SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION -- FIRST DEPARTMENT

JOSEPH RAKOFSKY, *et ano.*, Plaintiffs, *-against-* THE WASHINGTON POST COMPANY, *et al.*, Defendants.	**N.Y. County Clerk's Index No. 105573/11** **REPLY AFFIDAVIT**

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JOSEPH RAKOFSKY, being duly sworn, deposes and says:

INTRODUCTION

1. I am one of the two Plaintiffs in this action. At all times mentioned in this action I have resided in New York County at 67 Wall Street, Apt. 24G, New York, New York 10005.

2. RAKOFSKY LAW FIRM, P.C. ("RLF") is a professional service corporation organized under the laws of New Jersey, with a place of business at 4400 Route 9, Freehold, New Jersey 07728. RLF is also a Plaintiff in this action at this time, but its involvement in this action is about to be voluntarily discontinued (without prejudice) because (A) I am not admitted to practice law in the state of New York, and (B) I cannot afford the services of an attorney who

is admitted to practice law in the state of New York to represent RLF (and me).

3. I am the sole shareholder in RLF.

4. I make this reply affidavit in further support of my application for relief pursuant to CPLR 5704(a).

5. Based upon comments made by the Clerk of the Court when I presented my papers, I understand that this Court may choose not to modify the stay that was granted by Supreme Court and that is now scheduled to remain in place until March 9, 2012, but, instead, may grant my proposed Order to Show Cause. Either procedural route will meet my needs. The only limitation is that I am *not* asking this Court to lift the stay in *all* respects; that would be severely prejudicial to me; all I want is to get the issues that I raised on the proposed Order to Show Cause decided. I urgently need that relief "forthwith" because applicable Statutes of Limitations are about to bear down on me, beginning on April 1, 2012 (this is obviously what the Defendants hope will happen).

6. This Court issued directions for the processing of this application (see Exhibit "9"). I served my papers in a timely manner and by a method approved by this Court; most of the many Defendants named in this action have simply ignored my application; and I have received only *two* sets of papers in opposition, each of which is submitted on behalf of two Defendants, in each instance an individual and a business entity associated with that individual. Those papers plainly lack merit.

WHAT THIS APPLICATION IS *NOT* ABOUT

7. Attorney Weissman and his clients have no standing to assert the rights of *other* parties, in particular *The Washington Post* in this instance, especially inasmuch as it has not yet been joined (Weissman Aff. ¶ 13). This part of Attorney Weissman's presentation highlights the argumentative nature of his entire affirmation. Affidavits and affirmations are for presentation of facts, not argument.

8. Now is not the time to prove the vast extent of the injuries I have suffered at the hands of Defendants whose intent and objectives have been to destroy me professionally and my law practice (Weissman Aff. ¶ 14). Indeed, some of them have expressly vowed to do just that. For example, in their April 4, 2011, article, Defendants Scott Greenfield, Simple Justice NY, LLC, Blog.Simple Justice.US and Kravet & Vogel, LLP published on the Internet, "You aren't willing to pay the price that Joseph Rakofsky is now going to pay. The internet will not be kind to Rakofsky, nor should it. If all works as it should, no client will ever hire Rakofsky again."

THREE REASONS WHY RELIEF PURSUANT TO CPLR 5704(a) IS NECESSARY

9. First: The stay in place now is scheduled to expire on March 9, 2012. Applicable Statutes of Limitations will begin to run out just three weeks later, on April 1, 2012. This date is crucial, as all the other articles are derived from the article

that was published on April 1, 2011. Therefore, I require immediate relief.

10. Second: I have been destroyed professionally; this should not be a surprise. Several of the Defendants wrote and then published on the Internet for everyone to see that they would not rest until I was destroyed and my practice was shut down. Not surprisingly, they have accomplished what they said they intended to accomplish. Because Defendants destroyed my reputation, I cannot practice law any more and cannot earn a living. I have been fired from jobs in different sectors (outside of the practice of law) because my employers discovered articles written by Defendants which they believed to be true (*i.e.*, articles alleging I attempted to engage in witness tampering or that a mistrial was declared because I was incompetent or that I never told my client his trial was my first trial, etcetera). I am left with no way to support myself. Litigation is painful enough. For me, it has proven especially devastating. I have been destroyed mentally, emotionally and physically. I should not be forced to stand still and do nothing when I could be taking action to dispose of this case.

11. Third: According to the counsels for Defendant Washington Post Company, an entity known as Washington Post Company, LLC must be joined for the correct entity to be involved in this action. They have expressly refused to consent to a substitution of that entity for the entity I named as the lead Defendant, namely, The Washington Post Company.

JUDICIAL ATTITUDE TOWARD CPLR 5704(a)

12. I am aware that this Court has granted relief under this statute parsimoniously in the past. That said, I believe there has been a trend toward granting such relief when there is great urgency and no other remedy is available. This situation is, arguably, more deserving than other cases, and, because there is no other remedy available, there is great urgency. It is more deserving than other cases because I did nothing wrong; I have been destroyed professionally; there is an impending bar due to one or more Statutes of Limitations; and I did what I was *directed* to do by Supreme Court, but still there was no relief to be had. There are five factors to be considered.

13. First: The Statutes of Limitations applicable to most intentional torts are one year.

14. Second: This action was promptly and timely commenced (CPLR 304) on May 11, 2011, which is less than one and one-half (1-1/2) months after the first article appeared in the *Washington Post* on April 1, 2011. As of that point in time, more than ten and one-half (10-1/2) months remained on those periods of limitations.

15. Third: The stay now in force is due to be dissolved on March 9, 2012, which leaves just over three (3) weeks (twenty-three [23] days) until the first anniversary of the first offending publication on April 1, 2012. If any additional motions are filed at that time, it is unlikely that the hearing (or first conference) will occur before the applicable Statutes of Limitations run be-

cause the schedules of multiple parties would need to be coordinated. This is untenable for me.

16. Fourth: Of the ten and one-half (10-1/2) month period of time that was originally remaining under the applicable Statutes of Limitations, the case will have been stayed for eight months, absent immediate relief pursuant to CPLR 5704(a). I *never* requested a stay of this magnitude; I sought only the standard 30-day stay (CPLR 321[a]) when Attorney Borzouye first told me that he wanted to withdraw from his representation of RLF and me. This seems to be disparate and invidious treatment.

17. Fifth: Ultimately, out of a possible 12-month maximum time period, there would have been no opportunity for me to formulate and make necessary corrections to my pleadings for nearly 10 of those months. It should be remembered that Attorney Borzouye abandoned his responsibilities to RLF and to me after he was unethically threatened with the instigation of a criminal prosecution by an out-of-state lawyer who wished to appear in this case. He failed to seek a stay upon his withdrawal, which reduced even more of the time available for plaintiff to make a motion.

EFFORTS TO AVOID INVOCATION OF CPLR 5704(a)

18. I tried not once, but three times to file proper motions in Supreme Court before resorting to CPLR 5704(a) in this Court.

19. First: In October of 2011 I filed a proposed Order to Show Cause and it was "Denied without prejudice to appropriate motions."

20. Second: On or about October 24, 2011, I filed a motion for leave to amend my pleading (and for other relief): I was directed by Justice Goodman's Law Secretary, Ms. Field, to "Withdraw without prejudice." In other words, I did exactly what Supreme Court directed me to do (*i.e*, file an "appropriate motion[]"), but was, nevertheless, required by the Court below to withdraw it. See Exhibit "10."

21. Third: In December of 2011 I filed an elaborate, carefully designed, proposed Order to Show Cause (which is now before this Court). Supreme Court deemed it to be "incomprehensible" and declined to sign it.

22. Each time I spent an enormous amount of time drafting documents; each time I incurred substantial expense to prepare, copy and serve documents; and each time relief was denied. I paid for an index number just like everyone else, but unlike everyone else, I have been unfairly restrained for nearly the entire time.

DEFENDANTS' ARGUMENTS ARE SPECIOUS

23. Defendants want the applicable Statutes of Limitations to run out. Thus, they make a number of specious arguments. There is no valid reason to object to the modification of a stay. I am not asking for substantive relief on the merits of the case. I am not asking for the stay to be lifted completely. I am merely asking this Court to lift *so much* of the stay as makes it impossible for me to file a motion in Supreme Court.

COMPARISON TO OTHER TORT CASES

24. Generally, litigants are allowed to engage in motion practice, but I will have been denied it for eight (8) months out of the ten and one-half (10-1/2) month period of time remaining from when the action was commenced. I was not dilatory: This case was commenced just one and one-half (1-1/2) months after the initial defamatory utterance.

NARROW SCOPE OF APPLICATION

25. The only issue before this Court is whether my proposed Order to Show Cause should be executed and issued forthwith. The parties who have opposed my application have missed the point, and have raised all sorts of irrelevant matters. Some of their utterances continue the relentless campaign to damage my reputation and to inflict upon me as much emotional injury as may be possible.

26. Although these Defendants are privileged to make statements that are rationally related to this controversy without incurring additional liabilities to me, such utterances are, nevertheless, admissible to demonstrate their subjective intent to inflict harm. In at least one instance, an attempt is made to raise doubts that I am actually authorized to practice law in New Jersey (I am so authorized).

SERVICE OF PAPERS

Moving Papers

27. I served my papers upon all who were entitled to receive them; I did so in the manner and within the time limit directed by this Court; no one has suggested otherwise; and I have filed proof of such service. Accordingly, this Court should find that my application is properly before it.

Answering Papers

28. On January 27, 2012, I traveled from my residence in Manhattan to my law office in Freehold, New Jersey (see ¶ 2, above), *to receive* answering papers from the Defendants. I also alerted everyone at the alternative location at which I might be served -- my New York residence -- to notify me immediately of any such service. As I explain in greater detail below, nearly all Defendants elected not to serve any papers upon me. In fact, I received just *two* sets of papers, one from Attorney Teschner on behalf of Defendants MACE J. YAMPOLSKY ("Yampolsky") and MACE J. YAMPOLSKY LTD. ("Yampolsky Ltd."); and one from Attorney Weissman of HERZFELD & RUBIN, P.C. on behalf of Defendants REUTERS AMERICA, LLC ("Reuters") and DAN SLATER ("Slater"). *All* other Defendants chose not to oppose my application; they should be deemed to have *consented* to the relief I have requested. A few of these points should be sharpened. The first one concerns the names of several Defendants.

Names

29. Each of the attorneys I identified in ¶ 28, above, states that his business entity client was not perfectly named in this action. More specifically:

30. Attorney Weissman states (Weissman Aff. ¶ 1 & n.1) that Reuters was incorrectly identified as "Thompson Reuters." Plainly, both this Defendant and its counsel are aware of who I *intended* to sue (no confusion or prejudice is asserted). I merely *misstated* the *name* of this Defendant. Under the well-established rule of *idem sonans*, this Court should deem the requirements of procedural due process of law -- notice and a reasonable opportunity to be heard -- to have been satisfied. This Defendant is aware that it is being sued; it has been afforded -- and is still being afforded -- a fair opportunity to be heard. This is at worst a mistake, an omission, a defect, or an irregularity that can and should be disregarded or corrected on such terms as this Court may deem to be just and proper (CPLR 2001).

31. Similarly, Attorney Teschner states (Teschner Aff. ¶ 1), in effect, that Yampolsky Ltd. was incorrectly named as "MACE J. YAMPOLSKY & ASSOCIATES." Once again, this business entity Defendant and its counsel are aware of who I *intended* to sue (and once again no confusion or prejudice is asserted). The legal principles to which I referred in ¶ 30, above, should apply with respect to this business entity Defendant, as well.

Numbers of Defendants

32. It will be helpful for this Court to take notice of how very *few* Defendants have opposed this application.

33. On May 11, 2011, when I caused the original Summons and Complaint to be filed, seventy-four (74) Defendants were named.

34. The calumny continued. Accordingly, five days later, on May 16, 2011, when I caused the so-called "Amended Summons" and the Amended Complaint to be filed as a matter of right (CPLR 3025[a]), seven (7) new Defendants were added, making a total of eighty-one (81) Defendants.

35. A total of eight (8) Defendants settled with RLF and me; I seek to discontinue this action as against them (that is one branch of the proposed Order to Show Cause); that will *reduce* the number of Defendants to seventy-three (73).

36. Nine (9) Defendants have defaulted; I seek determinations against them by default as to liability and one or more inquests to determine my damages against them; that will further *reduce* the number of Defendants to sixty-four (64).

37. Five (5) additional Defendants could not be identified or located and served because they published anonymously. (That, by the way, is the reason why I am seeking to avoid having Google, Inc. spoliate evidence in its possession, custody, and/or control of those identities and locations.)

38. This leaves a *net number* of fifty-nine (59) Defendants actively participating in this action at this time.

39. Unfortunately, the publication of false and defamatory material "of and concerning" RLF and me did not stop after May 16, 2011. I therefore seek to add fifteen (15) additional Defendants at this time (this is another branch of the proposed Order to Show Cause); assuming that none of them default, there will be a grand total of seventy-four (74) Defendants named and participating in this action. This is the same number as there were in the original Complaint and seven (7) fewer than the Amended Complaint. It would be wasteful and expensive to start a second action and then seek consolidation (CPLR 602[a]).

40. Notwithstanding these unusually large numbers, only the four Defendants I identified in ¶ 28, above, have opposed the relief I seek. Of the four (4) Defendants who have opposed this application, two (2) (Yampolsky and Yampolsky Ltd.) failed to serve me in person; thus, only two (2) defendants should be deemed to oppose this motion: Reuters and Slater. Attorney Teschner and Attorney Weissman do not identify any good reason why relief should be denied to me.

Unauthorized Service

41. The Defendants were not authorized to serve me electronically. They were obligated to arrange for the delivery of hard copies of their papers to my office. Attorney Weissman served his papers properly, but Attorney Teschner did not; his clients should be deemed to have defaulted on this motion; and the relief I seek should be granted as against them.

42. Furthermore, to the extent that they used first class mail or priority mail (which is the same as first class mail, but used for envelopes weighing 11 ounces or more), they should have honored the spirit of this Court's Rule of Practice § 600.11(e) and served their papers five (5) days ahead of the due date. (I concede that the Rule does not expressly refer to motion papers, but the use of mail deprives me of a fuller opportunity to prepare my reply.) I have not received any such mail, and I have not seen their proof of service, so I do not know what they claim to have done in that regard. I am not clear on what the Clerk of the Court directed them to do if it is anything other than actual delivery to me on January 27, 2012, which left just two full business days (and two weekend days) to complete papers for delivery to this Court in a timely manner.

Service of This Reply

43. Notwithstanding such mistreatment, I will serve these papers via an overnight delivery service (CPLR 2103[b][6]).

SPECIFIC RESPONSES TO ANSWERING PAPERS

Attorney Teschner's Papers

44. Attorney Teschner's affirmation does not begin with (or contain anywhere else) as much as a perfunctory assertion of personal knowledge. This, alone, makes his affirmation insufficient as a matter of law.

45. Attorney Teschner has not submitted an affidavit made by his client, Yampolsky, speaking for himself or for Yampolsky Ltd.

or for both of them. A great deal of that which Attorney Teschner alleges is obviously rank hearsay (*e.g.*, Teschner Aff. ¶¶ 3, 4, 5, and 6). Moreover, apart from formal rules of evidence, I am entitled to have Yampolsky "talk." Just as I might say something in papers that is turned against me, or treated as an admission, the same might happen to him.

46. In ¶ 6, Attorney Teschner asserts -- on behalf of Yampolsky -- that he has "absolutely no connection with the State of New York." That text is rank hearsay and it is also conclusory. Even worse is the footnote appended to ¶ 6. All the assertions in the footnote are qualified by the use of the expression "Upon information and belief" (first sentence), and the expression "upon information and belief" (second sentence). That is *never* permissible. An affirmation is a substitute for an affidavit (CPLR 2106) on the theory that an attorney who is not a party to the action can be *trusted* to assert his personal knowledge without any motivation to slant the testimony in his own favor, and without the ceremonial execution of such a deposition in the presence of a notary public or other official authorized to administer oaths. This is not a "pleading" in which allegations of fact may be made "upon information and belief."

47. Further, Attorney Teschner acknowledges that I am "admitted to practice law in the State of New Jersey" (Teschner Aff. ¶ 6 at n.1 [first sentence]), but then he asserts, without any explanation, that I am supposedly "ineligible to do so" *(id.)*. This is

utterly untrue, and it further besmirches my reputation for no reason. Attorney Teschner apparently lives in a glass house; he ought not throw stones. *He* has been officially found to be ineligible to practice law in the state of New York in the past because he neglected matters for exceptionally long time periods and otherwise acted unprofessionally (see Exhibit "11"); I have *not* been found ineligible to practice law in New Jersey, in New York or in any other jurisdiction.

48. Attorney Teschner is also not entitled to raise any issue as to whether Supreme Court has acquired *in personam* jurisdiction over either one or both of his clients. First, he has not obtained relief from the stay. Second, such an issue must be raised in Supreme Court before it can be raised here. Third, he does not claim to have paid a motion fee in this Court. Fourth, he has not made a motion or a cross-motion for affirmative relief in this Court, and any such motion or cross-motion would be doomed for the first, second, and third reasons stated in this paragraph.

49. Just as Attorney Teschner may not properly make assertions under the penalties of perjury (CPLR 2106) "upon information and belief" (see ¶ 46, above), he may not properly incorporate by reference someone else's testimony as if it were his own testimony, but he purports to do so under the penalties of perjury (Teschner Aff. ¶¶ 8-9). Furthermore, he has not even annexed to his own submission copies of the papers he purports to incorporate by reference. Worst of all, I have *not received* -- and I have *never seen*

-- any such opposition papers supposedly served by attorney Randazza. Perhaps as an out-of-state attorney he does not know that service by mail is *defined* as mail entrusted to the United States Postal Service *within* New York (CPLR 2103[f][1]), and perhaps he mailed something to me from his office in *Nevada*. Or perhaps he served papers on my former representative, Attorney Borzouye, but if he did, they have not been called to my attention by email, by fax, by hand delivery, by telephone notification or in any other manner. I am *not* able to comment upon and oppose alleged papers I have *never seen*. This is another reason why Attorney Randazza should be deemed unfit to appear in this action *pro hac vice* for several dozen Defendants. I want -- and expect -- a "level playing field" with *one* set of rules for everyone.

50. Just as Attorney Teschner may not properly seek affirmative relief in this Court at this time concerning dismissal upon the alleged ground that Supreme Court lacks *in personam* jurisdiction over either one or both of his clients (see ¶ 48, above), he may not properly seek and have affirmative relief with respect to the stay for the benefit of his clients by tossing in a few words in his purported affirmation (Teschner Aff. ¶ 10). He would have to move or cross-move for such relief in a timely manner and pay the necessary fee.

51. Attorney Teschner has not addressed any of the specific forms of relief I seek in the proposed Order to Show Cause.

52. Attorney Teschner had no business placing either of his two exhibits in this record. The issue of *in personam* jurisdiction is not before this Court and that is the reason why his pleading is tendered. He needs lessons in New York law on affirmative defenses and the so-called "American Rule" on attorneys' fees. He may get such a lesson on a motion pursuant to CPLR 3211(b) at the proper time.

53. The same may be said of the inclusion of the offending article. It has no conceivable purpose other than to republish it under the shield of the privilege to say ***almost*** anything in litigation. Perhaps he will find that the privilege is not absolute if it is abused. We shall see.

Attorney Weissman

54. Like his colleague, Attorney Weissman does not claim personal knowledge, and does not submit an affidavit made by Slater or any other individual who can testify on personal knowledge on behalf of Reuters.

55. An application pursuant to CPLR 5704(a) under these circumstances is analogous to an appeal. Because Attorney Weissman had and has absolutely no basis for opposing the instant motion that does not amount to a specious exercise in reasoning, he can only trumpet that my proposed Order to Show Cause is "incomprehensible" (Weissman Aff. ¶ 1). In reality, nothing in the application is difficult to understand. I articulated its purposes at length in my original submission to this Court and I will not burden this

Court with mere repetition. I shall appear in person to answer any questions the panel that considers this application may have for me.

56. The Complaint, the Amended Complaint and the proposed Second Amended Complaint "speak for themselves." Because this is a complex case with many parties, in my original submission I assiduously described the evolution of this action from the first pleading to the second one, and from the second one to the proposed new one. Attorney Weissman's characterizations (Weissman Aff. ¶ 2, *et seq.)* are skewed to favor his clients and to prejudice me. The three pleadings and my own description of that evolution are the better source of a summary of "what happened." It should be remembered that we are not before this Court on the merits of the case or even on the merits of the relief sought on the proposed Order to Show Cause. As I have already said with respect to Attorney Teschner's submission, the issue presented is narrow and specific: May I have these technical matters resolved before applicable Statutes of Limitations run out?

57. The fact that Attorney Weissman is speaking in place of his client's representatives and reporting rank hearsay is graphically revealed -- for example -- in paragraph 4 of his affirmation. Just as I am entitled to have Attorney Teschner's client tell his version, I am entitled to have Attorney Weissman's clients do the same.

58. Attorney Weissman takes unfair advantage of the fact that Attorney Borzouye abandoned his obligations to RLF and to me, and the fact that he allegedly had some conversation with Attorney Borzouye that I never heard or even knew of until now, assuming that it occurred (Weissman Aff. ¶ 4).

59. It should be self-evident that I did not amend the Complaint on May 16, 2011, in response to the service of a motion by Reuters and Slater on June 22, 2011 (Weissman Aff. ¶ 5). That is a logical impossibility. The merits of this matter are not before this Court at this time; indeed, they have not yet been considered by Supreme Court; there is no motion or cross-motion for such relief in this Court at this time, nor could there be. The only issue is whether my proposed Order to Show Cause should be issued at this time. Attorney Weissman has no reason -- other than to prejudice me -- to discuss the merits of this case (Weissman Aff. ¶ 5).

60. Paragraph 7 of Attorney Weissman's affirmation truly distorts reality. It is true that a number of Defendants made motions (Weissman Aff. ¶ 6). But certainly, they were making motions independently, with all sorts of separate return dates. That alone created a substantial problem in terms of overlapping deadlines for answering papers, reply papers, return dates, etcetera. In addition, had I begun to respond immediately to those motions *other* Defendants would have the benefit of the prior motions when they determined the courses their defenses would take. Furthermore, it was Attorney Borzouye who sought to withdraw because attorney Ran-

dazza threatened him with a criminal prosecution if he opposed Randazza's *pro hac vice* application. I did *not* fire him.

61. There is nothing odd about a 30-day stay of an action when an attorney withdraws (CPLR 321[c]). I did not anticipate that the stay would be repeatedly extended for months on end until the applicable Statutes of Limitations were bearing down on me, as they now are. Furthermore, it was Attorney Borzouye who sought to withdraw. I did *not* fire him.

62. The unfairness of the presentation continues in paragraph 8 of Attorney Weissman's affirmation. While it is true that months have passed, I was not able to serve answering papers in opposition to his motion precisely because the action was stayed. Also, I was not authorized to serve papers on behalf of RLF because I am not admitted to practice law in the state of New York. As I have explained, I cannot afford to pay an attorney a substantial fee to represent RLF in this case, and I was unable to find someone who would work on a *pro bono publico* basis.

63. Attorney Weissman's reference to a "three-ring circus" with my former Attorney (Weissman Aff. ¶ 8) is positively unprofessional on his part. I am disappointed that Attorney Borzouye did not have the fortitude to stand up to Attorney Randazza's tactics and I am utterly amazed that Supreme Court chose to ignore the blatant violation of applicable ethical standards governing threats to instigate a criminal prosecution to gain an advantage in a civil

matter. He proved himself unfit, as did my own attorney. I offer no apology; I am the victim here, not a miscreant.

64. In paragraph 9 of his affirmation, Attorney Weissman overstates the events he describes. I did file a proposed Order to Show Cause and Supreme Court denied it with leave to file a new application. I sought guidance from others who have substantial experience with New York practice and filed the *instant* application. These *two* attempts to have the matters that concern me resolved are the entire "bizarre campaign of filing improper ex parte motions" to which he refers (Weissman Aff. ¶ 9). So far as I know, it is *normal* to file an application for an Order to Show Cause in Supreme Court on an *ex parte* basis. I have no idea why Attorney Weissman thinks and says that it is "bizarre." These applications were not filed "in violation" of the stay (Weissman Aff. ¶ 9) as I was doing what I believed the Court instructed me to do; they were filed to secure partial *relief* from the stay, primarily to enable me to address and correct various procedural matters before applicable Statutes of Limitations ran out. I also made a motion on notice because Supreme Court denied the first application without prejudice to appropriate motions. I do concede, however, that as I went forward, I also obtained substantive advice and added additional causes of action that fit the operative facts of the case.

65. It was not "frivolous" to ask to add new parties (Weissman Aff. ¶ 9) because additional individuals and entities *continued*

to defame RLF and me and *continued* to inflict economic and other injuries upon RLF and me.

66. Attorney Weissman goes overboard in his effort to discredit me with the following language, which is both gratuitous and untrue: According to him (Weissman Aff. ¶ 9), my "campaign" of filing "improper ex-parte [*sic*] motions in violation of the [s]tay, *inter alia* for leave to amend the complaint and to add new parties, among other frivolous requests, [were] all done" during a time when I ought to have done something else. He deliberately exaggerates and he heaps a baseless attack upon me. Thus, he said the equivalent of "among other things" twice in one sentence to suggest that I made numerous additional filings. Had I done so, he would have identified them, but the truth is, I did not do so. Furthermore, I do not take the word "frivolous" lightly: It is defined by law (22 N.Y.C.R.R. Subpart 130-1) and it amounts to unprofessional conduct. Had I done something truly "frivolous" as that term is defined, he would have identified it. Had he made a motion for relief on the ground of alleged frivolity, I would have cross-moved for the invocation of the first sentence of the final (unnumbered) paragraph of 22 N.Y.C.R.R. § 130-1.1(c). I have been advised that the Rule proscribing "frivolous" litigation conduct is invoked too often without justification, and in such cases, relief is frequently denied.

67. I had no obligation to give Attorney Weissman any "hint" (Weissman Aff. § 10) as to my litigation strategy, just as he is not before Supreme Court and this Court to help me.

68. My proposed "motion," which is singular, albeit with several branches, not plural (Weissman Aff. ¶ 11), is *not* "pointless" or "wasteful." My former attorney made some simple errors and some not-so-simple errors; I have attempted to correct them, which is entirely consistent with the CPLR's overall plan for the management of civil litigations (*e.g.*, CPLR 104).

69. Attorney Weissman asks this Court to decide a motion which has not yet been considered or determined by Supreme Court (Weissman Aff. ¶ 12); I ask it not to do so as it has no appellate jurisdiction to do so at this juncture.

70. I did not ask Supreme Court to *compel* Reuters to file a substitute motion (Weissman Aff. ¶ 12); I asked this Court to *allow* it to do so if it were inclined to do so. Apparently, "No good deed goes unpunished."

71. Attorney Weissman and his clients have no standing to assert the rights of *other* parties, especially inasmuch as they have not yet been joined (Weissman Aff. ¶ 13). This part of Attorney Weissman's presentation highlights the argumentative nature of his entire affirmation. Affidavits and affirmations are for presentation of facts.

72. I have not asked for a "prior restraint" of defamatory utterances (Weissman Aff. ¶ 14); nor does Reuters have standing to

raise any such issue. I seek immediate injunctive relief only as against Google, Inc.; only to prevent spoliation of critical evidence; and only because Google, Inc. has stated that it will not honor any mere request to preserve such evidence in the absence of a court order.

73. Paragraph 15 of Attorney Weissman's affirmation argues the *merits* of the proposed motion for relief with respect to correction of proof of service. CPLR 305(c) expressly permits this and we cited it.

74. In paragraph 16 of his affirmation, Attorney Weissman states that I filed a blatantly false affidavit of service. I did no such thing: I had counsel at the time (the action was two days old) and I had engaged professionals to handle service and proof of service. This goes to the merits of the matter, not to whether my Order to Show Cause should be signed. I did not personally serve process, nor could I do so as a party to this action. If any such error was made -- I do not have any knowledge of any such error -- it can be corrected.

JOSEPH RAKOFSKY

Sworn to before me on this
31st day of January, 2012

NOTARY PUBLIC

raise any such issue. I seek immediate injunctive relief only as against Google, Inc.; only to prevent spoliation of critical evidence; and only because Google, Inc. has stated that it will not honor any mere request to preserve such evidence in the absence of a court order.

73. Paragraph 15 of Attorney Weissman's affirmation argues the *merits* of the proposed motion for relief with respect to correction of proof of service. CPLR 305(c) expressly permits this and we cited it.

74. In paragraph 16 of his affirmation, Attorney Weissman states that I filed a blatantly false affidavit of service. I did no such thing: I had counsel at the time (the action was two days old) and I had engaged professionals to handle service and proof of service. This goes to the merits of the matter, not to whether my Order to Show Cause should be signed. I did not personally serve process, nor could I do so as a party to this action. If any such error was made -- I do not have any knowledge of any such error -- it can be corrected.

JOSEPH RAKOFSKY

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EXHIBIT 9

SUMMARY STATEMENT ON APPLICATION FOR EXPEDITED SERVICE AND/OR INTERIM RELIEF

(SUBMITTED BY MOVING PARTY)

Date January 13, 2012

Title of Matter: Rakofsky v. Washington Post — Index/Indict # 105573-2011

Appeal by _____ from order judgment of decree — Supreme Surrogate's Family — County NY

Court entered on _____, 20____

Name of Judge Goodman

Notice of Appeal filed on _____, 20____

If from administrative determination, state agency _____

Nature of action or proceeding Defamation, Intentional Torts, etc.

Provisions of order judgment appealed from _____

This application by appellant respondent is for Modification of Stay

If applying for a stay, state reason why requested _____

Has any undertaking been posted No If "yes", state amount and type _____

Has application been made to court below for this relief Yes — If yes, state Disposition Denied

Has there been any prior application herein in this court No — If "yes", state dates and nature _____

Has adversary been advised of this application Yes — Does he/she consent _____

Attorney for Movant

Name Joseph Rakofsky

Address 4400 US-9
Freehold NJ 07728

Tel. No. (877) 401-1529

Appearing by pro se

Attorney for Opposition

Anne Nicholson
Flemming Zulack Williamson Zauderer LLP

Jennifer Jones
Proskauer Rose LLP

John H. Tescher and
David Boies
Marc Randazza
Eric Turkewitz
Mark A. Weissman, Herzfeld & Rubin PC

(Do not write below this line)

DISPOSITION

moving papers to be served by overnight for delivery by 1/18/12
See exhibits 4 + 6 re 5704(a) orders to show cause refused by Bankr Ct (Goodman, J)

Justice

1/13/12
Date

Motion Date 2/2 Opposition 1/27 Reply 2/1

EXPEDITE _____ PHONE ATTORNEYS _____ DECISION BY _____

ALL PAPERS TO BE SERVED PERSONALLY.

EM
Court Attorney

Issac Rakofsky 775-7888

EXHIBIT 10

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: GOODMAN Justice PART 17

RAKOSKY, JOSEPH, ET AL.

-v-

THE WASHINGTON POST COMPANY, ET AL.

INDEX NO. 105573/11

MOTION DATE

MOTION SEQ. NO. 11

MOTION CAL. NO.

The following papers, numbered 1 to _____ were read on this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☑ No

FILED

OCT 19 2011

COUNTY CLERK'S OFFICE

Upon the foregoing papers, it is ordered that this motion

Denied without prejudice to appropriate motion. This O.S.C. seeks relief against non-parties and also seeks pre action discovery. Google and former attorneys are not parties

Dated: 10/17/11

EMILY JANE GOODMAN J.S.C.

Check one: ☐ FINAL DISPOSITION ☑ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

☐ SUBMIT ORDER/ JUDG. ☐ SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):