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' MOTION TO FILE UNDER SEAL

INTRODUCTION

The Defendants seek leave of the Court to file under seal Exhibit A to the Affidavit of Robert Pickle filed with Defendants' Reply Memorandum in Support of Defendants' Motion to Impose Costs upon the Plaintiffs. Exhibit A consists of documents produced by Remnant Publications, Inc. (hereafter "Remnant") pertaining to kickbacks and/or royalties paid by Remnant to DLS Publishing, Inc. (hereafter "DLS") from 2005 through 2007. These documents were marked confidential by Remnant's counsel.

FACTS AND ARGUMENT

The Defendants understood that Remnant had been the designating party that designated these documents as being confidential. (Affidavit of Robert Pickle (hereafter "Pickle Aff.") ¶ 1, Ex. A). However, when the Defendants notified Remnant's counsel that they were contemplating using certain documents in a filing, Remnant's counsel informed the Defendants that Remnant

was not the designating party. (Pickle Aff. ¶ 2, Ex. B). That leaves one or the other or both of the Plaintiffs as the designating parties.

In the motion hearing of March 4, 2008, in the District of Minnesota, the Honorable Arthur J. Boylan expressed skepticism as to how Danny Lee Shelton (hereafter "Shelton"), individually, had standing to file a motion to quash the Defendants' subpoena seeking records of a bank pertaining to, *inter alia*, DLS Publishing, Inc. (Pickle Aff. ¶ 3). Magistrate Judge Boylan stated that it didn't seem like it could be both ways: If incorporating insulated an individual from legal liability, then that individual could not legally act as if his corporation was but his DBA. (*Id.*) Thus the Defendants question how Shelton can be the designating party for the documents under consideration. Counsel for DLS has not made an appearance in the instant case, and the Defendants have received no communications from any attorney claiming to represent DLS.

The Defendants also question how Three Angels Broadcasting Network, Inc. (hereafter "3ABN") can designate documents pertaining to Remnant's payments to DLS as confidential, since 3ABN does not own or control DLS (Doc. 63-34 ¶ 5), and records of payments by Remnant to DLS cannot constitute a trade secret, proprietary information, or confidential business or commercial information of 3ABN.

¶ 1 of the confidentiality order of the instant case (Doc. 60) specifically states that information designated confidential cannot be "generally known or readily available to the public."

Because Remnant and 3ABN are both non-profit 501(c)(3) organizations that are required to file Form 990's with the Internal Revenue Service, and because those filings (and 3ABN's audited financial statements) are required by law to be open to public inspection, information about Remnant's payments to DLS can be deduced from those filings by any member of the public. (Doc. 81-7 pp. 24–26; Doc. 81-4 p. 23 at statement 1; Doc. 81-4 p. 27 at statement 2; ln.

43 of Doc. 81-4 at pp. 29, 32, 35, 38, and 42; ln. 43 of Doc. 152-10).

Table 1 gives the range of figures for Remnant's payments to DLS that can be derived from Remnant's Form 990's, especially in light of information from sources that royalty payments to others than Shelton don't "amount to anything," and that Remnant started doing printing and publishing for the Plaintiffs around mid to late 2004 (Pickle Aff. ¶ 4). The third through seventh columns subtract the royalty payment for the years 2000 through 2004 from the royalty payments for the years 2005 through 2007. The result is an estimate of the amount that the royalty payments for the years 2005 through 2007 exceeded that of non-DLS payees.

Table 1: Remnant's Payments to DLS, Derived from Remnant's Form 990's

Year	Royalties	– 2000	– 2001	– 2002	– 2003	– 2004
2000	$6,542					
2001	$17,652					
2002	$12,438					
2003	$16,226					
2004	$26,178					
2005	$116,556	$110,014	$98,904	$104,118	$100,330	$90,378
2006	$508,767	$502,225	$491,115	$496,329	$492,541	$482,589
2007	$202,917	$196,375	$185,265	$190,479	$186,691	$176,739
Totals		**$808,614**	**$775,284**	**$790,926**	**$779,562**	**$749,706**

Documents from Remnant that give totals varying greatly from the above estimates would consequently contain information not readily accessible to the public, and should thus remain under seal if they contain information that is also a trade secret, or constitutes confidential business or commercial information or proprietary information. Those documents that do not qualify should become part of the public record of this case.

Especially should this be given the fact that the Plaintiffs put these royalty and/or kickback payments from Remnant at issue in the instant case. (Doc. 1 ¶¶ 46h–46i, 50i). If the Plaintiffs object to these documents becoming part of the public record, such objection would constitute *prima facia* evidence that they never intended this case to go to trial. It would also

serve as *prima facia* evidence once again that 3ABN Board chairman Walter Thompson lied when he said that the sole purpose of the instant case was to expose the truth, not hide the truth. (Doc. 114-4 p. 2; Doc. 114-5 p. 1).

CONCLUSION

The documents in question, after being filed under seal, should remain under seal if they truly constitute a trade secret, proprietary information, or confidential business or commercial information of either Shelton as an individual or 3ABN, if such trade secret or confidential information is not generally known or readily available to the public, and if Walter Thompson lied when he said that the purpose of the instant case was to expose the truth, not hide the truth. Otherwise, the documents should become a part of the public record of this case.

Respectfully submitted,

Dated: December 8, 2008

/s/ Gailon Arthur Joy, *pro se*
Gailon Arthur Joy, *pro se*
Sterling, MA 01564
Tel: (978) 333-3067

and

/s/ Robert Pickle, *pro se*
Robert Pickle, *pro se*
Halstad, MN 56548
Tel: (218) 456-2568
Fax: (206) 203-3751