Ex. MM

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-FDS

DEFENDANTS' MEMORANDUM IN SUPPORT OF DEFENDANTS' OPPOSITION TO MOTION FOR PROTECTIVE ORDER LIMITING SCOPE AND METHODS OF DISCOVERY

INTRODUCTION

In the instant motion, the Plaintiffs allude to the difficulty of their case, and continue their attempts to obstruct the Defendants' discovery efforts.

Regarding their defamation claims, the Plaintiffs seek to prove that the Defendants "lacked a sufficient factual basis at the time such statements were made." (Doc. 75 p. 1). This suggests that the Plaintiffs are looking for a way around the fact that truth is an absolute defense to the claim of defamation, and that they know that the Defendants' statements were true.

While the Plaintiffs previously maintained that everything the Defendants seek is either confidential, privileged, or irrelevant, they now maintain using boilerplate objections that nearly everything is objectionable for one reason or another, even documents that are indisputably relevant. Thus they are following the one possible strategy they have, namely, to hamstring the

Defendants' case by keeping documents out of their hands or by making it overly burdensome to obtain those documents.

The Plaintiffs have not moved the Court to amend their complaint to remove the allegations that necessitate the discovery the Defendants seek. Using the instant motion to avoid producing documents requested more than six months ago is untimely at best. The Plaintiffs' Motion for Protective Order Limiting Scope and Methods of Discovery should be denied.

FACTS

The Plaintiffs served their initial disclosures on August 3, 2007. (Doc. 37-2 pp. 2–7). The Defendants turned over thousands of Rule 26(a)(1) documents to the Plaintiffs without making any claims of confidentiality. (Affidavit of Robert Pickle (hereafter "Pickle Aff.") ¶ 1). The Plaintiffs refused to turn over a single document, necessitating the filing of a motion to compel on December 14, 2007, and resulting in a court order on March 10, 2008.

Of the 12,825 pages (583 documents) of non-confidential Rule 26(a)(1) documents subsequently produced by the Plaintiffs in three unindexed PDF files, 1,385 pages (45 documents were duplicative) and more than 12,758 pages (565 documents) consisted of printouts of publicly available documents and web pages, or exhibits already used by the Plaintiffs more than a year ago. (Pickle Aff. ¶¶ 2–7, Tables 1–2). These numbers include the 250 additional pages (26 documents) which Plaintiffs' counsel falsely stated were 2500 pages, and which they thus far refuse to correct. (Doc. 68 ¶ 25, Pickle Aff. ¶¶ 6, 21).

Of particular note is the fact that the very documents used in Defendant Pickle's Exhibits A–M, O–R for the pending motion to compel are also found in the Plaintiffs' Rule 26(a)(1) materials amidst documents totaling 1152 pages. (Pickle Aff. ¶ 8, Table 3). The Plaintiffs identified these materials as being what they "may use to support [their] claims or defenses" (Doc. 37-2 p. 5), thus substantiating the fact that the Plaintiffs believe the allegations

these documents contain are relevant to the instant case.

On May 14, 2008, Plaintiffs' counsel belatedly served 207 pages of allegedly confidential, highly sensitive Rule 26(a)(1) materials, 72 pages of which was the freely and publicly available 2006 issue of *Catch the Vision*, 74 pages of which consisted of seven editions of 3ABN's corporate bylaws (the seventh of which 3ABN made a part of the public record in their property tax case), and 39 pages of which were 3ABN's 2005 employee handbook (of which the Defendants had already filed three pages as an exhibit). (Pickle Aff. ¶¶ 12–14, Table 4).

While the Defendants have not yet finished analyzing the documents belatedly produced from June 13 to June 27, 2008, in response to Defendant Pickle's requests to produce, the picture is not a whole lot better. The Plaintiffs have only claimed to produce documents responsive to 14 out of 44 requests to produce. (Pickle Aff. ¶ 16, Ex. D–F). Yet how some documents are responsive at all is unknown, a significant number are illegible, and the fact that three, four, or five copies of some documents have been produced makes the total page count sound more significant than it really is. (Pickle Aff. ¶ 16).

The Plaintiffs have thus far subpoenaed three non-parties, and the Defendants have thus far subpoenaed six. Of that six, only Remnant Publications, Inc. (hereafter "Remnant") refused to comply, taking the position that not even documents pertaining to royalty payments to Shelton were relevant to the instant case. Defendant Pickle therefore filed a motion to compel and obtained an order from the court that Remnant produce documents pertaining to 3ABN and Shelton, since the documents were deemed relevant. (Pickle Aff. ¶ 17, Ex. G–K; Doc. 76-3 pp. 52–53).

Of the other five non-parties subpoenaed by the Defendants, only Gray Hunter Stenn LLP (hereafter "GHS") resisted complying, but even they decided to comply rather than face a motion

to compel. (Pickle Aff. ¶ 18).

In the cases of the Defendants' subpoenas *duces tecum* of both MidCountry Bank (hereafter "MidCountry") and GHS, the Plaintiffs filed motions to quash. The former motion failed and compliance with the subpoena was ordered by the court. (Doc. 76-3 ¶¶ 20–22). The latter is still pending, but was untimely filed by 60 days. (Pickle Aff. ¶ 18).

ARGUMENT

I. THE INSTANT MOTION IS IN PART A MOTION TO RECONSIDER

The Plaintiffs in their December 18, 2007, motion for a protective order requested this Court to prohibit discovery of "donor names and donation information, as well as other trade secret information." (Doc. 40 p. 2). Defendant Pickle in his response to that motion countered that the Defendants needed to "conduct adequate discovery to a) differentiate donations from gross sales revenue and shipping charges, b) identify the reasons why donors have ceased giving since January 1, 2003, and c) verify that donors have ceased donating due to the actions of the Defendants rather than the actions of the Plaintiffs." (Doc. 48 pp. 4–5). This Court in its protective order of April 17, 2008, declined to prohibit the discovery of donor-identifying information.

The pertinence of these questions has not changed since this Court's April 17 order. The Defendants must still verify that donations declined because of their actions, not because of Shelton's controversial remarriage on March 8, 2006, not because of 3ABN's reduced audience due to being dropped from SkyAngel in April 2006, not because of the conclusion of the massive promotional campaign for Shelton's book, *Ten Commandments Twice Removed*, during the first half of 2006, and not because of the actions and criticisms of people other than the Defendants.

In the instant motion the Plaintiffs request the Court to reconsider its April 17 order which declined to prohibit the discovery of donor-identifying information. In doing so the

Plaintiffs present no manifest errors of law or fact, no newly discovered evidence, and no intervening change in the controlling law. The instant motion should therefore be denied, even if its being filed more than 60 days after the issuance of the order is considered timely.

II. UNTIMELY NATURE OF THE PLAINTIFFS' RESPONSES AND THE INSTANT MOTION

It should be pointed out once again that the Plaintiffs' responses to Defendant Pickle's requests to produce were untimely, and he never has stated or believed otherwise. (Pickle Aff. ¶ 19). While Ms. Hayes asserted that a lack of response to her first email of December 20, 2007, constituted an acceptance of a later response date (Doc. 68 ¶¶ 3–5), the plain fact of the matter is that Defendant Pickle never received any such email from her. (Pickle Aff. ¶ 20).

No privilege log has yet been produced. The use of boilerplate objections and the failure to produce a privilege log by the deadline imposed by Fed. R. Civ. P. 34(b)(2)(A) can result in the waiver of privilege. *See Burlington Northern & Santa Fe Railway Company v. United States District Court for the District of Montana*, 408 F.3d 1142, 1149 (9th Cir. 2005).

> "... at the outset of discovery or, at the latest, before Rule 34's 30-day time limit has expired, they may either secure an appropriate agreement or stipulation from the relevant litigants or, failing that, apply for a discovery or protective order."

Id.

Even at this late date, the final column of Plaintiffs' Exhibit 19 is not specific as to which specific objections pertain to which requests, and the Plaintiffs still have not completely specified which Plaintiff-related issues they believe to be irrelevant.

Inasmuch as the instant motion was filed so late in the case and more than six months after Defendant Pickle's requests to produce were served, the Court should deny the motion as untimely and order discovery pursuant to Fed. R. Civ. P. 26(c)(2).

III. ERRORS OF FACT IN PLAINTIFFS' FILINGS DEMONSTRATE UNRELIABILITY

Plaintiffs' memorandum (dated June 25, 2008 and signed by Mr. Simpson) in support of the instant motion falsely states that in only "one instance" the Plaintiffs filed a Motion to Quash in the District of Minnesota regarding the Defendants' subpoena of MidCountry. (Doc. 75 p. 4). Ms. Kingsbury falsely testifies under oath in her affidavit that GHS filed a motion to quash on June 16, 2008, and that GHS's supporting memorandum is attached as Exhibit 14. (Doc. 76 ¶ 15).

Turning to Exhibit 14, we find that the Plaintiffs, not GHS, filed this second motion to quash in the Southern District of Illinois, that GHS was going to comply with the subpoena, and that the memorandum in question bears the names of both Mr. Simpson and Ms. Kingsbury on its signature page. (Doc. 73-3 pp. 33, 37, 45). Further, while Ms. Kingsbury testifies that an order to show cause was issued in the Southern District of Illinois (before the Defendants could respond to the Plaintiffs' motion) (Doc. 76 ¶ 16), Mr. Simpson falsely states that GHS was ordered to produce the subpoenaed documents under seal to Magistrate Judge Hillman. (Doc. 75 p. 4).

If on June 25 Plaintiffs' counsel cannot remember what they filed just nine days earlier on June 16, the reliability of their opinions on more complex questions of this case is suspect. And this is just one example of a growing number of instances of reckless disregard for accuracy on the part of Plaintiffs and their counsel. (Pickle Aff. 21–22).

IV. PLAINTIFFS' SUBPOENAS ARGUE AGAINST LIMITING THE SCOPE OF DISCOVERY

The Plaintiffs have issued subpoenas to a) the web host BlueHost, b) Calvin Eakins, owner of BlackSDA.com, and c) Linda Shelton. (Pickle Aff. Ex. R–T).

The subpoena to BlueHost asked for "all access logs" of the entire website, AdventTalk.com. (Pickle Aff. Ex. R at p. 6). The subpoena to Calvin Eakins asked for "all access logs" from BlackSDA.com "for all threads related to 3ABN." (Pickle Aff. Ex. S at p. 5). The

typical website access log cannot be easily broken down into entries pertaining just to threads related to 3ABN. (Pickle Aff. ¶ 24).

Obtaining all access logs would give the Plaintiffs the IP addresses for every last visitor to entire websites, potentially allowing them to identify some visitors and compromising those visitors' First Amendment rights to read and/or speak anonymously. Yet even with these concerns of overbreadth and First Amendment right-violations, and concerns about identifying specific anonymous users not referenced in the Plaintiffs' complaint, the Defendants have not moved to quash these subpoenas or to limit the scope or methods of Plaintiffs' discovery.

The Plaintiffs seek the identity of "sister" on the subpoenas to BlueHost and Calvin Eakins. (Pickle Aff. Ex. R at p. 6, Ex. S at p. 5). Sister was the principal author of the material contained in Exhibits A–L filed with the pending motion to compel, material which the Plaintiffs tried to claim was irrelevant while also claiming that it represented the "rumors and innuendo" the Defendants had spread on the internet. (Doc. 63-2–63-13; Doc. 67 pp. 2, 3).

Both the subpoenas to Calvin Eakins and Linda Shelton request all correspondence that discusses, refers to, or mentions "Tommy Shelton." (Pickle Aff. Ex. S at p. 6, Ex. T at p. 5). Thus the Plaintiffs believe that the Tommy Shelton child molestation allegations and the Plaintiffs' handling of those allegations are relevant to this case.

V. DEFENDANTS' THIRD-PARTY SUBPOENAS SOUGHT RELEVANT INFORMATION

The Plaintiffs' complaint puts at issue questions of private inurement, Shelton's book deals, and his alleged attempts to hide such transactions. (Doc. 1 ¶¶ 46g–46i, 50i). Accordingly, the Defendants subpoenaed documents from Remnant that would document the flow of assets or funds to Shelton through Remnant. Inasmuch as sources claimed that Remnant had secreted Shelton's royalties in a bank account at Century Bank & Trust (Pickle Aff. ¶ 25), the Defendants also subpoenaed statements from that bank of any accounts for which Shelton was a signatory.

To further address the many allegations of private inurement the Defendants have received, they also subpoenaed bank statements from MidCountry for the ten bank accounts of which Shelton was a signatory. Such bank statements would also, *inter alia*, document whether Shelton reimbursed 3ABN for the personal legal and transportation services 3ABN paid for on his behalf.

The Plaintiffs have provided 3ABN's audited financial statements in their Rule 26(a)(1) materials, indicating their intent to use such statements to support their claims and defenses, and have maintained in their complaint that 3ABN is financially conscientious. (Pickle Aff. ¶ 4, Table 1). The Defendants' subpoena of the auditor's work papers, not believed to be in the Plaintiffs' possession, goes right to the question of the veracity of the figures on those statements, statements which contain known discrepancies. (Pickle Aff. Ex. M at pp 7–9). Further, since the Plaintiffs have put at issue the question of whether the Plaintiffs have violated the Internal Revenue Code (Doc. 1 ¶ 46g), the Defendants accordingly subpoenaed Shelton's tax returns, at least one of which Shelton himself claimed that he had falsified a figure on. (Pickle Aff. Ex. N at ¶¶ 22–24, Ex. O at Ex. Y–GG).

The Defendants have retained two auditors and a forensic accountant to assist in the evaluation of the above financial documents, and to provide expert testimony at trial regarding financial, accounting, auditing, and tax issues that are clearly relevant to the question of defamation *per se*.

The Plaintiffs' complaint put at issue whether Ervin Thomsen, Kathy Bottomley, Trenton Frost, and Oriana Frost were inappropriately terminated from the 3ABN Trust Services Department on account of their complaints about the alleged misconduct of Leonard Westphal. (Doc. 1 ¶ 48b). Accordingly, the Defendants subpoenaed documents from Kathy Bottomley pertaining to allegations of misconduct within the Trust Services Department, her termination,

and her subsequent complaints filed with the California Department of Fair Employment and Housing, and the EEOC.

A major portion of the allegedly damaging investigative reports of the Defendants has concerned the child molestation allegations against Tommy Shelton, and the Plaintiffs' handling of those allegations. (Pickle Aff. ¶ 30, Ex. X–AA). The subpoena to Pastor Glenn Dryden of Dunn Loring, Virginia, directly concerned those allegations as well as a grand piano that Tommy allegedly purchased at below fair market value from 3ABN.

The Defendants' efforts to minimize the costs to third party GHS is now a part of court record. (Pickle Aff. Ex. M at p. 3; Ex. U at p. 1).

VI. PLAINTIFFS GIVE NO BASIS FOR RESTRICTING DISCOVERY TO THE PERIOD OF 2001 TO JANUARY 2007

The Plaintiffs have presented nothing but assertions as to why discovery should be arbitrarily restricted to the period of time from 2001 to January 2007. The Defendants continue to maintain that the assertion that there is no basis for going prior to 2001 is a fraud upon the Court. (Doc. 63-28 pp. 11–12; Pickle Aff. Ex. M at pp. 8–9).

The Plaintiffs have put at issue the purchase and sale of a van. (Doc. 1 ¶ 46b). Upon information and belief, the arbitrary restricting of discovery to after January 2001 would prevent the Defendants from properly documenting what really took place regarding that van, as well as documenting a $10,000 check purportedly sent to Tommy Shelton in 1999. (Pickle Aff. Ex. N at ¶ 39).

The arbitrary restricting of discovery to before February 1, 2007 also presents problems. For one thing, the material on Save3ABN.com on January 31, 2007, nearly entirely concerned the child molestation allegations against Tommy Shelton and the Plaintiffs' handling of those allegations. (Pickle Aff. ¶ 27, Ex. V). How can the Plaintiffs seek to prohibit discovery into those allegations while simultaneously seeking to restrict discovery to prior to February 1, 2007?

Such an arbitrary restriction would also limit discovery into Shelton's resignation in September 2007, the criminal investigation of the Plaintiffs, and the payment by 3ABN of Shelton's personal legal expenses in this lawsuit. All three of these topics go to the heart of this case.

The Plaintiffs complaint contains "factual allegations" extending back "over two decades" to 3ABN's "inception." (Doc. 1 ¶¶ 9, 12, 31, 34). The Plaintiffs by their complaint have put at issue in this controversy 3ABN's "reputation, goodwill and character," whether 3ABN is "a dedicated, principled, Christ-centered ministry," whether 3ABN is "theologically faithful, operationally sound, and financially conscientious," the purpose, function, actions, votes, authority, and activities of the 3ABN Board, whether the directors or officers engaged in private inurement, whether or not the Plaintiffs have "committed financial improprieties" or "administrative and operational improprieties," and whether the officers and directors have adequately and appropriately responded to "repeated calls for investigation, reform, and accountability." (Doc. 1 ¶¶ 14, 31, 34, 46, 46a, 46e–46g, 46k, 48, 48c, 50, 50d, 50f, 50h, 52, 60, 63, 66–68, 76–78). Clearly, questions pertaining to whether the 3ABN Board's exercised proper oversight spans the entire length of 3ABN's history.

VII. AMOUNT IN CONTROVERSY AND ALLEGATIONS OF DOCUMENT FRAUD ARGUE AGAINST RESTRICTING DISCOVERY

Allowable discovery in a civil case 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.

See Fed. R. Civ. P. 26(b)(1).

The Court may limit the frequency and extent of discovery after weighing several factors, one of which is the amount in controversy. *See* Fed. R. Civ. P. 26(b)(2)(C)(iii). Inasmuch as the

Plaintiffs reported a loss of nearly $3 million in 2006 (Pickle Aff. Ex. O at ln. 18 of Ex. CCC), the amount in controversy is significant.

The Defendants have repeatedly filed a statement by former 3ABN Board member and general counsel Nicholas Miller alleging document fraud on the part of the Plaintiffs. (Doc. 63-33 p. 16; Pickle Aff. Ex. O at Ex. JJJ). This allegation necessitates adequate discovery to verify the veracity of whatever documents the Plaintiffs belatedly produce. Given the potential amount in controversy, anything less could result in the deprivation of the Defendants' property without due process of law, a violation of the Fifth Amendment of the United States Constitution.

VIII. RELEVANCE OF SPECIFIC ISSUES AND REQUESTS

A. Relevance of Phone Records in Request 27

Plaintiffs' counsel claims that the request for phone records of 3BN officers "seeks information of no discernible relevance," even though the Plaintiffs' Rule 26(a)(1) materials included material pertaining to the alleged phone record evidence that Linda Shelton had an affair (Pickle Aff. Table 2 at Doc. #10), which allegedly gave grounds for both her divorce and dismissal. And those questions have been put at issue by the Plaintiffs. (Doc. 1 ¶ 50). Correspondence from 2006 between Defendant Pickle, John Lomacang, and Mollie Steenson concerning such phone records has already been made a part of court record. (Doc. 37-2 pp. 29-39). And Shelton himself as early as March 25, 2004, was claiming to have phone records to prove his wife's guilt. (Pickle Aff. Ex. W, cf. Ex. O at Ex. GGG).

Based on 3ABN's Form 990's, in January 2003, 3ABN's officers consisted of Shelton and his then wife Linda Shelton. If phone records can prove that Linda Shelton was an adulteress, then they can potentially prove that Shelton is an adulterer, a question the plaintiffs have put at issue in this controversy. (Doc. 1 ¶¶ 50c–50d). An examination of the phone records is all the more relevant given Shelton's claim to Pastor Kevin Paulson on August 5, 2006, that his

new wife Brandy had been chasing him for seventeen years. (Pickle Aff. ¶ 29).

B. Relevance of the Child Molestation Allegations Against Tommy Shelton in Plaintiff-related Issues ¶¶ 16k–16m

The Plaintiffs accused the Defendants in their complaint of stating, "Danny Shelton and ASI conspired to prevent various allegations and issues from being included in the fact-finding tribunal." (Doc. 1 ¶ 50b). The child molestation allegations against Tommy Shelton are principal examples of those "various allegations and issues." (Pickle Aff. ¶ 30, Ex. X–AA).

Arguably, if the Plaintiffs have been damaged, it is the publishing of the child molestation allegations against Tommy Shelton that have been a primary cause, though there have been other quite egregious allegations. Consider the strong response of one donor to 3ABN upon reading the Defendants' December 7, 2006, investigative report about the allegations against Tommy Shelton. (Pickle Aff. ¶ 9, Ex. BB, A–C; Doc. 63-15).

To exclude from discovery such major allegations made by the Defendants greatly complicates matters. One would need to determine not only which donors stopped donating because of the Defendants, but also which allegations they stopped donating because of. If the allegations against Tommy Shelton were truly irrelevant, then whatever damages were caused by those allegations would have to be excluded, thus mandating even greater discovery.

The number of pages of the Plaintiffs' Rule 26(a)(1) materials devoted to the child molestation allegations against Tommy Shelton also argues for their relevance. (Pickle Aff. ¶¶ 9–11, Tables 1–2).

C. Relevance of 3ABN's Internal Damage Control in Plaintiff-related Issues ¶¶ 16p–16r

In the only cease and desist letter sent to the Defendants, Attorney Duffy on January 30, 2007, specifically identified the Defendants' objections to the Plaintiffs' use of cease and desist letters as being a part of the controversy which has led up to the instant lawsuit. (Doc. 63-18 p.

2). The writing of inappropriate cease and desist letters is therefore relevant.

The Plaintiffs have routinely engaged in a campaign of malicious slander and defamation of their critics. 3ABN Board chairman Walt Thompson has even insinuated that the Defendants have threatened Shelton's life. (Pickle Aff. Ex. CC).

Save3ABN.com's home page from the beginning has identified the first half of ¶ 16q as being the reason for its existence. (Doc. 10-2 Ex. 8). Defendant Pickle has repeatedly identified the second half of ¶ 16q as the reason why he entered the fray, since it involved the globally broadcasted trashing of Alyssa Moore's confidential allegation of sexual assault by Shelton against her. (Pickle Aff. Ex. DD).

The Plaintiffs have put at issue whether 3ABN is a principled, dedicated, Christian ministry. Every aspect of ¶¶ 16p–16r go to the heart of this question.

D. Relevance of the Use of the 3ABN Sound Center and 3ABN Music Issues in Plaintiff-related Issues ¶¶ 16y–16z

The 3ABN Sound Center was constructed at considerable expense. This topic goes to the issue of private inurement, whether 3ABN is operating as a non-profit or as a family business, and whether all expenses and revenue for the 3ABN Sound Center and 3ABN Music are being properly reported on 3ABN's financial statements and tax returns. The Defendants want to verify that Shelton and his family are not improperly, privately benefiting from the 3ABN Sound Center's services.

E. Relevance of Governmental Investigation Issues in Plaintiff-related Issues ¶ 16a

¶16aa goes to various questions put at issue by the Plaintiffs in their complaint, such as, *inter alia,* whether crimes have been committed, whether 3ABN is a dedicated and principled ministry, and whether whistle blowers were inappropriately terminated. (Doc. 1 ¶¶ 27, 75, 66, 48b). The Plaintiffs have not in this filing specifically identified what degree or breadth they

object to, but their opposition to the pending motion to compel indicates that they wish only the findings of investigations, not the facts underlying those investigations, to be discoverable. (Doc. 67 p. 11).

However, discovery in a civil case by its very nature differs from discovery in a criminal case, due to the Fifth Amendment restrictions imposed upon criminal cases. This civil case cannot therefore be restricted to the mere conclusions of criminal cases.

In both civil and criminal cases, statutes of limitations considerations may remove the motivation for discovery in a case, or may result in the dismissal of a case. Restricting discovery to mere findings in such situations would prevent the Defendants from preparing an adequate defense.

As one illustration, a witness wrote a letter describing an occasion of sexual harassment allegedly perpetrated by Leonard Westphal. (Pickle Aff. Ex. EE). Even if the California Department of Fair Employment and Housing and the EEOC chose not to proceed with their cases, the Defendants ought to be able to conduct discovery beyond mere findings since such discovery goes to the heart of this case.

F. Relevance of Administration, Board, and Theological Issues in Plaintiff-related Issues ¶¶ 16bb–16ff

The Plaintiffs have put at issue the questions of whether "the 3ABN Board of Directors has failed in its responsibility to oversee and manage 3ABN's financial assets," and whether "the 3ABN Board of Directors has failed in its responsibility to oversee the governance and administration of the organization." (¶¶ 46e, 48c). The reasons for Shelton's September 2007 resignation from the presidency of 3ABN are thus relevant to the case. If he was asked to step down because of his misdeeds, then the Defendants concerns were justified all along. But if that was not the reason for his resignation, and if the allegations of the Defendants prove true at trial, then the failure of the 3ABN Board to properly oversee 3ABN is substantiated.

Likewise, for the 3ABN Board to replace Shelton with James Gilley as president, after Mr. Gilley made it clear that he would not investigate any previous concerns or allegations (Pickle Aff. ¶ 35), makes their failure to restrain Shelton all the more striking.

The Plaintiffs have put at issue in this controversy whether 3ABN is "theologically faithful." (¶¶ 14, 66). While the First Amendment bars the state from deciding what is theologically faithful and what is not, the Seventh-day Adventist Church and its membership are not so limited. The entire case relates to the Defendants' allegations that the Plaintiffs have strayed from the standards and principles of the Adventist Church. Given the August 10, 2006, broadcast in which John Lomacang claimed that Shelton was God's anointed and could not be disciplined by any man, and given Shelton's oft-repeated claim of hearing God speak to him, the Defendants have a valid basis for including ¶ 16dd as a Plaintiff-related issue.

¶ 16ee's inquiry has a bearing on 3ABN's veracity, given the explicitly contradictory claims made by Hal Steenson of 3ABN's pastoral department on the point in question. (Pickle Aff. Ex. FF–GG). The first of Hal Steenson's emails is found in the Plaintiffs' Rule 26(a)(1) materials. (Pickle Aff. Ex. HH).

G. Relevance of the Identity of Certain Church Leaders in Request No. 15

Even though Mollie Steenson testified in her affidavit of May 9, 2007, that she believed the Defendants had a part to play in turning Seventh-day Adventist Church leadership against 3ABN (Doc. 10-3 ¶ 9), the Plaintiffs seek to prohibit discovery of the names of any such church leaders so that such a claim can be verified.

3ABN Board chairman Walt Thompson claimed that church leadership refused to hear 3ABN's side of the story, and that the world church believed that 3ABN was guilty of criminal or immoral activity. (Pickle Aff. Ex. II). The Defendants are entitled to discover whether these claims are true, claims which go to the veracity of the Plaintiffs and the question of damages.

The Plaintiffs have repeatedly made statements that they refuse to allow to be verified, and the Court has in this objection a concrete example of such.

H. Relevance of Shelton and Tommy Shelton's Health Condition in Request 24

Back about late 2003, alleged Tommy Shelton victim Roger Clem claimed that Tommy Shelton would suddenly become ill when allegations of his misconduct would arise, and then suddenly become better when the allegations had gone away. (Pickle Aff. Ex. JJ). After new allegations arose in Virginia around December 2006, Tommy Shelton allegedly had more health problems. (Doc. 63-16; Pickle Aff. Ex. KK–LL). Similarly, Shelton has been claiming health problems. (Pickle Aff. ¶ 42). The Defendants should be allowed to do enough discovery to determine whether such claims of health problems are mere sympathy getting devices totally unbecoming of leadership of a dedicated, principled, Christian ministry, mere diversion tactics to evade responsibility for sexual and fiscal misconduct, or whether such claims are indeed genuine.

I. Relevance of Documents Pertaining to 3ABN's Foreign Affiliates in Request 5

There are a number of issues that such documents would speak to, including whether the Plaintiffs have complied with domestic and foreign laws in the setting up and operation of their foreign affiliates. This is particularly relevant in light of a 3ABN Board document that suggests that 3ABN personnel were looking for creative ways to evade the requirements of foreign countries. (Pickle Aff. ¶ 43).

J. Relevance of Documents Pertaining to Linda Shelton's Alleged Affair in Requests 34 and 4

The Plaintiffs objected to every single request to produce (Doc. 68 ¶ 6), and did not produce a thing until June 13, 2008. They have now allegedly finished their intended production as of June 27, 2008. Noticeably absent from their production are the various documents requested in the greater and lower half of Request 34. Indeed, page 15 of Plaintiffs' Exhibit 19 makes it quite clear that the Plaintiffs object to producing any of that material, material which

goes directly to the question of the alleged affair of Linda Shelton.

And this is no accident, for the pregnancy test receipt of Request 4 is also objected to. But let there be no mistake: Shelton has claimed to be in possession of the pregnancy test receipt, a recording of a telephone conversation, video footage, and a photograph of a watch, and he has used all these things as evidence of his Linda Shelton's alleged affair, a key question the Plaintiffs have put at issue in their complaint. (Pickle Aff. Ex. NN–TT).

IX. DISCOVERY FROM MORE CONVENIENT SOURCES

The Plaintiffs maintain in their filing of June 25, 2008, that certain documents should be obtained from more convenient sources. (Doc. 75 p. 14). However, if the Plaintiffs have the trial records in their possession, they would be a more convenient source than a courthouse 1,000 miles away that does not allow individuals to make their own copies on their own equipment.

As the letter sent by Defendant Pickle to Plaintiffs' counsel on June 25, 2008, makes clear, a letter sent more than eight hours before they filed their motion, there are 3ABN publications that simply cannot be found on 3ABN's website. (Pickle Aff. Ex. II).

Overall, it would seem that just about any source would be more convenient than the Plaintiffs and their allies, since obtaining anything substantive requires the intervention of the Court!

CONCLUSION

Since the delay and evasion tactics of the Plaintiffs have gone on long enough, Defendant Pickle prays the Court to deny the Plaintiffs' untimely motion, to order discovery pursuant to Fed. R. Civ. P. 26(c)(2), and to award expenses to Defendant Pickle pursuant to Fed. R. Civ. P. 26(c)(3).

Respectfully submitted,

Dated: July 9, 2008

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

and

/s/ Gailon Arthur Joy, *pro se*
Gailon Arthur Joy, *pro se*
Sterling, MA 01564
Tel: (978) 422-3525