶ 5 of the 11 paragraphs of their prayer for relief can be claimed as being partly accomplished.

(Doc. 126 p. 16).

When Plaintiffs filed for dismissal on October 23, 2008, sixteen times as many Save 3ABN websites existed as when Plaintiffs filed suit on April 6, 2007. (Doc. 127 ¶ 29; Doc. 126 pp. 11, 16). Plaintiffs never obtained (a) an injunction against Defendants, or those in privity with Defendants, prohibiting them from using the characters "3ABN" in internet domain names and websites, or (b) an order requiring Defendants to remove or retract anything Defendants had

written. (Doc. 1 Prayer for Relief ¶¶ 2–3, 6–7). Plaintiffs' unsubstantiated hearsay assertion in the affidavit of Walter Thompson ("Thompson") (filed with Plaintiffs' motion to dismiss) that public donation levels had returned to pre-June/July 2006 levels has since been shown to be a deliberate fraud upon the court. (Doc. 123 ¶ 8; Doc. 224 ¶¶ 10–15).

Plaintiffs filed for dismissal on October 23, 2008, to evade the court-ordered discovery deadline of October 27, 2008, and to evade counterclaims against Plaintiffs and their counsel for malicious prosecution and abuse of process. (Doc. 127 ¶ 21; Doc. 127-29[1]; Doc. 107 p. 4; Doc. 141 pp. 6, 8–11). Plaintiffs' counsel stated that avoiding Defendants' counterclaims of malicious prosecution was the "only concern." (Doc. 141 p. 8).

B. Plaintiffs Are the Cause of Continued Litigation

Most of the last 21% of this case's docket entries (46 to 48 of the last 54 numbered entries) would never have been filed if Plaintiffs had not taken from the courthouse the only copy of part of the court record, namely, the copies of bank statements produced by MidCountry Bank ("MidCountry") ("MidCountry records"). If Plaintiffs really wanted to reduce the level of litigation activity, they would have returned the portion of the court record they took in violation of this Court's order that those records be instead returned to MidCountry. (Doc. 141 p. 13).

Plaintiffs complain about the ongoing litigation (Doc. 249 pp. 2–3). But the record shows that Plaintiffs are to blame. Defendants but seek truth and justice, wanting, *inter alia*:

- Defendants' malicious prosecution and abuse of process claims heard. (Doc. 171-2 p. 60; Doc. 126 pp. 4–5, 13–15).
- Discovery transferable to any future litigation initiated by Plaintiffs or Defendants. (Doc. 171-2 pp. 62–63; Doc. 126 p. 15; Doc. 141 p. 14).
- The confidentiality order's terms enforced in regards to allowing post-case challenges

[1]Attachments filed prior to the March 20, 2010, CM/ECF upgrade are cited by the post-upgrade numbering system. Thus what was cited as Doc. 127-30 is now cited as Doc. 127-29.

to confidentiality designations. (Doc. 171-2 pp. 64, 67–68; Doc. 60 ¶ 7).

- The confidentiality order's terms enforced in regards to what qualifies for protection against disclosure. (Doc. 171-2 pp. 30–32, 66–68; Doc. 60 p. 2).
- The confidentiality order's terms enforced in regards to no party being required to ever return any documents. (Doc. 171-2 pp. 64, 67–68; Doc. 60).

The confidentiality order was never to be a permanent injunction against Defendants publishing material obtained from other sources. (Doc. 242 pp. 2–3; Doc. 60 ¶ 8). Yet Plaintiffs on January 5, 2010, threatened to use the confidentiality order to hold Defendants in contempt of court if Defendants did so publish. (Doc. 223 pp. 6–7; Doc. 224-10). That threat was similar to the threat of October 30, 2008. (Doc. 152-7). If Plaintiffs' goal was to stop litigating rather than to silence Defendants, Plaintiffs would never have threatened Defendants on October 30, 2008, less than 90 minutes after case dismissal, seeking to privately re-impound the entire case in the process. (Doc. 149 pp. 6–9; Doc. 152-7). First Amendment freedoms are at stake.

C. Shelton Doesn't Own the Records of MidCountry Bank

Plaintiffs' continued advocacy of the position that the MidCountry records belong to Danny Lee Shelton ("Shelton") (Doc. 249 p. 3), without a legal basis for such advocacy, constitutes grounds for sanctions under Fed. R. Civ. P. 11. Six of the ten bank accounts in question, the bank statements of which make up 56% of the MidCountry records, were not even owned by Shelton. (Doc. 223 p. 8; Doc. 63-29 p. 5). For the bank statements pertaining to Shelton's four accounts, even those are the property of MidCountry, not Shelton. (Doc. 211 pp. 2, 10; Doc. 213 p. 2; Doc. 233 p. 6; Doc. 63-27 p. 9). *United States v. Miller*, 425 U.S. 435, 440 (1976); *Clayton Brokerage Co. v. Clement*, 87 F.R.D. 569, 571 (D.Md. 1980).

D. October 30, 2008, Order Never Executed; No Collateral Attack; Not Same Issue

Plaintiffs' October 23, 2008, motion to dismiss deceptively requested that "the records of

MidCountry Bank" be "return[ed] to Plaintiffs," but simultaneously admitted that MidCountry, not Plaintiffs, had produced those records. (Doc. 120 p. 1; Doc. 121 p. 9). Thus, the MidCountry records could only be "returned" to MidCountry, not to Plaintiffs.

On October 30, 2008, this Court expropriated the MidCountry records, which Defendants paid over $3,500 for and unjustly never got to see, ordering that they "be returned to the party that produced those documents." (Doc. 141 pp. 13, 15; Doc. 171-2 p. 9). Since the MidCountry records were never returned to MidCountry, that part of the October 30 order was never executed, and Defendants have therefore requested that the order be stayed during Defendants' appeals, if a stay is required to prevent the return of the MidCountry records to MidCountry.[2] (Doc. 210 p. 2).

Plaintiffs intentionally lie by asserting that (a) the October 30, 2008, order was executed, (b) Defendants are collaterally attacking the October 30, 2008, order with their pending motions, and (c) the orders of October 30, 2008, and January 29, 2010, concern "the very same issue." (Doc. 249 pp. 4). Plaintiffs being compelled to return the unlawfully obtained MidCountry records so that those records can be forwarded to the First Circuit leaves entirely undisturbed the October 30, 2008, order, and is an issue that was never addressed in that order.

E. Defendants' Belated Discovery of Plaintiffs' Theft of MidCountry Records from Courthouse Not "Disingenuous"

Plaintiffs accuse Defendants of being disingenuous in belatedly discovering Plaintiffs' theft of the MidCountry records from the federal courthouse, since Defendants received notice of that December 16, 2008, theft on December 23, 2008. (Doc. 249 pp. 3–4; Doc. 160). In reply, Defendants first note why a receipt for that theft was created and docketed:

> **(e) Removal of Papers.** Except as otherwise provided, papers filed in the office of the clerk shall not be removed from the office except by a judge,

[2]A motion to stay should not be required, since a district court cannot eliminate material from the record on appeal. 20 *Moore's Federal Practice* §310.40[2]; *Belt v. Holton*, 197 F.2d 579, 581 (D.C. Cir. 1952); *U.S. v. Forness*, 125 F.2d 928, 932 n.3 (2nd Cir. 1942). Therefore, the MidCountry records could never be returned to MidCountry until the end of all appeals.

> official, or employee of the court using the papers in official capacity, or by order of the court. All other persons removing papers from the office of the clerk shall prepare, sign and furnish to the clerk a descriptive receipt therefor in a form satisfactory to the clerk.

LR, D. Mass. 5.1(e). Thus, the fact that the receipt identified as Doc. 160 was created and docketed shows that the MidCountry records were "filed in the office of the clerk," were thus part of the district court record, and were removed without an "order of the court" so authorizing.

Second, the docketed receipt violated Local Rule 5.1(e) in that it was not adequately "descriptive." In stark contrast to the ambiguous docket text for Doc. 160 is the docket text for 49 exchanges of documents for *in camera* review in *Amgen v. F. Hoffman - LaRoche Ltd, et. al.*, D. Mass. Case No. 05-cv-12237. The docket text for the *Amgen* exchanges all clearly state whether the court was receiving or returning documents, and which party in the case was involved in those transfers. (Pickle Aff. Ex. C). Similarly, unlike the ambiguously worded Doc. 160, the 49 receipts in *Amgen* clearly state whether the court was receiving or returning documents, and which party in the case was involved in those transfers.[3] (Pickle Aff. Ex. D).

Given the ambiguity of Doc. 160 and its associated docket text, and the court staff's claim that they could not find the MidCountry records (Doc. 206 ¶¶ 7, 9, 11–12), Defendants believed Doc. 160 to be a belated receipt for the Court's receiving the MidCountry records. (Doc. 177 p. 5 n.4; Doc. 212 ¶ 6). Therefore, under these circumstances, Defendants' belated discovery of Plaintiffs' theft at worst is excusable neglect (and judicial clerical error), not disingenuousness. *Pioneer Inv. Servs. v. Brunswick Assocs. Ltd. Partnership*, 507 U.S. 380, 398–399 (1993).

[3]We note two more points about the 49 transfers of documents in *Amgen* that occurred from December 26, 2006, to October 10, 2007: (a) The 17 receipts for documents returned by the court were docketed on the very date of the receipt. (b) 12 receipts for documents received by the court were docketed on the very date of the receipt, and 20 receipts for documents received by the court were docketed the very next business day. (Pickle Aff. Ex. C–D).

In stark contrast, no receipt was docketed when the MidCountry records were received or found by the Court, and the docketing of the receipt for the unlawful surrender of the MidCountry records to Plaintiffs was delayed by seven days, until the very day Defendants served their designation of appendix and issues for review in their first appeal. (Doc. 214-4).

REPLY TO PLAINTIFFS' ARGUMENT

I. MIDCOUNTRY RECORDS ARE ALREADY PART OF DISTRICT COURT RECORD, AND ALREADY PART OF RECORD ON APPEAL

Contrary to Plaintiffs' present denials (Doc. 249 pp. 5–6), the MidCountry records are already part of both the district court record and the record on appeal: Plaintiffs already admitted that the MidCountry records were filed with the court (Doc. 231 p. 7), which makes these records part of the record on appeal. Fed. R. App. P. 10(a)(1). LR, D. Mass. 5.1(e) required the receipt (Doc. 160) to be docketed because the MidCountry records constituted "papers filed in the office of the clerk." (*supra* 5–6). Thus, by December 16, 2008, the date of the receipt, the clerk had determined that the MidCountry records were part of the district court record. And the First Circuit still requires that the entire record be forwarded in *pro se* cases. 1st Cir. R. 11(b).

II. PLAINTIFFS ARE ESTOPPED FROM ASSERTING YET AGAIN THAT ALLEGATIONS AGAINST TOMMY SHELTON ARE IRRELEVANT

On February 18, 2010, Plaintiffs stated in their court filing:

> Pickle and Joy have long made uncorroborated, unfounded allegations against Danny Shelton and 3ABN, including claims that they covered up allegations of child molestation against a 3ABN employee, financial mismanagement, and other misconduct that framed the original basis for Plaintiffs' lawsuit against them.

(Doc. 231 p. 5). But now Plaintiffs state, "Tommy Shelton's conduct was not addressed in the Complaint, and was never part of the litigation as framed by the Plaintiffs." (Doc. 249 p. 6). It can't be both ways. Plaintiffs are estopped from now denying their February 18 admission.

III. SUPPLEMENTAL EXHIBITS ARE NOT "RANK HEARSAY"

Defendants' purpose for offering the five felony arrest warrants and the press release were clear: To conclusively demonstrate that Defendants' reporting about the pedophilia allegations against Tommy Shelton was not "uncorroborated, unfounded" as Plaintiffs intentionally and falsely asserted. (Doc. 233 p. 7; Doc. 246 pp. 5–6; Doc. 231 p. 5).

Defendants never offered these exhibits to prove that Tommy Shelton was guilty of pedophilia, as Plaintiffs falsely suggest. (Doc. 249 p. 6). Rather, Defendants are demonstrating that the Honorable Magistrate Claude J. Beheler of the Fairfax County Juvenile and Domestic Relations District Court "found probable cause to believe that the Accused committed the offense charged." (Doc. 246 p. 6, citing Doc. 247-1). That a magistrate found probable cause does not mean that the magistrate found Tommy Shelton guilty as accused. But it does prove that the allegations by these ecclesiastical reporters against Tommy Shelton were not "unfounded."

IV. RELEVANCE OF THE PEDOPHILIA ALLEGATIONS TO THE RETURN AND FORWARDING OF THE MIDCOUNTRY RECORDS

Plaintiffs contend that the five felony arrest warrants and the press release are not relevant to the issues at bar. (Doc. 249 pp. 1, 5–7). But Plaintiffs, not Defendants, injected the issue of the pedophilia allegations against Tommy Shelton into a dispute over the MidCountry records in an illegitimate attempt to undermine Defendants ecclesiastical reporting.

By admitting that Defendants' ecclesiastical reporting concerning the pedophilia allegations against Tommy Shelton in part "framed the original basis for Plaintiffs' lawsuit," Plaintiffs' counsel tacitly admitted that he lied when he earlier sought to prohibit discovery concerning those allegations on the basis of relevancy. (Doc. 231 p. 5; Doc. 75 pp. 12–13; Doc. 91 p. 8). Plaintiffs have therefore demonstrated a pattern of unethically obstructing discovery and litigation by claiming to be irrelevant matters that they know are indisputably relevant:

(a) Plaintiffs *still* assert that the bank statements comprising the MidCountry records are irrelevant to this litigation, which litigation includes allegations that Shelton privately enriched himself at the expense of Three Angels Broadcasting Network, Inc. ("3ABN"), and perjuriously failed to disclose assets and income in his divorce-related proceeding. (Doc. 231 p. 1; Doc. 1 ¶¶ 46(g)–(h), 50(i); Doc. 9 at Answers to ¶¶ 9, 14).

(b) Plaintiffs falsely asserted that the documents produced by Remnant

Publications, Inc. were irrelevant to the litigation, an assertion proven false by a simple and casual perusal of those very revealing documents. (Doc. 158 pp. 1–2; Ex. A–B for Doc. 234).

(c) Plaintiffs falsely asserted that documents pertaining to pedophilia allegations against Tommy Shelton were irrelevant to the case, when all along Plaintiffs knew that Defendants' ecclesiastical reporting regarding those allegations in part "framed the original basis for Plaintiffs' lawsuit." (Doc. 75 pp. 12–13; Doc. 91 p. 8; Doc. 231 p. 5).

The clear establishment of a pattern of unethically declaring relevant materials to be irrelevant rebuts Plaintiffs' arguments against Defendants' pending motions. Therefore, the MidCountry records which were filed with the Court are clearly relevant, and should be returned to this Court and forwarded as part of the record on appeal to the First Circuit.

That Plaintiffs know that Defendants seek to establish such a clear pattern of bogus and unethical relevancy objections is evident from the fact that Defendants explicitly stated such in their briefs. (Doc. 233 pp. 7–8; Doc. 237 p. 2; Doc. 242 p. 9).

V. RELEVANCE OF THE SUPPLEMENTAL EXHIBITS TO DEFENDANTS' REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANTS' OBJECTIONS

But Plaintiffs contend that the issue is extremely narrow: Do the supplementary exhibits refute Plaintiffs' assertion that Defendants' reporting was unfounded about Shelton's cover up of "previous" pedophilia allegations against Tommy Shelton? (Doc. 249 p. 7). Yes, they do, if they can be used to prove as well founded either Defendants' ecclesiastical reports about allegations in Virginia, or Defendants' reports about televangelist Shelton's cover up thereof.

Plaintiffs falsely assert that the date of the five felony arrest warrants is significant. (Doc. 249 p. 7). Plaintiffs well know that the question is the date of the allegations reported by Defendants that led to those arrest warrants, not the date of the arrest warrants themselves.

On December 6, 2006, Defendants issued a widely circulated investigative report.[4] (Doc.

[4]This report and the allegations it contained explains why Plaintiffs accused Defendants

63-14). That report cited (a) allegations involving minors in both Illinois and Virginia, (b) Tommy Shelton's residing in Virginia from about 1993 to about 2001, (c) "a 3ABN attorney ... pressuring people into silence" in 2003, and (d) 3ABN Board chairman Thompson's asserting that Shelton had told him in 2003 that the allegations were all 30 years old, a gross lie. (*Id.*).

The 2003 letter by Pastor Glenn Dryden ("Dryden") to Thompson called for Tommy Shelton to apologize "for his deceit, as well as inappropriate behavior, etc., to ... the congregation of the Community Church of God, Dunn Loring, Virginia." (Doc. 81-1 p. 3; Doc. 171-5 p. 3). Therefore, since Tommy Shelton resided in Virginia from about 1993 to about 2001, Shelton lied in response to Dryden's 2003 letter[5] when Shelton said that the allegations were all 30 years old.

Defendants repeatedly referenced alleged incidents involving a then-minor in Virginia, who, based on discussion in a Community Church of God Board of Trustees meeting, was 25 years of age on December 14, 2006. (Doc. 63-14 p. 3; Doc. 63-15; Doc. 81-1 pp. 6–7; Doc. 171-24 p. 1). That individual reported the alleged incidents to the authorities, and the resulting three felony arrest warrants refer to him being 12 years old 13 years prior to 2006. (Pickle Aff. ¶ 3; Doc. 247-1 pp. 1–3). The remaining two arrest warrants were issued in response to allegations from Alex Walker, Tommy Shelton's son-in-law's brother. (Pickle Aff. ¶ 4).

Shelton took particular offense to Defendants' reporting that Plaintiffs were covering things up by using attorneys to silence those who were concerned about the pedophilia allegations. In response, Shelton perpetuated the attempted cover up by using Attorney Gerald Duffy ("Duffy") to try to silence Defendants, who wrote a letter for Plaintiffs to Defendants on January 30, 2007. (Doc. 63-17). Defendants' subsequent, published report about that letter was

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of causing a decline in revenue in 2006. (Doc. 171-2 pp. 13–14, 22; Doc. 10-4 ¶ 6). Save3ABN.com was later launched in January 2009. (Doc. 1-3 p. 16).

[5] In response to the same letter, in answering machine recordings intended to silence Dryden, Shelton acknowledged that incidents had occurred in Illinois for which the statute of limitations would apply. (Doc. 171 ¶¶ 11–12). Thus, Shelton acknowledged allegations of pedophilia in Illinois to be true.

partially filed by Plaintiffs on April 6, 2007, the same day Plaintiffs filed their complaint, and filed by Defendants' in its entirety on May 10, 2007. (Doc. 3-1 pp. 2–3; Doc. 8-1 pp. 2–12). Though Plaintiffs' complaint contains no explicit references to the pedophilia allegations against Tommy Shelton, Plaintiffs' own counsel has belatedly raised these issues at a strategically inopportune time for Plaintiffs. (Doc. 231 p. 5).

Thus, the entire litigation, including Plaintiffs' untimely response to the instant motion, as well as Shelton's written and verbal threats in 2003 and 2007 (Doc. 81-1 pp. 9–10; Doc. 63-16; Doc. 63-17; Doc. 171 ¶¶ 11–12), indisputably represents efforts by Plaintiffs to cover up the pedophilia allegations against Tommy Shelton, including allegations in Virginia. The allegations in Virginia are in particular proven to be well founded by the proposed supplemental exhibits (the certified copies of the five felony arrest warrants, and the press release based on those arrest warrants (Doc. 245-1; Doc. 245-2)).

VI. DEFENDANTS SHOULD NOT BE SANCTIONED

A. CM/ECF Admin. P. § O Requires Attaching Proposed Documents

Plaintiffs argue that Defendants should be sanctioned for attaching Defendants' proposed exhibits to Defendants' motion for leave to file those exhibits. (Doc. 249 pp. 1–2, 7–8). However:

> In any case of an electronic filing in which a party seeks leave of court to file a document or to amend a document previously filed, the party ***must*** attach electronically to the motion seeking leave a copy of the document which the party proposes to file.

CM/ECF Admin. P. § O, emphasis added. Defendants should not be sanctioned for obeying the rules. Since a reasonable inquiry would have revealed the requirement of Procedure O, and since Plaintiffs refused to correct their frivolous argument (Doc. 256 pp. 4–5), Plaintiffs' unethical and grossly inaccurate argument is therefore sanctionable under Fed. R. Civ. P. 11.

Plaintiffs have repeatedly maintained that exhibits must be attached to affidavits. (Doc. 207 p. 9; Doc. 216 p. 12; Doc. 238 p. 9). Therefore, the two proposed supplementary exhibits

were also attached to an affidavit. (Doc. 247).

B. No Evidentiary Basis Given for Plaintiffs' Requested Sum

Plaintiffs provide no evidentiary support for the requested sum, which is twice the $500 requested on June 24, 2008, which was never awarded. (Doc. 72 p. 6). In that instance, Plaintiffs filed an 1815-word[6] response, an 848-word[6] affidavit, and four exhibits. (Doc. 72 to Doc. 73-4). In this instance Plaintiffs' response is but 1952 words,[6] without an affidavit or exhibits. If the higher amount now requested reflects additional legal research, then Plaintiffs' counsel knew or should have known that Plaintiffs' basis for requesting sanctions was frivolous. (*supra* 1, 11).

CONCLUSION

Plaintiffs' grossly inaccurate allegations, unethical legal arguments, and questionable tactics are unavailing: The MidCountry records were filed, are part of the district court record, and must be returned to this Court and forwarded to the First Circuit, properly certified pursuant to the Federal Rules of Evidence. The two proposed supplemental exhibits indisputably refute part of Plaintiffs' arguments against the return and forwarding of the MidCountry records, and should be permitted to be filed. Defendants should not be sanctioned. Plaintiffs should be sanctioned, and Plaintiffs' counsel's *pro hac vice* status reconsidered by the honorable Court.

Respectfully submitted,

Dated: April 26, 2010

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[6]These word counts exclude captions, signatures, and certificates of service.