

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re)	Chapter 7, No. 07-43128-JBR
)	
GAILON ARTHUR JOY)	
)	
Debtor)	

GAILON ARTHUR JOY)	Adv. Proceeding No. 07-4173
)	
Plaintiff)	
)	
v.)	
)	
THREE ANGELS BROADCASTING)	
NETWORK, INC.,)	
DANNY LEE SHELTON,)	
JOHN P. PUCCI, ESQ.,)	
GERALD S. DUFFY, ESQ.,)	
FIERST, PUCCI & KANE, LLP,)	
and)	
SIÉGEL BRILL GRUEPNER)	
DUFFY & FOSTER, P.A.)	
)	
Defendants)	

**MOTION TO DISMISS AMENDED COMPLAINT, OR IN THE ALTERNATIVE, TO
TREAT ADVERSARY PROCEEDING AS A CONTESTED MATTER UNDER FEDERAL
RULE OF BANKRUPTCY PROCEDURE 9014**

To the HONORABLE JOEL B. ROSENTHAL, Bankruptcy Judge:

Now come Three Angels Broadcasting Network, Inc. ("3ABN") and Danny Lee Shelton ("Shelton"), defendants in the above-captioned adversary proceeding, and hereby move to dismiss the Plaintiff's Amended Complaint, or in the alternative, seek an Order treating this Adversary Proceeding as a contested matter

pursuant to Fed. R. Bankr. P. 9014. In support thereof, 3ABN and Shelton respectfully represent as follows:

1. On August 14, 2007 ("Petition Date"), the Plaintiff filed a Voluntary Petition under the provisions of Chapter 7 of the United States Bankruptcy Code, which case is pending before this Court as Docket No. 07-43128-JBR (the case underlying this instant Adversary Proceeding).

2. Janice G. Marsh is the duly appointed Chapter 7 Trustee in the Plaintiff's Chapter 7 case and continues to serve in that capacity.

3. On April 6, 2007, 3ABN and Shelton commenced an action in the U.S. District Court for the District of Massachusetts entitled Three Angels Broadcasting Network, Inc., an Illinois non-profit corporation and Danny Lee Shelton v. Gailon Arthur Joy and Robert Pickle, which case is pending as Case No. 4:07-cv-40098-FDS ("Civil Action").

4. 3ABN is an entity founded in Illinois in the mid 1980's to operate and manage a Christian television and radio broadcast ministry; one of its founders is Shelton, also a plaintiff in the Civil Action. 3ABN's slate of programming includes both spiritual and lifestyle presentations, and it has a ministry focus of "Mending Broken People".

5. Over the past two decades, 3ABN has spent enormous resources to promote its message and publicizing itself through advertising, live events, direct mail campaigns, and group presentations. The result of this effort is that 3ABN is now one of the larger Christian networks in North America,

broadcasting 24 hour television and radio programming to viewers and listeners that are estimated to number well into the millions. While it maintains its headquarters in West Frankfort, Illinois, it also operates facilities in Russia, the Philippines and New Guinea.

6. In order to provide its programming, to retain current viewers and listeners and to attract new ones, 3ABN depends on its reputation and goodwill. Most of its operations are funded by the donations of viewers and supporters.

7. To help it protect this reputation and goodwill, 3ABN has registered "3ABN" and "Three Angels Broadcasting Network" as trademarks with the U.S. Patent and Trademark Office.

8. 3ABN also has a significant internet operation, primarily through its website, www.3abn.org (targeting North American audiences), and through secondary websites www.3abnaustralia.org.au (for Australia) and www.3angels.ru (for Russia). These websites offer pastoral support, streaming audio and video programming and information about 3ABN's mission and operations. Visitors to the websites can also purchase books and recordings produced by 3ABN and can make donations to its ministry.

9. In order to protect its trademarks and to use the 3ABN marks on the internet, 3ABN has registered over 3 dozen domain names, all of which contain the "3ABN" trademark, including but not limited to 3ABN.com, 3ABN.org, 3ABN.tv, 3ABNtelevision.com, 3ABNradio.com, 3ABNmusic.com, 3ABNbooks.com, 3ABNtv.com, and 3ABNtv.org.

10. In January 2007, 3ABN discovered that the Debtor had registered the domain name "save3ABN.com". In March 2007, 3ABN further discovered that the Debtor had registered the domain name "save3ABN.org" and that the website at www.save3ABN.org automatically redirected visitors to the www.save3ABN.com website. Neither of these two websites that the Debtor registered was listed as assets in his bankruptcy schedules. Those websites now point to a similarly named website that the Defendants believe is controlled by the Debtor which contains an archive of the information at "save3ABN.com".

11. According to 3ABN, the website at www.save3ABN.com contained and now points to another similarly named website that contains information that is antithetical to 3ABN's message, and contains gross misstatements of fact concerning 3ABN's actions and operations, and contains baseless and untrue allegations of criminal conduct by 3ABN, Shelton and persons involved with 3ABN, and also contains disparaging characterizations of 3ABN, its broadcast network and Shelton.

12. The Debtor had also embedded www.save3ABN.com with the metatags "3ABN", "3-ABN", and "Three Angels Broadcasting Network", which are words and phrases used by internet search engines to locate websites that use 3ABN trademarks.

13. In the Civil Action, 3ABN alleges that the save3ABN.com and save3ABN.org domains and websites, as well as the use of the metatags as described above, incorporate 3ABN's trademark that it has used continuously for over 20 years in connection with its ministry, broadcasts and audio and video programming, and as such, infringes on those trademark rights.

Additionally, the Debtor's statements on his website about 3ABN and Shelton are defamatory in nature.

14. The domains save3ABN.com and save3ABN.org now point to the website at "www.save-3ABN.com" (with a hyphen), which the Defendants believe the Debtor controls. The save-3ABN.com website contains the same information that was formerly accessible through save3ABN.com.

15. The Complaint filed in the Civil Action seeks damages for the Debtor's conduct, as well as injunctive relief requiring, among other things, that the Debtor stop infringing on 3ABN's trademarks and using the aforementioned domains and websites.

16. 3ABN and Shelton believe that due to the Debtor's continuing infringement of 3ABN's marks and his continuing defamatory conduct, cause existed pursuant to 11 U.S.C. §362(d)(1), to grant them relief from the automatic stay for the purpose of proceeding with the Civil Litigation to obtain injunctive relief related to the Debtor's continued, postpetition, use of the domains and websites. Accordingly, on November 13, 2007, 3ABN and Shelton filed a Motion in the underlying case seeking relief from the automatic stay, which was allowed on November 21, 2007.

17. On November 15, 2007, the Plaintiff filed the original complaint in this Adversary Proceeding, alleging that certain actions that Defendants might have undertaken subsequent to the Petition Date constituted violations of the automatic stay. On November 20, 2007, 3ABN and Shelton filed a Motion to Dismiss said original complaint, arguing, among other things, that the

requested relief should have been brought by Motion, and further, that the Plaintiff failed to specify the injury that he suffered as a result of any violation of the automatic stay.

18. On February 1, 2008, the Bankruptcy Court entered an Order allowing the Motion to Dismiss, and further stating that the "Plaintiff has failed to allege all elements of 11 U.S.C. §362(k) under the standard set forth in the Supreme Court Bell Atlantic case. Plaintiff shall have until February 11, 2008 to file an amended complaint."

19. On February 11, 2008, the Plaintiff filed his Amended Complaint, which is essentially identical to the original Complaint, except for (a) the addition of an exhibit and reference to the exhibit (a letter from general counsel for 3ABN to the Debtor's counsel concerning the cancellation of a deposition in connection with the Civil Action), (b) a statement concerning the entry of the Order of this Court allowing the Defendants' Motion for Relief from Stay in the underlying Chapter 7 case, (c) two paragraphs (now numbered 28 and 29) in which the Plaintiff states that he spent approximately 10 hours in attending to matters in connection to the Civil Action prior to the entry of the Order lifting the stay and that he incurred legal fees, and (d) a phrase in Paragraph 30 that the Defendants are liable for Plaintiff's costs.

20. In Paragraph 28 of the Amended Complaint, the Plaintiff states that he "cannot quantify his lost profits" in connection with the Defendants' alleged stay violation, but then states that he previously performed paralegal work for which he was compensated at \$25.00 per hour. The Plaintiff finally uses

that benchmark as the basis for saying that he suffered a personal loss of \$250.00.

21. In Paragraph 29 of the Amended Complaint, the Plaintiff states that he incurred legal fees and costs of \$1,593.60 in connection with the alleged stay violations.

22. Defendants state that Plaintiff's Amended Complaint does not allege an injury sufficient to trigger any liability under Section 362(k), and therefore fails to satisfy the heightened pleading requirements of Bell Atlantic Corporation v. Twombly, 127 S. Ct. 1955 (2007). Plaintiff has not alleged that his spending of time to deal with matters pertaining to the Civil Action prior the lifting of the automatic stay caused him to lose any property, business opportunities or work for which he would have earned some income. This is consistent with his statement in Paragraph 28 of the Amended Complaint that the Debtor "cannot quantify his lost profits". That is because there must have not been any lost profits. Attempting to ascribe a paralegal's compensation rate to the time he spent on attending to matters pertaining to the Civil Action, when the Debtor did not otherwise actually suffer any economic harm such as the loss of income opportunities, is not an appropriate measure of injury. Furthermore, the Plaintiff did not allege that he suffered any emotional distress. See In re Bailey, 2007 WL 2049007, *5 (Bankr. S.D.N.Y. 2007). Accordingly, the Defendants maintain that the Debtor did not suffer any actual injury, and is not entitled to any relief. Additionally, the Defendants believe that where there is no actual injury, it is inappropriate to assess almost \$1,600.00 in legal fees and costs that the Plaintiff states he incurred in connection with the alleged stay violations.

23. Additionally, Fed. R. Bankr. P. 7001 sets forth those bankruptcy related matters that are to be brought by Adversary Proceeding. 3ABN and Shelton do not believe that any of the types of matters described in Rule 7001 apply to the Complaint filed in this case. Although Rule 7001(1) includes "a proceeding to recover money or property", the instant action seeks redress for alleged automatic stay violations, and in connection therewith, the Plaintiff essentially requests \$5,000.00 as a sanction for each stay violation. As stated above, the Defendants believe that the Amended Complaint does not describe any real economic or emotional injury suffered by the Plaintiff.

24. Furthermore, with respect to his statement that the Defendants' efforts to simply preserve evidence make it impossible to conduct his normal business operations, 3ABN and Shelton note that in his Schedules, the Debtor discloses that his business is that of a "Loan Consultant" through the business or trade name of "Nemco". 3ABN and Shelton do not seek the preservation of any information, computer records or electronic evidence pertaining to a loan consultation business that the Debtor may operate; they wish to only preserve the evidence that pertains to his operation of the "save3abn.com" and "save3abn.org" domains and websites, through which 3ABN and Shelton assert that the Debtor is infringing trademark rights and defaming and interfering with the business of 3ABN and Shelton. Nothing is disclosed in the Debtor's schedules about the "save3abn.com" and "save3abn.org" websites, despite the fact that the "WHOIS" internet registry as of November 2007 (when the original Complaint was filed) discloses the Debtor as the registrant of those domains. See WHOIS registry printout

attached hereto as Exhibit "A". Lastly, a review of those websites reveals nothing pertaining to any loan consultation business. Accordingly, 3ABN and Shelton maintain that this further demonstrates that the Plaintiff/Debtor has suffered no actual damages or injury.

25. As he does not appear to have suffered any actual damages, therefore, 3ABN and Shelton maintain that the Debtor's request for \$5,000.00 per alleged stay violation is in the nature of a sanction or punitive damages, which does not seek to recover anything that was lost. Rather, he seeks to impose these sanctions. Rule 7001(1) states that an adversary proceeding includes a proceeding "to recover money". "Recover" implies that something was lost. In this situation, where the Debtor does not appear to have lost anything, he cannot be seeking the "recovery" of anything. Instead, he appears to be seeking the *imposition* of sanctions, and 3ABN and Shelton maintain that an Adversary Proceeding is an inappropriate procedural tool through which to do that. Furthermore, Defendants maintain that where there is no economic or emotional harm that actually is suffered by the Plaintiff, punitive sanctions cannot be imposed. See, e.g., In re McHenry, 179 B.R. 165, 168-69 (9th Cir. BAP 1995).

26. In addition to Defendants' argument that Plaintiff has not demonstrated an actual injury, 11 U.S.C. §362(k) requires a Debtor asserting a stay violation to establish a "willful" violation. The automatic stay does "not shield the debtor from all the vicissitudes, aggravations and anxiety of everyday life." In re Sullivan, 357 B.R. 847, 854 (Bankr. D. Colo. 2006), quoting In re Peterson, 297 B.R. 467, 470 (Bankr. W.D.N.C. 2003). As noted above, the Debtor has not adequately

specified actual harm that was allegedly caused by the actions of Defendants. The preservation of evidence in connection with the Civil Action which itself was precipitated by the Debtor's actions cannot be more than a minor inconvenience, and as stated above, is not related to the Debtor's business disclosed in his Schedules. Not every violation of the automatic stay should result in punishment to the alleged offender. In re McHenry, 179 B.R. at 168. The automatic stay "is intended to be a shield protecting debtors and their estates, and should not be used as a sword for their enrichment." Id. at 169. The Defendants maintain that in this case, where they believe the Plaintiff cannot even quantify any actual damages that he directly suffered beyond attorneys fees that the Defendants believe he is not entitled to, a request for sanctions of \$35,000.00 is wholly inappropriate and is simply an attempt by the Plaintiff to enrich himself for what is at most a minor inconvenience.

27. Furthermore, the Court should be aware that at the hearing that took place on November 13, 2007 in the U.S. District Court (in the nature of a status conference to discuss the effect of the litigation as a result of the Debtor's bankruptcy filing), nothing took place to advance the case for 3ABN or Shelton. The District Court, aware of the Debtor's Chapter 7 case, indicated that the Debtor was to deliver certain electronic evidence directly to the Court (not to 3ABN or Shelton). That was done deliberately to simply preserve the status quo, not to advance the case.

28. Therefore, the Debtor's Adversary Proceeding, filed shortly after the November 13th hearing in the District Court (and amended on February 11, 2008), is disingenuous at best, and fails to state a basis for relief. Accordingly, there can be no

claim under Section 362(k). In re Sullivan, 357 B.R. at 854. Therefore, the Debtor's Amended Complaint must be dismissed for failure to state a claim upon which relief can be granted. Fed. R. Bankr. P. 7012.

29. In the alternative, 3ABN and Shelton request that if the Court does not dismiss the Plaintiff's Amended Complaint, that it be treated as a contested matter pursuant to Fed. R. Bankr. P. 9014. In this case, there are not likely to be any significant contested facts – the interpretation of those facts will be at issue. The letters that the Debtor describes in his Amended Complaint speak for themselves, and the participation of parties in connection with the Civil Action can be reviewed through the docket in that case as well as through transcripts of the relevant hearings or proceedings.

30. The streamlined rules governing contested matters under Rule 9014 are more than ample to resolve this matter in an expeditious manner. There are numerous decisions dealing with stay violations that are brought by Motion (as a contested matter through Rule 9014). See, e.g., In re Hildreth, 357 B.R. 650 (Bankr. M.D. Ala. 2006); In re LTV Steel Co., Inc., 264 B.R. 455 (Bankr. N.D. Ohio 2001); In re Timbs, 178 B.R. 989 (Bankr. E.D. Tenn. 1994). Furthermore, the last sentence of Fed. R. Bankr. P. 1001 states that the Federal Rules of Bankruptcy Procedure "shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding." Treating this as a Rule 9014 contested matter is all that would be required to secure the "just, speedy, and inexpensive determination" of any issues raised by the Debtor, especially where there are likely to be very few, if any, facts that will be contested.

31. The other defendants named in the Debtor's complaint have all indicated to 3ABN and Shelton that they assent to the relief requested by this Motion.

WHEREFORE, 3ABN and Shelton respectfully request the entry of an Order dismissing the Plaintiff's Amended Complaint, or in the alternative, that said Complaint be treated as a Motion filed under Rule 9014 for all purposes.

THREE ANGELS BROADCASTING
NETWORK, INC.
DANNY LEE SHELTON

Dated: February 21, 2008

By: /s/ George I. Roumeliotis
JOSEPH B. COLLINS, ESQ.
(BBO No. 092660)
GEORGE I. ROUMELIOTIS, ESQ.
(BBO No. 564943)
HENDEL & COLLINS, P.C.
101 State Street
Springfield, MA 01103
Tel. (413) 734-6411
groumeliotis@hendelcollins.com

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EXHIBIT "A"

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WHOIS Search Results

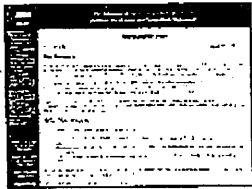


Available save3abn extensions:

.us	.mobi	.info	.biz	.de	.tv	.co.uk	.eu	.bz
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Order Selected Domain(s) >>

Your WHOIS Search Results



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- Backorder - Try to get this name when it becomes available.
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The information in this whois database is provided for the sole purpose of assisting you in obtaining information about domain name registration records. This information is available "as is," and we do not guarantee its accuracy. By submitting a whois query, you agree that you will use this data only for lawful purposes and that, under no circumstances will you use this data to: (1) enable high volume, automated, electronic processes that stress or load this whois database system providing you this information; or (2) allow, enable, or otherwise support the transmission of mass, unsolicited, commercial advertising or solicitations via facsimile, electronic mail, or by telephone to entities other than your own existing customers. The compilation, repackaging, dissemination or other use of this data is expressly prohibited without prior written consent from this company. We reserve the right to modify these terms at any time. By submitting an inquiry, you agree to these terms of usage and limitations of warranty. Please limit your queries to 10 per minute and one connection.

Registrant:

G. Arthur Joy
3 Clinton Road, Box 1425
Sterling, MA 01564
US

Registrar: NAMESDIRECT
Domain Name: SAVE3ABN.COM
Created on: 09-JAN-07
Expires on: 10-JAN-08
Last Updated on: 11-JAN-07

Administrative, Technical Contact:

Joy, G. Arthur gabbjoy4@comcast.net
3 Clinton Road, Box 1425
Sterling, MA 01564
US
(978) 422-3464

Domain servers in listed order:

NS1.BLUEHOST.COM
NS2.BLUEHOST.COM

End of Whois Information

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Current Registrar: MYDOMAIN, INC.

IP Address: [69.89.27.211](#) (ARIN & RIPE IP search)
IP Location: US(UNITED STATES)-UTAH-OREM
Record Type: Domain Name
Server Type: Apache 1
Lock Status: clientDeleteProhibited
Web Site Status: Active
DMOZ: no listings
Y! Directory: [see listings](#)
Secure: No
E-commerce: No
Traffic Ranking: 1
Data as of: 31-Jul-2007



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- [IP Address](#)

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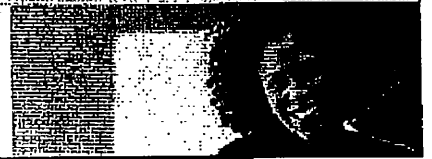
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WHOIS Search Results

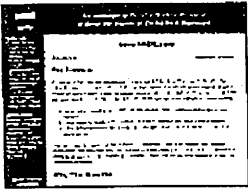


Available save3abn extensions:

.us	.mobi	.info	.biz	.de	.tv	.co.uk	.eu	.bz
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Domain ID:D137232849-LROR
Domain Name:SAVE3ABN.ORG

Created On:14-Jan-2007 05:11:41 UTC
 Last Updated On:16-Mar-2007 03:47:36 UTC
 Expiration Date:14-Jan-2008 05:11:41 UTC
 Sponsoring Registrar:MyDomain, Inc. (R92-LROR)
 Status:OK
 Registrant ID:DOT-Y11PM3XIRGTX
 Registrant Name:G. Arthur Joy
 Registrant Street1:3 Clinton Road, Box 1425
 Registrant Street2:
 Registrant Street3:
 Registrant City:Sterling
 Registrant State/Province:MA
 Registrant Postal Code:01564
 Registrant Country:US
 Registrant Phone:+1.9784223464
 Registrant Phone Ext.:
 Registrant FAX:
 Registrant FAX Ext.:
 Registrant Email:gabbjoy4@comcast.net
 Admin ID:DOT-TP9O28IYN38H
 Admin Name:G. Arthur Joy
 Admin Street1:3 Clinton Road, Box 1425
 Admin Street2:
 Admin Street3:
 Admin City:Sterling
 Admin State/Province:MA
 Admin Postal Code:01564
 Admin Country:US
 Admin Phone:+1.9784223464
 Admin Phone Ext.:
 Admin FAX:
 Admin FAX Ext.:
 Admin Email:gabbjoy4@comcast.net
 Tech ID:DOT-1D086KGMRTWH
 Tech Name:G. Arthur Joy
 Tech Street1:3 Clinton Road, Box 1425
 Tech Street2:
 Tech Street3:
 Tech City:Sterling
 Tech State/Province:MA
 Tech Postal Code:01564
 Tech Country:US
 Tech Phone:+1.9784223464
 Tech Phone Ext.:
 Tech FAX:
 Tech FAX Ext.:
 Tech Email:gabbjoy4@comcast.net
 Name Server:NS1.BLUEHOST.COM
 Name Server:NS2.BLUEHOST.COM
 Name Server:
 Name Server:
 Name Server:
 Name Server:
 Name Server:
 Name Server:



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Domain Name

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Name Server:
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Name Server:

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- [IP Address](#)

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IP Address: [69.89.27.211](#) (ARIN & RIPE IP search)
IP Location: US(UNITED STATES)-UTAH-OREM
Record Type: Domain Name
Server Type: Apache 1
Web Site Status: Active
DMOZ: no listings
Y! Directory: [see listings](#)
Web Site Title: Save 3ABN (Three Angels Broadcasting Network)
Meta Keywords: Danny Shelton, Linda Shelton, Tommy Shelton
Secure: No
E-commerce: No
Traffic Ranking: Not available
Data as of: 31-Jul-2007



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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
In re)	Chapter 7, No. 07-43128-JBR
GAILON ARTHUR JOY)	
Debtor)	
_____)	
GAILON ARTHUR JOY)	Adv. Pro. No. 07-4173
Plaintiff)	
v.)	
THREE ANGELS BROADCASTING)	
NETWORK, INC.,)	
DANNY LEE SHELTON,)	
JOHN P. PUCCI, ESQ.,)	
GERALD S. DUFFY, ESQ.,)	
FIERST, PUCCI & KANE, LLP,)	
and)	
SIEGEL BRILL GRUEPNER)	
DUFFY & FOSTER, P.A.)	
Defendants)	
_____)	

CERTIFICATE OF SERVICE

I, GEORGE I. ROUMELIOTIS, ESQ. of the law firm of HENDEL & COLLINS, P.C., 101 State Street, Springfield, Massachusetts, do hereby certify that on the 21st day of February, 2008, I electronically filed the Motion of Three Angels Broadcasting Network, Inc. and Danny Lee Shelton to Dismiss Amended Complaint, or in the Alternative, to Treat Adversary Proceeding as a Contested Matter Under Rule 9014. I further hereby certify

that upon receipt of the Notice of electronic service of said Motion, a copy thereof will be served by first class mail, postage prepaid, to any of the parties listed on the attached Exhibit "A" not noted as having received electronic service, said service being made on the 21st day of February, 2008.

/s/ George I. Roumeliotis
GEORGE I. ROUMELIOTIS, ESQ.
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EXHIBIT "A"

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