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

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

IndexNo.: 105573/11

Plaintiffs,

AFFIDAVIT

Filed by the New York County Clerk on May __, 2012

-against-

THE WASHINGTON POST COMPANY, *et al.*

Defendants.
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I, Osvaldo Alayon, being duly sworn, state as follows:

1. I am a forensic expert concerning the methodology and equipment related to search engine optimization, search engine marketing, cache detection, data recovery, data storage and data hosting and am an analytical computer specialist with respect to matters related to the Internet, having expertise in Search Engine Optimization and Marketing, electronic communication and control systems.
2. I have served as an expert in the detection and subsequent presentation of evidence used in civil cases and in a variety of other capacities for sixteen years. In addition, from 2006 until the present, I have provided Search Engine Optimization ("S.E.O.") and Search Engine Marketing (S.E.M.) strategies and I.T. services for law firms, churches, small businesses and individuals. I am an expert at HTML 5 (hyper treading multi-language) Internet coding and am proficient in any vector CAD, image editing (i.e., Photoshop and G.I.M.P etc...),

Web authoring programs, HTML and C+++. I am an Internet Security Administrator, a trained web designer, an experienced web master and am an expert in the following programs: Dreamweaver, Flash, Panic Coda, Firebug, Notepad +++ CSS Editor. In addition to my software-related abilities, I have built personal computers for 22 years and, during that time, have diagnosed and repaired countless personal computers. In 1999, I attended Katherine Gibbs School (New York) for A+ classes and I.T. From 2004 to 2006, I returned to Katherine Gibbs School and studied visual communication and web site design and creation.

3. I have personally investigated the websites of all of the defendants named in this action.

4. I have discovered that an overwhelming majority of the defendants' websites are connected via "hyperlinks." A hyperlink (hereinafter referred to as a "link") permits the defendants' websites to be connected to each other like links in a chain. In almost every case, once the link (which is usually emphasized on the original document in bold-faced font or is underlined and presented in a color different from that of the other text) is selected by the reader, clicking on it causes the target document to replace the original document being displayed.

5. Each time the target article is visited, the owner of the target article receives a commercial benefit because it is credited with a point or a "hit" by Google or other search engines. The more number of hits a website accumulates, the better its positioning [1] and the more visibility (or "traffic") it will receive. [2]

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1 As Defendant Brian Tannebaum admits in Defendant Jamison Koehler's article on February 1, 2010 (which was published approximately 1 year and 3 months prior to the filing of the instant action), "I

6. Many of the target articles accused Joseph Rakofsky and the Rakofsky Law Firm of committing crimes both under Federal and State law (*i.e.* "witness tampering"); other publications published by certain defendants (or their agents) associated him with Child Pornography [3] and Bestiality. [4]

7. In the Exhibits attached, the diagrams depict how each website is connected to the next by the aforementioned links. [5]

8. In every single case, the links were created intentionally by the owner or operator of the respective websites, so that the reader (of such website) would be able to connect to (and then read) the target article without being required to search for it on Google or another search engine (or even know about its existence in the first place). This act maximizes the amount of time a reader stays on the original website because, by providing a link, the reader need not waste any time in searching for the target article on a Search Engine (like Google), which would cause him or her to leave the original website. The target article is delivered to the reader "on a silver platter." In this way, **the defendants work together** to accumulate hits.

9. There is no evidence on any of the defendants' websites that any of the owners or operators of such target websites ever requested that such links (targeting their own articles) be removed by the owner or operator of the original website who created the link.

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realized long ago that it's not about the profession anymore, it's about Google [search engine], and *positioning* (emphasis added)" (http://koehlerlaw.net/2010/01/on-ghostblogging-west-berlin-and-the-internet/#comments). *See* Exhibit A.

2 *See* Exhibit B.

3 *See* Exhibits C, D and E.

4 *See* Exhibit F and Q.

5 *See* Exhibits G1 – G7.

10. The network of links created by the owners or operators of the defendants' websites (hereinafter referred to as the "Link Network") created a vast "web" that had the ability to greatly increase the amount of visitors each website received, which, in turn, would improve their position on Google (and other search engines), which would improve their visibility when a potential client searched for a lawyer, law firm or media company on the Internet. This practice is referred to as "Search Engine Optimization" ("S.E.O."). According to Wikipedia, "[i]n general, the earlier (or higher ranked on the search results page), and more frequently a site appears in the search results list, the more visitors it will receive from the search engine's users." In general, any business that uses a website would wish for its website to be as visible as possible, so that it could attract as many potential clients as possible to their website, which functions as their business presence on the Internet.

11. The precise increase in visitors to their respective websites that each of the defendants named herein presumably enjoyed as a direct result of the Link Network cannot be assessed absent additional website-specific quantitative data.

BanniNation.com

12. In addition, I have very closely investigated defendants' website BanniNation.com, which is owned or operated by defendant Banned Ventures, LLC and/or "Tarrant 84" and/or "Graham" and have discovered evidence of the existence of child pornography [6] published on this website under the section dedicated to Joseph Rakofsky. The evidence of the publication of child

6 *See* Exhibit C, D and E.

pornography is strewn throughout the "thread" of the website with the subtitle "Oh My Goodness, We've Allegedly Been Sued!"

13. The title of the section dedicated to Joseph Rakofsky ("Joseph Rakofsky rapes donkeys...Rape-ofsky") appears to have been created by the owner or operator of the website. Further, because it is not a user comment (and is instead part of the title of the section and appears above each of the 28 pages of the section dedicated to Joseph Rakofsky and the Rakofsky Law Firm as well as above the 2,794 comments about Joseph Rakofsky and Rakofsky Law Firm) it is distinguished from and separated from the comments provided by its anonymous and pseudonymous users.

14. On June 8, 2011, the owners, agents or controllers of BanniNation.com published, "there's apparently a suit out there, filed by a Mr. Joseph Rakofsky, that names us as a defendant...We wanted to make you aware of the risk of litigation by posting on the [Rakofsky v. Washington Post, *et al.* suit] matter here, or frankly, anywhere else on the internet." [7]

15. I find that the aforementioned thread is dedicated to Joseph Rakofsky and his business, Rakofsky Law Firm, P.C. and is entitled "Joseph Rakofsky rapes donkeys...Rape-ofsky." [8]

16. I find that in the aforementioned section dedicated to Joseph Rakofsky and his business, Rakofsky Law Firm, P.C., very close to photographs of Mr. Rakofsky and an elderly relative of his wearing yarmulkes (which appear to have been copied from Mr. Rakofsky's Facebook page by a BanniNation.com user), on June

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7 *See* Exhibit H.
8 *See* Exhibit F and Q.

9, 2011, BanniNation.com anonymous user "Valaru" published: "And the Nazis killed million of Jews. Doesn't make killing Jews right. How can something that feels so right be wrong?" [9]

17. I find that in the aforementioned section dedicated to Joseph Rakofsky and his business, Rakofsky Law Firm, P.C., very close to photographs of Mr. Rakofsky and an elderly relative of his wearing yarmulkes (which appear to have been copied from Mr. Rakofsky's Facebook page by a BanniNation.com user), on June 9, 2011, BanniNation.com anonymous user "tabernash" published: "JEW! JEW know. JEW know my name?" [10]

18. I find that in the aforementioned section dedicated to Joseph Rakofsky and his business, Rakofsky Law Firm, P.C., very close to photographs of Mr. Rakofsky and an elderly relative of his wearing yarmulkes (which appear to have been copied from Mr. Rakofsky's Facebook page by a BanniNation.com user), on June 9, 2011, a BanniNation.com anonymous user published a photograph of Hitler (underneath the caption: "Welcome new users.") [11]

19. I find that in the aforementioned section dedicated to Joseph Rakofsky and his business, Rakofsky Law Firm, P.C., very close to photographs of Mr. Rakofsky and an elderly relative of his wearing yarmulkes (which appear to have been copied from Mr. Rakofsky's Facebook page by a BanniNation.com user), on June 9, 2011, BanniNation.com anonymous user "spongegirl circleskirt" published: "New User Advice: Every year bN [BanniNation.com] runs a summer camp for

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9 *See* Exhibit V.
10 *See* Exhibit V.
11 *See* Exhibit V.

members. And even though we are expanding, we fill up fast as trainloads of people signup! So signup early! JEW don't wanna miss it!" [12]

20. I find that BanniNation.com used Joseph Rakofsky's likeness to make it appear that he is engaging in Child Pornography. Below the section of the aforementioned thread that states "Joseph Rakofsky **rapes** donkeys," "**Rape**-ofsky," "Clown orgy porn," and "Free gay porn," the BanniNation.com anonymous users co-opted the image of Joseph Rakofsky and superimposed his image on many other images, including but not limited to images of young children, [13] published photos of a young girl in a bathing suit, who is described as being "Jailbait," [14] jailbait being a girl with whom sexual intercourse is statutory **rape** [15] and obviously, child pornography.

21. I have found that the child pornography was intentionally hidden by the owners and/or agents and/or controllers of BanniNation.com.

22. Further, I find that, based on my experience, it would not be surprising if many of the users on BanniNation.com who post messages on the website use more than one pseudonymous identity when posting. This practice by its users of adopting multiple pseudonymous identities creates the misleading impression that a bigger community exists than actually exists at any given time.

23. In my experience, I have found that frequently, the owner or operator of a website will publish content anonymously or pseudonymously, so it can later deny being the publisher of such content.

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12 *See* Exhibit V.
13 *See* Exhibit I.
14 *See* Exhibit J.
15 *See* Exhibit K.

24. On June 9, 2011, BanniNation.com anonymous user "A Troll Who Me" published: "Could this place become renowned for something other than harboring pedos [pedophiles]?"[16]

25. On June 9, 2011, BanniNation.com anonymous user "Howie Feltersnatch" published: "Harboring pedos? [BanniNation.com user] chronocide was using a Tor node and linking to kiddy porn." [17]

26. On June 9, 2011, BanniNation.com anonymous user "valentine selezynov" published: "For all I know, Roffisky [*sic*] really does lure children away from their mothers with intent to learn the secrets of man's red fire." 18

27. On June 9, 2011, BanniNation.com anonymous user (and defendant) "Tarrant 84" published: "I hope he tries to offer it as an exhibit and a judge is like...um..."

28. On June 9, 2011, BanniNation.com anonymous user (who posted on BanniNation.com using the pseudonym "josephrakofsky") published: "Now you are accusing me of rape? But if I rape myself, isn't it just rough masturbation." [19]

29. On June 9, 2011, BanniNation.com anonymous user "Cardinal Puff" [who is also known as "**CP**uff," "cp" being a commonly-used abbreviation for "Child Pornography"] published: "I guess I'll go cry in the corner then :)" [20]

30. On June 9, 2011, BanniNation.com anonymous user "Stimp" published: "Just don't go off and hug any children." [21]

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16 *See* Exhibit D.
17 *See* Exhibit C.
18 *See* Exhibit T.
19 *See* Exhibit E.
20 *See* Exhibit M.
21 *See* Exhibit M.

31. On June 9, 2011, BanniNation.com anonymous user "Cardinal Puff" published: "They're crying in the corner of the van." [22]

32. On June 9, 2011, BanniNation.com anonymous user "Derp" published: "If THIS doesn't get me named in a lawlsuit... I'm going to go cry." [23]

33. On June 9, 2011, BanniNation.com anonymous user "TotalSecurity" wrote about Rakofsky: "He's ruined now. I wonder what kind of work he could find after this?" [24]

34. On June 8, 2011, BanniNation.com anonymous user "TotalSecurity" published: "I'm posting in this thread HOPING they add me to the suit. My username at gmail. I DARE you." [25]

35. On June 10, 2011, BanniNation.com anonymous user "mrhappyrotter" published: "You freaks are still at this? You know the more you post in here, the more likely it is you're going to end up personally listed in this dude's next lawsuit." [26]

36. A web hosting service is a type of Internet hosting service that allows individuals and organizations to make their own website accessible via the World Wide Web. Web hosts are companies that provide space on a server they own or lease for use by their clients as well as providing Internet connectivity, typically in a data center. Web hosts can also provide data center space and connectivity to the Internet for servers they do not own to be located in their data center. Many Internet Service Providers (ISPs) offer this service free to their subscribers. People can also obtain Web page hosting from other, alternative service

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22 *See* Exhibit M.
23 *See* Exhibit N.
24 *See* Exhibit O.
25 *See* Exhibit P.
26 See Exhibit W.

providers. The host may also provide an interface or control panel for managing the web site.

37. I conclude that BanniNation.com is, as many of its users already admit in writing and have published openly that, the website is "renowned for...harboring [pedophiles]." The only way to prove this is to physically inspect the actual computer servers being used by BanniNation.com and its owners, agents (including web hosting agents), controllers and website users.

38. In my professional opinion, the published child pornography was used by Banned Ventures, LLC and/or "Tarrant 84" and/or "Graham" and/or the anonymous and pseudonymous users of the BanniNation.com website to injure Joseph Rakofsky and his business, Rakofsky Law Firm, P.C.

Defendants Directly Benefitted from Banned Ventures' acts

39. The BanniNation.com section, which was created to "discuss" Joseph Rakofsky is filled with links to the websites of the Turkewitz Law Firm and other defendants. As previously mentioned, each time any of these links were clicked, the target websites, in this case, owned or operated by the Turkewitz Defendants, [27] the Crime and Federalism Defendants, [28] the MyShingle Defendants [29] and the Washington Post Defendants [30] (among others), received commercial benefits as a result.

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27 As demonstrated in Exhibit G, in one of their articles which is the subject of this lawsuit, the Turkewitz Law Firm single-handedly created and provided links for 20 different defendants. *See* Exhibits H, O and R.

28 *See* Exhibit L.

29 *See* Exhibit L.

30 *See* Exhibit L.

40. Defendants Eric Turkewitz and Turkewitz Law Firm ("New York Personal Injury Law Blog"), Defendants Mike Cernovich and Crime and Federalism, Defendants My Shingle and Carolyn Elefant and Defendants The Washington Post Company, Keith L. Alexander and Jennifer Jenkins commercially benefitted from the many links created or permitted by the owner and or operator of BanniNation.com, which linked to their respective websites. [31] Without additional quantitative data, I am unable to say precisely how many readers visited Eric Turkewitz's and the Turkewitz Law Firm's website as a result of clicking on the numerous links provided by Banned Ventures website BanniNation.com.

41. I found absolutely no evidence indicating that the Washington Post Defendants, the Turkewitz Law Firm Defendants, the Crime and Federalism Defendants or the My Shingle Defendants ever requested that the links from BanniNation.com to their respective websites be removed.

Dated: New York, New York
May 10, 2012

State of New York)
County of Kings)
Sworn to before me
this 10th day of
May 2012.

CASTO F. RODRIGUEZ
Notary Public, State of New York
No. 01RO4524093
Qualified in Kings County
Commission Expires 9/23/14

Respectfully Submitted,

Osvaldo Alayon
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31 *See* Exhibits H, L and R.