

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)		
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.)	
_____)		

AFFIDAVIT OF ROBERT PICKLE

NOW COMES Robert Pickle of Halstad Township, Norman County, Minnesota, who deposes and testifies to the following under pain and penalty of perjury:

1. The parties made their initial disclosures around August 3, 2007. The Defendants turned over thousands of documents to the Plaintiffs as part of their initial disclosures, but the Plaintiffs refused to produce their Rule 26(a)(1) materials.

2. I filed a motion to compel on December 14, 2007, which resulted in an electronic order of the court dated March 10, 2008, that the Plaintiffs serve their non-confidential, non-privileged Rule 26(a)(1) materials by March 28, 2007.

3. The Plaintiffs ultimately produced 12,825 pages of such materials comprising 583 documents, of which about 11% of the total pages was duplicative. More than 12,730 pages were publicly available, easily downloadable from the internet, and already in the Defendants' possession.

4. Plaintiffs' counsel promised that confidential Rule 26(a)(1) materials would be produced by May 4, 2008, and after a bit of badgering, they were belatedly served on May 14 and received on May 16. These materials consisted of 207 pages, of which at least 74 pages were easily downloadable from the internet, 12 pages were made a part of public record in 2002 by 3ABN, and 134 pages were already in the Defendants' possession. The communication promising to serve the materials by May 4 is attached hereto as **Exhibit A**.

5. I served extensive Requests to Produce on the Plaintiffs on November 29 and December 7, 2007, and have yet to receive a single document responsive to these requests. The Plaintiffs took the position that every requested document was irrelevant, confidential, or privileged. The confidentiality order issued by this Court on April 17, 2008, resolved, to a great extent, the issues of confidentiality and privilege.

6. On April 9 and 18, 2008, I wrote Ms. Hayes seeking to schedule the inspection and copying of responsive documents to my Requests to Produce, and she declined in her reply of April 21 to give a date when that could be done. *See* Exhibit A.

7. In the status conference of May 7, 2008, Judge Saylor extended the deadline for service of interrogatories, requests to produce, and requests to admit to June 11, 2008. I expressed my concern in that conference that we needed to first receive responsive documents before being able to intelligently request additional documents.

8. Also in that same status conference, Ms. Hayes made it clear that the Plaintiffs now intended to challenge scope and relevancy of discovery. Further discovery would have to be subject to an agreement or there would be a battle brewing over these issues.

9. Judge Saylor told the parties that they could file motions seeking relief.

10. On May 9, 2008, I wrote Ms. Hayes asking for clarification as to what requested documents were considered relevant by the Plaintiffs, so that I could then more narrowly tailor a

motion to compel. She replied that she could provide such in writing by May 20, which seemed too close to June 11 to be acceptable. These communications are attached hereto as **Exhibit B**.

11. I filed a motion to compel on May 15, 2008, which is still pending. The Plaintiffs served upon me a proposed production schedule on May 27, two days before they filed their opposition to my motion on May 29. The production schedule is attached hereto as **Exhibit C**. The proposed production schedule leaves entirely open the question of relevancy, and gives no hint as to what the Plaintiffs will eventually, voluntarily produce. What that schedule proposes is that no documents would be produced until June 13, 2008, two days after the looming deadline is past, and does not allow the Defendants to fully know what the Plaintiffs believe to be relevant and privileged until July 11, 2008.

12. The Plaintiffs therefore have opted for a long, drawn-out battle over discovery in a deliberate attempt to handicap the Defendants' defense, and it has become totally impossible for the Defendants to complete their requests for discovery from the Plaintiffs by the present deadline.

13. On June 6, 2008, Plaintiffs' counsel informed me by phone that the Plaintiffs intended to further obstruct Defendants' third-party discovery efforts over the issue of scope and relevancy by interpleading motions.

14. The Defendants conferred with Plaintiffs' counsel on June 4 and 5, 2008, and Plaintiffs' counsel agreed that a 90-day extension of all discovery deadlines was both reasonable and acceptable. The plan was that the parties would stipulate to such an extension, in exchange for Defendant Pickle's agreement to table his Motion to Compel.

15. Plaintiffs' counsel offering to draft the stipulation, but the Defendants have not yet received that draft, though it was promised on June 5 that it would be faxed on June 6.

16. Given the Plaintiffs' perpetual effort to obstruct discovery as demonstrated by Ms.

Hayes' Affidavit in response to the pending Motion to Compel, which states in part, "Both Plaintiffs found ALL the Requests to Produce served upon them to be objectionable" (emphasis added); given that such obstructionism is a *modus operandi* of the Plaintiffs as demonstrated in such controversies as a) the complaint filed with the California Department of Fair Employment and Housing and the EEOC, b) *Shelton v. Shelton*, and c) the action brought by 3ABN against the Department of Revenue of the State of Illinois, which found 3ABN to be a Shelton family business largely because of 3ABN's failure to produce documents, the Defendants recognize that it will take time and resources to compel discovery from these very reluctant Plaintiffs.

17. The Defendants felt compelled to file an appropriate Motion to Extend Discovery to give adequate time to complete the various controversies, and to preserve the Defendants' right to an adequately discovered and documented defense of the allegations at bar.

FURTHER DEPONENT TESTIFIES NOT.

Signed and sealed this 10th day of June, 2008.

/s/ Bob Pickle

Bob Pickle

Subscribed and sworn to me
this 10th day of June, 2008.

/s/ Deanna M. Zimmerman

Notary Public—Minnesota

My Commission Expires Jan. 31, 2010