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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-FDS
	)	
Plaintiffs,	)	
v.	)	
	)	
Gailon Arthur Joy and Robert Pickle,	)	
	)	
Defendants.	)	

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**MEMORANDUM IN SUPPORT OF DEFENDANT ROBERT PICKLE’S MOTION  
TO COMPEL PLAINTIFFS TO PRODUCE RULE 26(a)(1) DOCUMENTS  
AND FOR SANCTIONS**

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**INTRODUCTION**

Since the Plaintiffs made their initial disclosures on August 3, 2007, they have repeatedly refused to make these materials available. Without access to these materials, the Defendants cannot prepare a proper or adequate defense.

**ARGUMENT**

Federal Rule 34 states,

“Any party may serve on any other party a request (1) to produce and permit the party making the request ... to inspect, copy, test, or sample any designated tangible things which constitute or contain matters within the scope of Rule 26(b). ...

“The request shall set forth, either by individual item or by category, the items to be inspected, and describe each with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.”

On November 14, 2007, Defendant Pickle served a request by email to Attorney Hayes, later sending a copy by mail, asking for the production, or inspecting and copying of the Plaintiffs' Rule 26(a)(1) materials. For inspecting and copying in person, the request indicated that the time would be after giving whatever notice the Plaintiffs felt necessary, and the place would be the places the Plaintiffs specified in their initial disclosures. Both the suggested place and the suggested time should be considered reasonable.

Defendant Pickle received a reply dated November 14 and 15, 2007, from Attorney Hayes, indicating that if he wished to "personally inspect" these documents, a minimum two-weeks' notice was needed before appearing at "3ABN Offices," and a minimum one-week's notice was needed before appearing at her law firm. No other conditions were specified.

Accordingly, on November 19, 2007, Defendant Pickle gave his one- and two-weeks' notice, after which Attorney Hayes rescinded the arrangement dated November 14 and 15 by maintaining on November 20 and 28, 2007, that no inspection or production of any Rule 26(a)(1) documents was presently authorized by the Plaintiffs.

For just this moment, let us follow Attorney Hayes' suggestion of November 20, 2007, and omit from this paragraph's discussion "printed pages of the various websites upon which statements about plaintiffs have been published—all of which are publicly available," resulting in a remaining "total volume of Rule 26(a)(1) materials [of] less than 500 pages." The Plaintiffs' objection to inspection and production does not then consist of an objection to part of the request, as allowed by Rule 34(b), but to the entire quantity of all such materials that had not already been made publically available by the Defendants or others prior to August 3, 2007.

Attorney Heal first sought to inspect and copy the Rule 26(a)(1) materials in early August, and was told that there were no materials to produce, even though redacted documents had been

filed with the Court in connection with the Affidavit of Mollie Steenson of May 9, 2007, and even though Attorney Hayes admitted in her correspondence with Attorney Heal that the plaintiffs were in possession of Rule 26(a)(1) materials.

The Plaintiffs' attempts to seal or impound all the filings and discovery of this case have repeatedly been turned back by this Court. In the four months since Attorney Heal first served his requests for production of the Rule 26(a)(1) materials, the Plaintiffs have not filed any motions with the Court seeking Protective Orders for any specific documents. Neither have they provided or offered to provide any redacted documents with accompanying indexes containing the redacted confidential information. Yet court-appointed deadlines for discovery draw nearer, and it is critical that the Defendants be able to inspect and copy without further delay these materials to see if the evidence in support of the Plaintiffs' claims is deficient.

Federal Rule 26(b)(1) states, "Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party." Attorney Hayes claims that "the bulk of [Plaintiffs'] 26(a)(1) disclosures" are "extremely sensitive, confidential business and commercial information." Since the Plaintiffs' claims of trademark dilution and intentional interference with advantageous economic prospective business advantage are based in part upon their defamation claims, these materials should support their claims of defamation, but whether they do or not cannot be determined.

Claims of defamation necessitate proving that the Defendants recklessly or maliciously published falsehood. Yet if the materials that would make clear what the truth really is are so secretive that the Defendants can only obtain them with great difficulty during Court proceedings, it becomes all the more challenging to prove that the Defendants ever were reckless or malicious even if some of the Defendants' published statements were not 100% accurate.

The Plaintiffs have also made very specific claims in the Affidavit of Larry Ewing of May 9, 2007, as to the nature and cause of an alleged decline in revenue, but have thus far not provided or filed any documentation to support their contention that there has indeed been a drop in donations, and that such a drop is due to defamation by the Defendants. The Defendants must therefore be able to inspect and copy the Rule 26(a)(1) materials in order to determine whether the Plaintiffs claims are indeed substantiated, or whether these materials consist of individuals concerned about the implications of the voluminous documentation posted at [Save3ABN.com](http://Save3ABN.com).

Lastly, the Plaintiffs' initial disclosures did not list any documents in support of the claims of Plaintiff Shelton, individually, nor did they disclose that Plaintiff Shelton, individually, has any Rule 26(a)(1) materials in his possession. Additionally, Attorney Hayes stated, "the total volume of Rule 26(a)(1) materials is less than 500 pages," and "the bulk of [Plaintiffs'] 26(a)(1) disclosures" concern business and commercial matters, not personal matters. These facts and statements raise doubts as to whether any materials support Plaintiff Shelton's non-business claims against the Defendants. Yet these claims of Plaintiff Shelton partly or entirely form the basis or background for the allegations of Plaintiff Three Angels Broadcasting Network, Inc. Defendants must therefore inspect and copy the Rule 26(a)(1) materials to determine whether the materials that support Plaintiff Shelton's claims are deficient or non-existent.

### **CONCLUSION**

The Plaintiffs have had four months since Attorney Heal first requested access to these materials to file motions with the Court for Protective Orders for specific documents and have not done so. Plaintiffs' counsel agreed that Defendant Pickle could inspect and copy these materials after giving a one- or two-week notice, and then five days later rescinded that agreement and denied that privilege.

In order for the Defendants to prepare their defense, the Plaintiffs must be ordered to produce their Rule 26(a)(1) materials. Defendants must have access to these materials to see if they support any of Plaintiff Shelton's claims, whether they support the Plaintiffs' claims of defamation, and whether they support the Plaintiffs' claims that defamation by the Defendants caused an actual drop in true donations. Further delay jeopardizes their case, for it suggests that no amount of care or entreaty would have enabled the Defendants to obtain the "truth" about certain matters pertaining to the Plaintiffs prior to the instant case being filed.

Respectfully submitted,

Dated: December 7, 2007

/s/ Robert Pickle

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### **CERTIFICATE OF SERVICE**

I, Bob Pickle, do certify that I am over the age of 18 years of age and on this day I have caused service of this document to the Court and have served by first class mail, postage prepaid, a copy of this document and this Certificate of Service to Plaintiffs' counsel at Siegel, Brill, Greupner, Duffy & Foster, and Fierst, Pucci & Kane, LLP.

Dated: December 10, 2007

/s/ Bob Pickle