

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

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JOSEPH RAKOFSKY and RAKOFSKY LAW FIRM, P.C.,

Plaintiffs,  
-against-

THE WASHINGTON POST COMPANY, et al.,

Defendants.

Randazza Sur-Reply Affidavit  
in Response to "Supplemental  
Affirmation" of Richard  
Borzouye

Index # 105573/11

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Marc J. Randazza, being duly sworn, deposes and says:

1. This Sur-Reply Affidavit is submitted in the motion for my *pro hac vice* admission for this case. It is filed in response to a sur-reply filed by Richard Borzouye – entitled Supplemental Affirmation" – that was submitted on June 29, 2011, the return date of this motion. It contains new information that was not part of the opposition papers previously served by the plaintiffs.

2. This Affidavit is limited to rebutting the manner in which settlement negotiations were presented to this Court by plaintiff's counsel, Richard Borzouye, specifically regarding any potential civil claim for wiretapping.

3. Pursuant to a conversation with Eric Turkewitz, (in which he related to me that Mr. Borzouye was concerned about me filing a criminal complaint against him for wiretapping) I called Mr. Borzouye on June 24, 2011 to confirm that I was not seeking, and would not seek, criminal prosecution of him.

4. This is contrary to Mr. Borzouye's claims in Paragraph 10 of his Supplemental Affirmation, as I did not threaten to seek criminal prosecution of him under California's wire-tapping statute.

5. Under California Penal Code § 637.2, however, I am authorized to bring a civil action against Mr. Borzouye for violating California's wiretapping statutes. I informed Mr.

Borzouye of my intention to bring a *civil* action against him under this statute, and that I was considering bringing such an action against him.

6. For a conversation to be monitored or recorded in California, all parties must consent to the monitoring. *See* Cal. Penal Code §§ 632 *et seq.*

7. Mr. Borzouye and Mr. Rakofsky had called me on May 16, 2011, while I was located in the state of California, but Mr. Rakofsky wasn't initially identified on the line.<sup>1</sup> As discussed in my prior Affidavit, neither Mr. Rakofsky nor Mr. Borzouye disclosed that Mr. Rakofsky was eavesdropping until he started speaking to me about the case.

8. I neither knew of nor consented to Mr. Rakofsky's presence on that phone call, which Mr. Borzouye knew of and failed to disclose to me. As such, Mr. Borzouye violated California's wire-tapping statute.

9. Mr. Borzouye asked me what relief I was seeking from him. I offered to release Mr. Borzouye from this claim for \$5,000, to be donated to the charity of his choice. This was the same amount Mr. Rakofsky demanded from each of the clients that I hope to represent that are defendants in this action, Mr. Rakofsky had previously described this amount as "nominal" in an email to Mr. Turkewitz that I have read, as Mr. Rakofsky attempted to avoid litigating this case.

10. Via e-mail, I also offered Mr. Borzouye the opportunity to resolve this civil claim by donating \$1,000 to the Citizen Media Law Project, Public Citizen, or the First Amendment Lawyers' Association.

11. I do not own or have any controlling stake in any of these groups or receive any

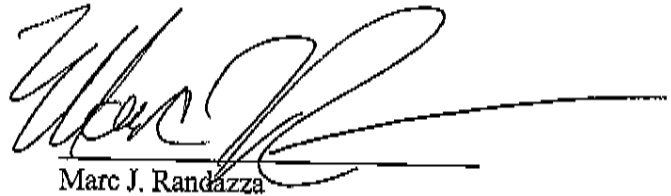
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<sup>1</sup> As Mr. Borzouye has visited Randazza Legal Group's website, he surely is aware of its presence in California; moreover, numerous news articles have identified my residence at that time as San Diego, California, and I specifically informed him that I was in California. *See* Borzouye Supplemental Affirmation Exh. B.

financial benefit from them; I merely value the services and education they provide to the public at large as they focus on First Amendment issues.

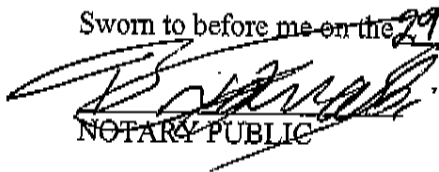
12. This is the second time that Mr. Borzouye has used privileged settlement discussions in an effort to extract a tactical advantage in this case.

Signed under penalty of perjury this 29th day of June, 2011

  
Marc J. Randazza

Dated: June ~~29th~~ 2011

Sworn to before me on the ~~29th~~ day of June, 2011

  
NOTARY PUBLIC

My commission expires Oct 23/2013.