Ex. AA

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

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.: 0:08-mc-7 RHK/AJB

DEFENDANT ROBERT PICKLE'S MEMORANDUM IN SUPPORT OF HIS OPPOSITION TO PLAINTIFF DANNY SHELTON'S MOTIONS TO QUASH SUBPOENA *DUCES TECUM* OR, IN THE ALTERNATIVE, FOR PROTECTIVE ORDER, AND TO STAY AND REMIT ENFORCEMENT OF SUBPOENA *DUCES TECUM* OR, IN THE ALTERNATIVE, TO APPOINT A SPECIAL MASTER

INTRODUCTION

Three Angels Broadcasting Network, Inc. ("3ABN") and Danny Lee Shelton filed suit on April 6, 2007, in United States District Court for the District of Massachusetts, a suit captioned *Three Angels Broadcasting Network, Inc. and Danny Lee Shelton v. Gailon Arthur Joy and Robert Pickle* (No. 07-40098-FDS (D. Mass.)).

While the Defendants have produced voluminous amounts of material to the Plaintiffs, the Plaintiffs have to date not produced one single document. Moreover, the Plaintiffs have taken the unusual position that everything they possess is either privileged, irrelevant, or confidential, even documents that are part of their own initial disclosures made on August 3, 2007.

Defendant Robert Pickle caused a third-party subpoena *duces tecum* dated December 12,

2007, to be issued and served upon MidCountry Bank, N.A. ("MidCountry"). This third-party subpoena seeks the business records of a bank that are reasonably calculated to lead to the discovery of admissible evidence in the underlying suit. The bank records in question are only for accounts for which Plaintiff Danny Lee Shelton is a signatory.

These bank records are necessary under the rules of evidence to tie together information from tax returns and third-party statements and to demonstrate that private inurement was not properly disclosed on 3ABN's Form 990's and/or financial statements. These bank records are critical to the completion of the evidentiary trail at bar.

Plaintiff Shelton's motion should be denied for sundry reasons.

STATEMENT OF RELEVANT FACTS

Background

Three Angels Broadcasting Network, Inc. ("3ABN") is a publicly supported, non-profit, 501(c)3 organization, and is a supporting ministry of the Seventh-day Adventist Church. From 1985 until September 2007, Plaintiff Shelton was the president, CEO, and managing director of 3ABN, and he remains an influential director of and the only founder still employed by 3ABN.

On June 17, 2004, Plaintiff Danny Shelton in a globally televised broadcast told the world, "It's your ministry. I've said that for years. It's not our ministry." He stated that 3ABN belonged to its donors and viewers, that they had a right to know what was going on at 3ABN, that what he did was "very public," and that "our lives are an open book." See Affidavit of Robert Pickle at ¶ 4 (hereafter "Pickle Aff."). Thus Plaintiff Shelton declared to the world his long-held position that the public has a right to know information that would otherwise be private.

Plaintiff Danny Shelton has been the subject of numerous and varied allegations of malfeasance and misconduct, as well as negative internet commentary, long before either Defendant became involved in mid-August 2006. These allegations have included wrongful

termination, sexual assault, the ignoring or cover up of child molestation allegations, unbiblical divorce, deceit, and private inurement.

In mid-August 2006 the Defendants launched ecclesiastical investigations into the conduct of Plaintiff Shelton, and began publishing investigative reports in harmony with their First Amendment rights of Freedom of Religion, Freedom of Speech, and Freedom of the Press. The Plaintiffs repeatedly claimed that they had evidence to prove various allegations false while also refusing to provide that evidence to those who inquired.

The Plaintiffs have taken their attempts at secrecy to such extremes that they have yet to produce one single document in the underlying suit, even documents referenced in their initial disclosures on August 3, 2007. The Plaintiffs have taken the unusual position that everything is either confidential, privileged, or irrelevant. See Pickle Aff. at ¶¶ 6–7, Ex. A.

A status conference was held on December 14, 2007, in which Attorney Hayes referred to two subpoenas served upon banks. She specifically referred to the fact that a subpoena served upon MidCountry had not been issued from the District of Minnesota. Attorney Hayes requested a stay of discovery until a yet unfiled motion for a protective order was heard, a request that was denied. The Honorable Judge Saylor specifically stated in that conference that any protective order would have to be narrowly tailored. Attorney Hayes did not request a special master then or later. See Pickle Aff. at ¶ 9.

Adding the date of December 14, 2007, to other dates referred to in Plaintiff Shelton's Memorandum in support of the instant motion (hereafter "Shelton Memo."), we have the following chronology:

- December 6, 2007 – Date of issue of first third-party subpoena to MidCountry, issued from District of Massachusetts. See Shelton Memo., p. 3, fn. 1.
- December 7, 2007 – Date of service of Defendant Pickle's Requests for Production of

Documents to Plaintiff Shelton. See Shelton Memo., p. 3.

- December 12, 2007 – Date of issue of second third-party subpoena to MidCountry, issued from District of Minnesota. See Shelton Memo., p. 4.
- December 14, 2007 – Attorney Hayes acknowledged that MidCountry had been served with a subpoena issued from the District of Minnesota.
- December 18, 2007 – Date Plaintiffs' Motion for Protective Order was filed. Id.
- January 9, 2008 – Date Plaintiff Shelton served his responses to Defendant Pickle's Requests for Production of Documents. Id.

MidCountry responded to these third-party subpoenas with a schedule of fees, and with a list of ten different accounts that Plaintiff Shelton had been signatory to, eight of which he had been signatory to at the same time. See Pickle Aff., Ex. C–E.

Private Inurement

Regarding financial allegations, the complaint of the underlying suit states in part:

> 46. Gailon Joy and Robert Pickle have published numerous untrue statements that 3ABN and its President Danny Shelton have committed financial improprieties with donated ministry funds. Among those untrue statements made by Joy and Pickle are, *inter alia*, that: ...
>
> g. 3ABN Board members have personally enriched themselves as officers and directors of 3ABN in violation of the Internal Revenue Code.
>
> h. Danny Shelton wrongfully withheld book royalties from 3ABN and refused to disclose those royalties in proceedings before a court of law related to the distribution of marital assets.

In particular, "g" is used by the complaint as a foundation for claims of defamation *per se*, transferring the burden of proof to some extent to the Defendants.

In 1998 Plaintiff Shelton bought a house from 3ABN for $6,139 and sold it one week later for $135,000. See Pickle Aff. at ¶ 11, Ex. F–G. These real estate transactions were:

- reported on Save3ABN.com around June 2007,
- referred to in Defendant Pickle's letter to Attorney Hayes of November 30, 2007,
- and became part of court record in the District of Massachusetts on January 2, 2008, as part of Defendant Pickle's Opposition to the Plaintiffs' Motion for a Protective Order.

See Pickle Aff. at ¶ 11, Ex. F–I. Thus, Attorney Hayes is well aware of this 1998 real estate transaction.

Plaintiff Shelton signed the 1998 Form 990 under penalty of perjury. See Pickle Aff., Ex. J at p. 6. That form denied that any section 4958 excess benefit transactions or transfer of assets had taken place during the year, even though an attachment acknowledged that a house had been sold to someone for $6,129, a price acknowledged to be far below fair market value. See Pickle Aff., Ex. J at ln. 89b, Sched. A, pt. III, ln. 2e, attached statement for p. 1, pt. 1, ln. 8c.

The Defendants are in possession of reliable statements regarding a "love gift" of $10,000 being sent by 3ABN to a Shelton family member about 1999. See Pickle Aff. at ¶ 13.

Book Purchases

Judge Barbara Rowe noted in her decision of January 28, 2004, in 3ABN's property tax case that for 2000 and 2001, "Applicant's financial reports raise additional questions and concerns. . . . The 'related party transactions' were acknowledged without identifying the parties." See Pickle Aff., Ex. K at p. 17, fn. 15. Subsequently, 3ABN's financial statements identified D&L Publishing and DLS Publishing as related parties from 2002 through 2004 and acknowledged total purchases from them for those years of $283,449.38. See Pickle Aff., Ex. L–N at n. 14. For 2005 and 2006, Plaintiff Shelton's publishing ventures are again off the radar, with the financial statements for those years merely stating that 3ABN purchased a combined total of $3,065,506.14 worth of books authored by a member of management. See Pickle Aff., Ex. O–P at n. 14.

3ABN's financial statements are not nearly as easy to locate for the general public as 3ABN's Form 990 filings. Yet 3ABN's Form 990's do not disclose the fact that millions of dollars in purchases that directly benefit Plaintiff Shelton have been made. See Pickle Aff., Ex. Q–U. Indeed, when one compares the numbers of the financial statements with those of the Form 990's, one discovers that 3ABN's sales of Plaintiff Shelton's books on the 2003 Form 990 were called "satellites" instead of books. See Pickle Aff., Ex. M at p. 12, Ex. R at statement 7–8. Additionally, from 2004 onward these sales of his books were treated as items given away rather than sold, suggesting that Plaintiff Shelton was profiting from these book sales while 3ABN was not. See Pickle Aff., Ex. N at p. 12, Ex. O at p. 13, Ex. P at p. 14, Ex. S–U at statement 2, 7–8.

D&L Publishing and DLS Publishing

While Plaintiff Shelton's affidavit associated with the instant motion states that D&L Publishing was a sole proprietorship, his 2001 tax return indicates that it was a partnership. On Schedule C and Forms 8829 and 4562, he identified Linda Shelton and himself as being co-owners, and he evenly split the profits of his Schedule C with Linda, filing a separate Schedule SE for her with an identical amount on it as when his own Schedule SE reported. See Affidavit of Danny Shelton (hereafter "Shelton Aff.") at ¶ 3; Pickle Aff. at ¶ 17. Even though Linda Shelton's name did not appear on his Schedule C or a Schedule SE or on Form 8829 for 2002 and 2003, suggesting that by tax return filing time the spring of 2003 Plaintiff Shelton was already making different plans for his future, Linda Shelton's name still appears on his Form 4562 as joint owner of D&L Publishing. See Pickle Aff. at ¶¶ 18–19.

For the tax years 2001 through 2003 Plaintiff Shelton reported no inventory, and no advertising or shipping expense for D&L Publishing. See Pickle Aff. at ¶¶ 17–19. For 2004 Plaintiff Shelton at least reported no advertising expense for DLS Publishing. See Pickle Aff. at ¶ 20. Comparing the sales figures given on these various returns with the declared purchases from

these companies as reported in 3ABN's financial statements, one can conclude that 3ABN is the only customer of D&L Publishing and DLS Publishing.

While the copyright page of *The Antichrist Agenda* claims that DLS Publishing published that title in 2004, a book 3ABN Books published the following year in 2005 claims that 3ABN Books is really the publisher. See Pickle Aff., Ex. V–W.

Book Royalties

On September 19, 2006, former 3ABN director and General Counsel Nicholas Miller wrote the following to Defendant Joy:

> I am quite certain that Danny received royalties on [millions of copies of *Ten Commandments Twice Removed* distributed in 2006], probably to the tune of several hundred thousand dollars, although he is refusing to disclose the amount to his own board members. This is a gross conflict of interest and also an improper personal inurement that could cause the ministry to lose its tax exempt status if it came to light.

See Pickle Aff., Ex. X. These books were published by Remnant Publications.

3ABN has a conflict of interest policy, and requires its employees to sign a conflict of interest statement. See Pickle Aff., Ex. Y–Z. The March 2005 employee handbook states, "Outside employment that constitutes a conflict of interest is prohibited." See Ex. Y at p. 378.

In 2005 Remnant Publications sold $1,228,662 worth of literature and paid out $116,556 in royalties. See Pickle Aff., Ex. AA at ln 43d, ln 93a. In 2006 Remnant Publications sold $4,316,011 worth of literature, an increase of $3,087,349, and paid out $508,767 in royalties, an increase of $392,211. See Pickle Aff., Ex. BB at ln 43d, ln 93a. Since the increase in sales for 2006 is comparable to the figure for 3ABN's 2006 purchases of books "authored by a member of management" as reported on its financial statements, purchases that put 3ABN $2,996,016 in the red that year, the large increase in royalties paid by Remnant Publications in 2006 is due to Plaintiff Shelton's book, *Ten Commandments Twice Removed*. See Pickle Aff., Ex. U at ln. 18,

statement 2.

Document Fraud and Document Destruction

On November 2, 2006, Nicholas Miller explained that he had been forced to resign from the 3ABN Board (about a year earlier) because his billing records had been altered without his knowledge at the direction of Plaintiff Shelton. He alleged that this was in retaliation for his own refusal to stop pushing for reforms and accountability, despite Plaintiff Shelton's threats. See Pickle Aff., Ex. DD.

In early 2006, 3ABN personnel acknowledged that documents prior to 2000 were being or had been destroyed, despite the fact that there was an outstanding appeal in 3ABN's property tax case. See Pickle Aff. at ¶ 26.

Public Campaign of Defamation

On February 13, 2007, Gregory Scott Thompson of Madison, Wisconsin, son of 3ABN Board chairman Walter Thompson, under the user name of "fallible humanbeing," posted the documents associated with Plaintiff Shelton's motion on an internet forum, and, because of the erroneous statements and arguments in those documents, defamed Defendant Pickle. See Pickle Aff., Ex. EE. This is only one event of many in which the Plaintiffs or their agents have used the internet, letters, or global TV broadcasts to defame the Defendants. Yet the Plaintiffs accuse the Defendants of defamation and seek a protective order which would seriously limited the public trial of the allegations against the Defendants, and thus limit their ultimate exoneration.

ARGUMENT

I. THE THIRD-PARTY SUBPOENA SHOULD NOT BE QUASHED OR SUBJECT TO A PROTECTIVE ORDER

A. Plaintiff Shelton Lacks Standing to Object to the Third-Party Subpoena

Pursuant to Federal Rule of Civil Procedure 26(b), the scope of discovery permitted in civil litigation is quite broad:

> Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense .... Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. Fed. R. Civ. P. 26(b)(1).

In the absence of privileged information, Federal Rule of Civil Procedure 26(b) does not limit the discovery of otherwise confidential or private information.

Further, the U.S. Supreme Court has determined that bank records are "business records of the bank," not the private papers of a party, that the "issuance of a subpoena to a third party does not violate" a party's rights, and that a party possesses "no Fourth Amendment interest in the bank records that could be vindicated by a challenge to the subpoenas":

> There is no legitimate "expectation of privacy" in the contents of the original checks and deposit slips, since the checks are not confidential communications, but negotiable instruments to be used in commercial transactions, and all the documents obtained contain only information voluntarily conveyed to the banks and exposed to their employees in the ordinary course of business.

United States v. Miller, 425 U.S. 435, 445 (1976).

Various courts have repeatedly cited and applied the above case:

> Accordingly, the bank customer has no inherent right to assert ownership, possession, or inferentially, control over the release of a bank's records of his transactions. . . . Nothing in the Act [Financial Privacy Act], however, shields the records from discovery in a civil suit. . . .
>
> Absent a claim of privilege, a party has no standing to challenge a subpoena to a nonparty.

Clayton Brokerage Co. v. Clement, 87 F.R.D. 569, 571 (D. Md. 1980).

A more recent order that utilized *United States v. Miller* and that denied a motion to quash a third-party subpoena *duces tecum* seeking bank records stated, "Accordingly, the bank records at issue here are subject to discovery and do not warrant protection under Federal Rule of Civil Procedure 26(c)(7)." See *Rotoworks International v. Grassworks USA*, No. 07-05009, order

issued on Apr. 25, 2007 (W.D. Ar.).

Plaintiff Shelton acknowledges that MidCountry intends to comply with the third-party subpoena. See Shelton Memo., pp. 4–5. Since MidCountry is the owner of the business records in question, it is MidCountry that should challenge the subpoena, not Plaintiff Shelton. Yet MidCountry, after careful review by their attorney, has chosen to comply with the subpoena.

Since the records sought do not belong to Plaintiff Shelton, and since he has no claim of privilege in the bank's records, he therefore lacks standing to challenge the third-party subpoena.

B. Defendants Must be Free to Challenge Documents Produced by Plaintiff Shelton

Plaintiff Shelton in effect argues that MidCountry's business records of accounts for which he is a signatory should be sought for from him rather than from the bank to whom they belong. However, even if such an argument were sound, allegations of document fraud leveled against Plaintiff Shelton as well as allegations of document destruction make it imperative that the Defendants be allowed to adequately challenge the authenticity of any document that Plaintiff Shelton eventually produces. See Pickle Aff. at ¶ 26, Ex. DD.

Additionally, the veracity of Plaintiff Shelton is in doubt. He reported on 3ABN's 1998 Form 990 that no section 4958 excess benefit transactions had taken place and that no transfer of 3ABN's assets to himself had occurred even though he had only paid $6,139 for the house he bought from 3ABN that very year. See Pickle Aff. at ¶ 12, Ex. J at ln. 89b, Sch. A, pt. III, ln. 2e. He testified in his affidavit associated with the instant motion that D&L Publishing was a sole proprietorship while treating it on his 2001 tax return as if it was a partnership. See Shelton Aff. at ¶ 3; Pickle Aff. at ¶ 17. The discrepancies of Plaintiff Shelton's own sworn statements, even those connected with the present motion, as well as allegations of document fraud ordered by him, necessitate that the Defendants not be required to take Plaintiff Shelton's word for what MidCountry's business records really say.

C. The Third-Party Subpoena Is Profitable, Not Unduly Burdensome, to Midcountry

The fees charged by MidCountry for complying with the many subpoenas they receive indicate that complying with subpoenas is profitable for MidCountry, not burdensome. See Pickle Aff., Ex. C–E.

Additionally, Plaintiff Shelton and Attorney Hayes' efforts to portray Defendant Pickle's third-party subpoenas as a deceitful end-run to avoid dealing with motions to compel Plaintiff Shelton to produce and to avoid dealing with and waiting for the pending Motion for a Protective Order in the District of Massachusetts (see Shelton Memo., p. 8) are laughable and a fraud upon the court.

First of all, Plaintiff Shelton's memorandum acknowledges that the date of issue of the third-party subpoena in question is *prior to*, not *after*, a) the filing of Plaintiffs' Motion for a Protective Order, and b) the serving of Plaintiff Shelton's responses to Defendant Pickle's Requests for Production of Documents. See *supra*, pp. 3–4. Second, Attorney Hayes acknowledged in the status conference of December 14, 2007, that she knew that the first subpoena for MidCountry had already been served, and thus acknowledged that it predated the Plaintiffs' Motion for a Protective Order and Plaintiff Shelton's objections to Defendant Pickle's requests. See Pickle Aff. at ¶ 9. Third, Attorney Hayes was told by Judge Dennis Saylor in that same status conference that discovery would not be stayed while waiting for a decision upon the Plaintiffs' yet unfiled Motion for a Protective Order, despite Attorney Hayes' request for a stay. Id.

There simply was no end to run around, and thus the whole allegation of an end-run is a fraud upon the court.

D. The Third-Party Subpoena Is Not Overbroad

But the above is not the only fraud upon the court perpetrated by Plaintiff Shelton and his

attorney in the motion before this Court. Plaintiff Shelton's Memorandum contends that a third-party subpoena requesting bank records dating back to 1998 is overbroad because "the earliest occurrence of any event that might arguably be considered relevant to the Plaintiffs' claims is 2001." See Shelton Memo., p. 9. And yet both Attorney Hayes and her client are well aware of the 1998 private inuring of Plaintiff Shelton by 3ABN, whereby he bought a house from 3ABN for $6,139 and sold it one week later for $135,000. See *supra*, pp. 4–5.

Moreover, the Plaintiffs in the complaint of the underlying suit allege that the Defendants have defamed and disparaged by accusing 3ABN officers and directors of privately enriching themselves in violation of the Internal Revenue Code. See ¶ 46(g), quoted above. Thus, Plaintiff Shelton and his attorney's contention that MidCountry's records concerning Plaintiff Shelton's personal accounts are irrelevant to Plaintiffs' claims is an additional fraud upon the court.

Furthermore, the complaint of the underlying suit contains allegations that the Defendants have defamed and disparaged by accusing Plaintiff Shelton of misconduct regarding the royalties he earned on his book *Ten Commandments Twice Removed*. See ¶ 46(h), quoted above. This book was distributed in the millions in 2006, put 3ABN around $3 million in the red for the year, and, according to sources, enabled Plaintiff Shelton to line his pockets with hundreds of thousands of dollars of royalties to the financial detriment of 3ABN. See *supra* 7–8, Pickle Aff., Ex. X. And yet Plaintiff Shelton and his attorney perpetrate a fraud upon the court by contending in the motion at issue that bank records pertaining to Plaintiff Shelton and his publishing ventures are irrelevant to the underlying suit!

Purported "love gifts" from 3ABN to Plaintiff Shelton's family members in 1999 also show good cause for asking for MidCountry's records prior to 2001. See Pickle Aff. at ¶ 13.

Local Rule 26.5(c)(5) of the District of Massachusetts defines "parties" for discovery purposes as "the party and, where applicable, its officers, directors, employees, partners,

corporate parent, subsidiaries, or affiliates." Therefore, despite Plaintiff Shelton's contention that D&L Publishing and DLS Publishing are not "parties" in the underlying suit, "Danny Shelton" by definition includes D&L Publishing and DLS Publishing for discovery purposes. Plaintiff Shelton himself has testified in his affidavit that D&L Publishing is a D.B.A., and that he is the sole officer, director, and shareholder of DLS Publishing. See Shelton Aff. at ¶¶ 3, 5.

Moreover, 3ABN has repeatedly reported D&L Publishing and DLS Publishing in its financial statements as related parties. See Pickle Aff., Ex. L–N at note 14. Based on D.Ma. Local Rule 26.5(c)(5), named Plaintiff "3ABN" includes these entities as well for discovery purposes.

While the copyright page of *The Antichrist Agenda* states that it was published by DLS Publishing in 2004, 3ABN Books' 2005 *Mending Broken People* claimed that 3ABN Books was the real publisher of *The Antichrist Agenda*. See Pickle Aff., Ex. V–W. This fact also raises the question of whether DLS Publishing is actually an extension of Plaintiff Shelton's 3ABN operation or a partner thereof.

The relationship between Plaintiff Shelton's publishing companies and 3ABN is definitely unique. 3ABN appears to be their sole customer, they appear to report no inventory or advertising expense or shipping expense, and 3ABN promotes their publications extensively. See Pickle Aff. at ¶¶ 17–20. Plaintiff Shelton, having held absolute sway over 3ABN, had undue influence over whose books were bought and promoted by 3ABN, in violation of 3ABN's conflict of interest policy. See Pickle Aff., Ex. Y–Z. The result? 3ABN purchased millions of dollars of product from Plaintiff Shelton, Plaintiff Shelton pocketed the profits, and these transactions were not reported on 3ABN's Form 990's. See *supra*, pp. 5–6.

II. GRANTING PLAINTIFF'S REQUEST FOR A PROTECTIVE ORDER VIOLATES LOCAL RULES AND COURT ORDERS OF THE DISTRICT OF MASSACHUSETTS

Plaintiff Shelton requests this Court to impose upon MidCountry's business records the proposed Protective Order filed on December 18, 2007, in the District of Massachusetts. This proposed Protective Order is yet another attempt by the Plaintiffs to permanently impound or seal the underlying case or its documents, and what they have been unsuccessful thus far doing in Massachusetts they seek to do in Minnesota contrary to the local rules of and the orders already issued by the District of Massachusetts.

A. District of Massachusetts Has Already Refused to Impound Case

Plaintiff Shelton's Memorandum acknowledges that "a motion for impoundment [was] heard on May 10, 2007 and June 21, 2007." See Shelton Memo., p. 3. Since the case is not impounded, this is an acknowledgment by the Plaintiff that that motion was ultimately denied.

In their responses of January 9, 2007, to Defendant Pickle's Requests to Produce, the Plaintiffs took the position that all documents requested are either confidential, irrelevant, or privileged. Not even 3ABN's freely distributed monthly magazine can be produced without a confidentiality agreement or protective order in place! See Pickle Aff., Ex. A at Response to Request No. 8. It is therefore quite clear that if the proposed Protective Order is put into place, Plaintiff Shelton intends to impound the entire case by declaring confidential every possible discovery document, thus circumventing the decisions of the District of Massachusetts upon the matter of impoundment.

B. Plaintiffs' Proposed Protective Order Is Not Narrowly Tailored

On December 14, 2007, Judge Dennis Saylor made quite clear to Attorney Hayes that any proposed protective order would have to be narrowly tailored. See Pickle Aff. at ¶ 9. A cursory reading of Plaintiffs' proposed Protective Order shows that it is anything but narrowly tailored, and attempts to enable the Plaintiffs to impound just about anything they wish simply at their whim. Based on the wording of the proposed order, such impoundment could extend to

documents provided by third parties to the Defendants. See Affidavit of Jerrie Hayes (hereafter "Hayes Aff."), Exhibit H at ¶ 7. Even third-party documents received by the Defendants long before the filing of the underlying suit, if produced in discovery, would have to be turned over to the Plaintiffs after the closure of the case. Id. at ¶ 5, 20. The unsealing of any such documents would require an order of the court. Id. at ¶ 15. And that is narrowly tailored!

C. Local Rules Disallow Blanket Orders of Impoundment

Further, Local Rule 7.2(e) for the District of Massachusetts, the rule which governs impounded and confidential materials, states:

> The court will not enter blanket orders that counsel for a party may at any time file material with the clerk, marked confidential, with instructions that the clerk withhold the material from public inspection. A motion for impoundment must be presented each time a document or group of documents is to be filed.

Of course the Defendants will utilize documents obtained in discovery in future filings in the District of Massachusetts, but they are barred by that court from filing as confidential or sealed such documents without motions of impoundment being granted for each such filing. Thus, the Plaintiffs' proposed Protective Order which they seek to impose upon MidCountry's business records, which would result in the Defendants having to file under seal even third-party documents the Plaintiffs want to call confidential (see Hayes Aff., Ex. H at ¶¶ 26, 27), even documents obtained before the filing of the underlying suit, would violate the above Local Rule 7.2(e).

III. GRANTING PLAINTIFF'S REQUEST FOR A STAY OR SPECIAL MASTER VIOLATES COURT ORDERS OF THE DISTRICT OF MASSACHUSETTS OR EXCEEDS THE AUTHORITY OF THE DISTRICT OF MINNESOTA

A. Judge Dennis Saylor Already Declared That There Will Be No Stay

In the status conference of December 14, 2007, when Attorney Hayes requested a stay of discovery until their yet unfiled Motion for a Protective Order could be heard, Judge Saylor

explicitly stated that discovery would not be stayed. See Pickle Aff. at ¶ 9. In seeking a stay of the third-party subpoena in question, Plaintiff Shelton attempts to contravene Judge Saylor's decision on this matter.

B. Plaintiffs Seek to Force District of Massachusetts to Do What It Has Thus Far Refused to Do or Has Not Been Requested to Do

Plaintiff Shelton's Memorandum acknowledges the unsuccessful attempts that the Plaintiffs have made to impound the underlying case and its documents. See Shelton Memo., p. 3. In the status conference of December 14, 2007, Attorney Hayes, though aware of the multiple subpoenas Defendant Pickle had caused to be issued requesting bank records, did not seek a special master then or later. See Pickle Aff. at ¶ 9.

In seeking a special master of the District of Massachusetts appointed by the District of Minnesota, Plaintiff Shelton attempts to use the District of Minnesota to inappropriately force the District of Massachusetts to do what it has thus far decided that there is no good cause to do, and what it has thus far not been asked to do.

CONCLUSION

For all the foregoing reasons, Defendant Pickle respectfully requests the Court to deny a) Plaintiff Danny Shelton's Motion to Quash Subpoena *Duces Tecum* or, in the Alternative, for Protective Order, and to deny b) Plaintiff Danny Shelton's Motion to Stay and Remit Enforcement of Subpoena *Duces Tecum* or, in the Alternative, to Appoint a Special Master.

Respectfully submitted,

Dated: February 25, 2008

s/ Robert Pickle, pro se

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In compliance with local Rule 7.1(c), I hereby certify that this Memorandum is less than 5,000 words.

s/ Bob Pickle
Bob Pickle