

taken, nor have any dispositive motions been filed or served. The parties recently stipulated to an order extending discovery and unexpired deadlines by 90 days.

3. On August 14, 2007, Gailon Arthur Joy filed for bankruptcy in the United States Bankruptcy Court for the District of Massachusetts, Case No. 07-43128-JBR. The bankruptcy court order lifting the automatic stay required 3ABN to give up its right to seek damages against Mr. Joy for prepetition actions. A true and correct copy of the bankruptcy court order is attached hereto as Exhibit 1.

4. Based on court filings by Defendant Robert Pickle seeking relief from the requirement to appear in person on the basis of hardship, among other things, it appears that he is a man of modest means who would be unable to pay any substantial award of damages. True and correct copies of two such filings by Mr. Pickle are attached as Exhibit 2.

5. Attached hereto as Exhibit 3A and 3AB are two internet postings made by Gailon Arthur Joy that refer to what we believe can only be Confidential documents produced in this litigation.

FURTHER YOUR AFFIANT SAYETH NOT.

Dated: October 23, 2008

s/M. Gregory Simpson
M. Gregory Simpson

Subscribed and sworn to me
this 23rd day of October, 2008.

s/ Amy Jo Ditty
Notary Public
My Commission Expires: January 31, 2010

Certificate of Service

I, M. Gregory Simpson, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on October 23, 2008.

Dated: October 23, 2008

/s/ M. Gregory Simpson
M. Gregory Simpson