

MS# 13
MOD

At IAS Part 17 of the Supreme Court of the State of New York, held in and for the County of New York at the New York County Courthouse, 60 Centre Street, New York, New York, on the 23 day of December, 2011.

P R E S E N T :

HON. EMILY JANE GOODMAN,

J.S.C.

EX PARTE MOTION OFFICE

-----X
JOSEPH RAKOESKY, et ano.,
Plaintiffs,
-against-
THE WASHINGTON POST COMPANY,
et al.,
Defendants.
-----X

Index No. 105593-2011
ORDER TO SHOW CAUSE WITH
MODIFICATION OF STAY AND
TEMPORARY RESTRAINING ORDER

APPROVED
FOR THE PAYMENT
OF MOTION FEE
ONLY

030529

FEE PAID

DEC 27 2011

NEW YORK

On reading and filing the affidavit of Plaintiff JOSEPH RAKOESKY, sworn to on December 22nd, 2011; and the exhibits submitted in support thereof; and upon all the prior proceedings heretofore had herein, (1) let GOOGLE, INC. for counsel appear and show cause before this Court at the New York County Courthouse, 60 Centre Street, New York, New York, in IAS Part 17, in Courtroom ____, before Honorable EMILY JANE GOODMAN, on the ____ day of January, 2012, at 9:30 a.m. or as soon thereafter as counsel can be heard; and (2) (A) let all other Defendants who have appeared in this action, (2) (B) all Defendants who have secured extensions of their time to appear in this action and who are not in default, and (2) (C) all new Defendants named in

the proposed Second Amended Complaint, ^{or counsel to appear and} show cause before this Court at the New York County Courthouse, 60 Centre Street, New York, New York, in IAS Part 17, in Courtroom _____, before Honorable EMILY JANE GOODMAN, on the _____ day of April, 2012, at 9:30 a.m. or as soon thereafter as counsel can be heard, why one or more orders should not be made to grant the following relief:

(1) an order, to be made pursuant to CPLR 2201, modifying the stay heretofore granted herein to the extent of allowing Plaintiff JOSEPH RAKOFSKY ("RAKOFSKY") to make this motion at this time; and

(2) an order, pursuant to CPLR 305(a), 3014, 3025(b), and 3217(b), authorizing RAKOFSKY to issue, file, and serve upon all current Defendants who are not in default, and upon all new Defendants identified herein, namely, THE WASHINGTON POST, LLC; THE ATLANTIC MEDIA COMPANY; THE ATLANTIC MONTHLY GROUP; THE ATLANTIC WIRE; ADAM MARTIN; YAHOO! INC.; YAHOO NEWS; TECH-DIRT; MIKE MASNICK; THOMPSON REUTERS CANADA, LTD.; CANADIAN LAWYER MAGAZINE; DAMIAN J. PENNY; JEFFREY M. LEWIS, ATTORNEY AT LAW; JEFFREY M. LEWIS; and GOOGLE, INC. a Second Amended Complaint that (A) deletes Plaintiff RAKOFSKY LAW FIRM, P.C. ("RLF") from the caption of this action; (B) deletes and voluntarily discontinues, without prejudice, all causes of action asserted by RLF in this action in the Complaint and/or in the Amended Complaint; (C) allows RAKOFSKY to discontinue this

action, with prejudice, as against eight Defendants who have settled, namely, MARTHA SPERRY, INDIVIDUALLY, THE MARTHA SPERRY DAILY, ADVANTAGE ADVOCATES, LORI D. PALMIERI, INDIVIDUALLY, PALMIERI LAW, HESLEP & ASSOCIATES, UNIVERSITY OF ST. THOMAS SCHOOL OF LAW, and DEBORAH K. HACKERSON; (D) allows RAKOFSKY to separately state and number each of his causes of action for defamation by libel; (E) allows RAKOFSKY to add and to separately state and number each of his causes of action for injurious falsehood; (F) allows RAKOFSKY to restate and clarify the allegations of his causes of action for (i) intentional infliction of severe emotional distress, (ii) intentional interference with contract, and (iii) violation of Civil Rights Law §§ 50 and 51; (G) allows RAKOFSKY to add a cause of action for prima facie tort; (H) allows Rakofsky to discontinue, without prejudice, all causes of action for prior restraint of further publication and re-publication; (I) allows RAKOFSKY to seek to compel GOOGLE, INC. to preserve certain information necessary to identify, locate, and serve certain Defendants; and (J) allows RAKOFSKY to restate and clarify his *ad damnum* clause; and

(3) an order, to be made in the exercise of the discretion of the Court, and in the exercise of the Court's inherent power to control the business before it, revising the existing briefing schedule fixed by the Court (A) to afford all Defend-

ants who have made motions to dismiss to substitute alternate motions, if they deem themselves to be so advised; (B) to enlarge the time for RAKOFSKY to serve and file answering papers on all existing motions and all such new motions as may be made; (C) to enlarge the time for all Defendants making such motions to serve and file reply papers if they deem themselves advised to do so; (D) to fix a new date for all concerned to appear before the Court for oral argument on all such motions; and (E) to fix such additional dates, if any, as this Court may deem to be just and proper under the circumstances; and

(4) an order permitting RAKOFSKY to serve and file (A) a Notice of Appeal, and/or (B) a motion for permission to appeal to the Supreme Court, Appellate Division, First Department, from this Court's Order dated July 22, 2001, denying him any right to seek relief in this action against his former attorney, RICHARD BORZOUYE, ESQ. of BORZOUYE LAW FIRM, P.C. ("Attorney Borzouye") on the grounds that said attorney and said professional corporation, in effect, abandoned his and its professional responsibilities to both Plaintiffs (i) by failing, when moving for leave to withdraw, to move by order to show cause; (ii) by failing, when moving for leave to withdraw, to seek a stay of all proceedings during the pendency of such motion; and (iii) by failing to withdraw in the manner directed by this Court, which required service of this Court's

Order dated July 22, 2011, upon Plaintiffs by a stated method and within a stated time period, and by failing to act to protect and preserve both Plaintiffs' rights during all of that time period; and

(5) an order permitting RAKOFSKY to serve and file (A) a Notice of Appeal, and/or (B) a motion for permission to appeal to the Supreme Court, Appellate Division, First Department, from this Court's Order dated September 15, 2011, authorizing MARC JOHN RANDAZZA ("Attorney Randazza") to appear in this action *pro hac vice* for dozens of Defendants after threatening to instigate a criminal prosecution of Attorney Borzouye in California if he did not pay money to one or more entities designated by Attorney Randazza, thereby intimidating Attorney Borzouye and causing him to refuse to continue to represent Plaintiffs, and, in turn, causing Plaintiffs to be deprived not only of their chosen counsel but of any counsel, and causing RLF to be forced to withdraw from this action; and

(6) an order, to be made pursuant to CPLR 3217(b), (A) allowing RLF to withdraw, without prejudice, all causes of action it has interposed in this action on the grounds that (i) Plaintiffs do not have sufficient resources to engage substitute counsel admitted to practice law in the state of New York to represent RLF in this action at this time; (ii) they have not found any attorney admitted to practice law in the state

of New York who is willing to represent RLF in this action on a pro bono publico basis at this time; and (iii) RAKOFSKY is not admitted to practice law in the state of New York at this time and is therefore not authorized to represent RLF in this action at this time; and (B) allowing RAKOFSKY to omit all references, whether express or by the use of the expression "et ano." or by the use of any similar expression, to RLF in the caption of papers to be served and/or filed in this action on and after the date of the order to be made hereon; and

(7) an order, to be made pursuant to CPLR 305(c), 2001, and 2101(c), (A) directing that the Summons, dated May 11, 2011, shall be deemed corrected in three respects, namely, (i) to state that venue is based upon the residence of RAKOFSKY in New York County; (ii) to state that his residence address then was and still is 67 Wall Street, Apt. 24G, New York, New York 10005; and (iii) to state that such Summons was filed by the New York County Clerk on May 11, 2011; and (B) directing that the so-called "Amended Summons," dated May 16, 2011, to be deemed corrected in four respects, namely, (i) to state that venue is based upon the residence of RAKOFSKY in New York County; (ii) to state that his residence address then was and still is 67 Wall Street, Apt. 24G, New York, New York 10005; (iii) to state that such "Amended Summons" was filed by the New York County Clerk on May 16, 2011; and (iv) to deem the

label on said "Amended Summons" to be "Supplemental Summons"; all on the grounds that no Defendant has (i) objected to the sufficiency of the Summons or the so-called "Amended Summons"; or (ii) moved to strike either one or both of them; or (iii) claimed that a substantial right has been prejudiced; or (iv) claimed any other legally cognizable prejudice; and that the face of the Complaint and the face of the Amended Complaint be deemed to state that they were filed by the New York County Clerk on May 11, 2011, and May 16, 2011, respectively, for the same reasons; and

(8) an order, to be made pursuant to CPLR 305(c), 306(a), 2001, and 2101(c), deeming the expression "Supplemental Summons" to be substituted in every affidavit of service filed with respect to the service of a paper labeled "Amended Summons" on the grounds that no Defendant has (i) objected to the sufficiency of such proof of service; or (ii) moved to strike such proof of service; or (iii) claimed that a substantial right has been prejudiced; or (iv) claimed any other legally cognizable prejudice; and

(9) an order, to be made pursuant to CPLR 3217(b) and (c), permitting RAKOFSKY to voluntarily discontinue all causes of action he has interposed against MARTHA SPERRY, INDIVIDUALLY; (B) THE MARTHA SPERRY DAILY; (C) ADVANTAGE ADVOCATES; (D) LORI D., PALMIERI, INDIVIDUALLY; (E) PALMIERI LAW; (F) HESLEP

& ASSOCIATES; (G) UNIVERSITY OF ST. THOMAS SCHOOL OF LAW; and
(H) DEBORAH K. HACKERSON with prejudice; and

(10) an order, to be made pursuant to CPLR 306-b, extending indefinitely the time for RAKOFSKY to effect service of (A) copies of the original Summons, the so-called "Amended Summons," and a new Supplemental Summons, and (B) copies of the original Complaint, the Amended Complaint, and the Second Amended Complaint, and to cause proof of service of such papers to be filed by the New York County Clerk (i) on the ground that good cause has been shown and/or (ii) in the interest of justice, all because some Defendants, namely "BANNINATION.COM.," "J-DOG," "JOHN DOE NO. 1," "JOHN DOE # 2," "RESTORING DIGNITY TO THE LAW," and "TARRANT 84," are, in effect, anonymous users of the Internet and/or the World Wide Web, and they have not yet been identified and located for purposes of service of process, despite duly diligent efforts by or on behalf of RAKOFSKY; and

(11) an order, to be made pursuant to CPLR 6301, granting (A) a temporary restraining order against new Defendant GOOGLE, INC. pending an immediate hearing of the relevant parts of this motion, and, upon the determination of the relevant parts of this motion, (B) a preliminary injunction, against new Defendant GOOGLE, INC., which is to be added as an additional Defendant in this action in the proposed Second Amended

Complaint, because it has refused to preserve certain information in the absence of a formal Court order, and preventing GOOGLE, INC. from spoliating any evidence within its possession, custody, and/or control that will or may help RAKOFSKY to identify individuals and/or business entities who have done business anonymously on the Internet and the World Wide Web, and who have, as a consequence of such anonymity, not yet been served with process in this action; and

(12) an order, to be made in the discretion of the Court pursuant to CPLR 2004, extending the time for RAKOFSKY to serve additional copies of papers by first class mail or priority mail (depending upon the weight of the envelope or other package) upon one or more clients represented by Attorney Randazza if (A) they are found to have been entitled to such additional service, and (B) they are found to have not received such additional service; and

Sufficient cause therefor having been ~~shown~~^{alleged} to the satisfaction of this Court, it is

ORDERED that pending the initial hearing of this motion, Defendant GOOGLE, INC. is temporarily restrained from spoliating any evidence within its possession, custody, and/or control pertaining to the true identities, locations, and addresses of the individuals and/or entities that did and/or do business on the Internet and/or the World Wide Web under the assumed or fictitious names "BANNINA-

TION.COM.," "J-DOG," "JOHN DOE NO. 1," "JOHN DOE # 2," "RESTORING DIGNITY TO THE LAW," and "TARRANT 84,"; and sufficient reason therefor having been shown to the satisfaction of this Court,

LET service of copies of this Order to Show Cause and all supporting papers upon which it has been made upon (1) all Defendants who have appeared in this action; (2) all Defendants who have been granted an extension of time to appear in this action; (3) GOOGLE, INC.; and (4) RICHARD BORZOUYE, ESQ. and BORZOUYE LAW FIRM, P.C. (one set of papers only) be deemed sufficient and timely notice of this application if served by Express Mail service from the United States Postal Service no later than December ____, 2011; and it is

ORDERED that Plaintiffs shall file proof of such service on GOOGLE, INC. no later than December ____, 2011, and proof of such service on all other parties and others who must be served no later than January ____, 2012; and it is further

ORDERED that this Court will hear the matter of the relief requested against GOOGLE, INC. at the New York County Courthouse, 60 Centre Street, New York, New York, in IAS Part 17, in Courtroom ____, on January ____, 2012, at ____ a.m. or as soon thereafter as such matter can be heard by the Court; and it is further

ORDERED that if GOOGLE, INC. elects to serve answering papers in opposition to this motion it shall serve the same upon RAKOFSKY at 67 Wall Street, Apt. 24G, New York, New York 10005, by Express Mail service from the United States Postal Service or any other

overnight delivery service no later than January ____, 2012; and it is further

ORDERED that GOOGLE, INC. shall file proof of such service no later than January ____, 2012, at ____ a.m.; and it is further

ORDERED that all other parties and all others who elect to serve answering papers in opposition to this motion shall serve the same upon RAKOFSKY at 67 Wall Street, Apt. 24G, New York, New York 10005, by Express Mail service from the United States Postal Service or any other overnight delivery service no later than January ____, 2012; and it is further

ORDERED that all other parties and all others who elect to serve answering papers in opposition to this motion shall file the same with proof of such service no later than January ____, 2012; and it is further

ORDERED that RAKOFSKY may serve reply papers, if so advised, upon all parties and all others who elect to serve answering papers in opposition to this motion by Express Mail service from the United States Postal Service or any other overnight delivery service no later than February ____, 2012; and it is further

ORDERED that RAKOFSKY shall file all such reply papers with proof of such service no later than February ____, 2012; and it is further

ORDERED that any party who has made a motion to dismiss all or any part of this action may rest on such motion or serve, in the

manner set forth above for answering papers on this motion, and file a substitute motion with proof of service no later than January ____, 2012; and it is further

ORDERED that RAKOFSKY may, if so advised, serve answering papers in opposition to one or more or all such motions, in the manner set forth for answering papers on this motion, no later than March ____, 2012; and it is further

ORDERED that Plaintiffs shall file proof of such service no later than March ____, 2012; and it is further

ORDERED that any party who has made a motion to dismiss all or any part of this motion or who serves a substitute motion or who serves a new motion, may serve, in the manner set forth above for answering papers on this motion, reply papers on such motion by April ____, 2012; and it is further

ORDERED that any party who has made a motion to dismiss all or any part of this motion or who serves a substitute motion or who serves a new motion shall file all such reply papers with proof of such service no later than April ____, 2012; and it is further

ORDERED that in light of the large number of parties and the complexities of this action, this Court will entertain oral argument on all issues other than those which pertain solely to GOOGLE, INC. on _____, 2012, at ____ a.m., or as soon thereafter as this matter can be heard by this Court; and it is further

ORDERED that the stay granted in this Court's Order dated July 22, 2011 shall be deemed lifted and dissolved solely as set forth herein; and it is further

J.S.C. ORDERED that except as lifted and dissolved herein, such stay shall otherwise remain in full force and effect pending further Order of this Court and the expiration of ten (10) additional days thereafter.

J.S.C.
Oral Argument
Directed

JSC

E N T E R :

HON. EMILY JANE GOODMAN

EMILY JANE GOODMAN

Opposition papers must be delivered to Chambers two business days before return date. Reply papers are due the next day.

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

-----X
:
JOSEPH RAKOFSKY, et ano., : Index No. 105573-2011
:
 Plaintiffs, : AFFIDAVIT IN SUPPORT
:
 -against- : ASSIGNED JUSTICE:
: EMILY JANE GOODMAN
THE WASHINGTON POST COMPANY, :
et al., : IAS PART 17
 Defendants. :
:
-----X

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

JOSEPH RAKOFSKY, being duly sworn, deposes and says:

1. I am the principal Plaintiff in this action. At all times mentioned 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 U.S. 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).

3. I am the sole shareholder in RLF.

4. I make this affidavit in support of my application for the issuance of the foregoing proposed order to show cause and for the

substantive relief requested therein. On December 20, 2011, this Court notified the parties that it has extended a stay (previously granted) to March 9, 2012. The dates for responses to this motion and for responses to the proposed Second Amended Complaint (Exh. "6") should be set accordingly in the proposed order to show cause. This Court should also bear in mind that the first false and libelous utterance was published by The Washington Post on April 1, 2011, and that applicable Statutes of Limitations of Limitations will begin to expire on April 1, 2012. The lone exception is my application for immediate injunctive relief against new Defendant GOOGLE, INC. ("Google") (see final cause of action in Exhibit "6") to prevent spoliation of critical evidence in Google's possession, custody, and/or control (it has advised me that it will not preserve such evidence in the absence of a formal Court Order).

**EXECUTIVE SUMMARY OF THE
GENESIS OF THIS ACTION**

5. Earlier this year RLF and I undertook to represent a man accused of various criminal acts, including a homicide, in the District of Columbia.

6. RLF and I associated with SHERLOCK GRIGSBY, ESQ., who is an experienced attorney admitted to practice law in the District of Columbia, with offices at 601 Pennsylvania Ave., N.W., Suite 900, Washington D.C. 20004.

7. I was admitted to practice law in the District of Columbia *pro hac vice* for the purposes of that case.

8. Difficulties, including a conflict with my client, led me to ask the trial judge to allow me to withdraw from that representation.

9. With my client's consent, the District of Columbia Court allowed me to withdraw, declared a mistrial, and directed a new trial with new defense counsel in my place.

10. On April 1, 2011, The Washington Post published a story concerning that case. Parts of that story "of and concerning" RLF and "of and concerning" me were false and libelous, and they have inflicted great personal and professional damage upon RLF and upon me.

11. The story "spread like wildfire" on the Internet and the World Wide Web, with some individuals and entities re-posting the original Washington Post article, and others embellishing that article with libelous commentary "of and concerning" RLF and "of and concerning" me.

12. At the outset, RICHARD BORZOUYE, ESQ. of BORZOUYE LAW FIRM, P.C., 14 Wall Street, 20th Floor, New York, New York 10005, ("Attorney Borzouye"), represented RLF and me in this action.

13. As I explain more fully below, Attorney Borzouye was threatened by an out-of-state attorney to a point at which he became so intimidated that he sought and obtained leave to withdraw from his representation.

EXHIBITS

14. A copy of the original Summons in this action, which was signed by Attorney Borzouye and which was filed by the New York County Clerk on May 11, 2011, is submitted as **Exhibit "1."**

15. A copy of the original Complaint in this action, which was signed by Attorney Borzouye and which was filed by the New York County Clerk on May 11, 2011, is submitted as **Exhibit "2."** The first cause of action began in paragraph 77 on page 14, and was for defamation by libel. The second cause of action began in paragraph 185 on pages 63-64, and was for violation of New York Civil Rights Law §§ 50-51. The demand for relief began in paragraph 188 on page 64.

16. A copy of the so-called "Amended Summons" in this action, which was signed by Attorney Borzouye, which should have been labeled "Supplemental Summons," and which was filed by the New York County Clerk on May 16, 2011, is submitted as **Exhibit "3."** This was just *five (5) days* after this action was commenced (see ¶¶ 14-15, above).

17. A copy of the Amended Complaint in this action, which was issued as a matter of right pursuant to CPLR 3025(a), which was signed by Attorney Borzouye, and which was filed by the New York County Clerk on May 16, 2011, is submitted as **Exhibit "4."** Again, this was just *five (5) days* after this action was commenced (see ¶¶ 14-15, above). The first cause of action began in paragraph 84 on

page 15 and was for defamation by libel. The second cause of action began in paragraph 195 on page 66 and was for intentional infliction of severe emotional distress. The third cause of action began in paragraph 208 on pages 72-73 and was for intentional interference with contract. The fourth cause of action began in paragraph 214 on page 74 and was for violation of New York Civil Rights Law §§ 50-51. The demand for relief began in paragraph 217 on page 74.

18. The caption of the so-called "Amended Summons" (Exh. "3") and the caption of the Amended Complaint (Exh. "4") added seven (7) new Defendants who were not named in the original Summons (Exh. "1") and who were not named in the original Complaint (Exh. "2"). They are: (A) ACCELA, INC.; (B) AVVO CORPORATION; (C) COLIN SAMUELS; (D) JOSHUA KING; (E) KRAVET & VOGEL, LLP; (F) NATHANIEL BURNEY; and (G) THE BURNEY LAW FIRM, LLC. Putting aside the fact that the so-called "Amended Summons" (Exh. "3") should have been labeled "Supplemental Summons" to add the new Defendants (CPLR 305[a]), the joinder of the seven additional Defendants was proper: There was no order of the Court authorizing such joinder (CPLR 305[a]); and there was no stipulation signed by all parties authorizing such joinder; but the Amended Complaint (Exh. "4") was filed on May 16, 2011, just five (5) days after the original Complaint (Exh. "2") was filed on May 11, 2011 (CPLR 305[a], 1003).

19. A copy of a proposed Supplemental Summons to add fifteen (15) additional Defendants is submitted as Plaintiffs' **Exhibit "5."**

20. Pursuant to CPLR 3025(b), a copy of a proposed Second Amended Complaint (A) to add fifteen (15) additional Defendants; (B) to separately state and number (CPLR 3014) each libelous utterance as a separate cause of action; (C) to add and separately state and number (CPLR 3014) each cause of action for injurious falsehood as a separate cause of action; (D) to restate the cause of action for intentional infliction of severe emotional distress in certain respects; (E) to restate the cause of action for intentional interference with contract in certain respects; (F) to restate the cause of action for violation of Civil Rights Law §§ 50-51 in certain respects; (G) to add a new cause of action for prima facie tort based on "cyber-bullying" or "mobbing"; (H) allows Rakofsky to discontinue, without prejudice, all causes of action for prior restraint of further publication and re-publication; (I) to add a new cause of action against new Defendant Google for injunctive relief to prevent spoliation of critical evidence; and (J) to restate the *ad damnum* clause to clarify the relief requested on each cause of action, is submitted as **Exhibit "6."**

WITHDRAWAL OF PLAINTIFFS' COUNSEL AND STAY

21. Attorney Randazza stated to Attorney Borzouye that he represents dozens of parties named as Defendants in this action; that he intended to move for admission *pro hac vice*; and that he

was preparing to file criminal charges against Attorney Borzouye for alleged violations of one or more California anti-wiretapping laws. Randazza threatened Borzouye because Borzouye permitted me to listen to his telephone conversation with Randazza without disclosing to Randazza that I was on the phone. We did this because countless people were calling and emailing me, and we had no idea who Attorney Randazza was. I listened to protect our case.

22. Attorney Randazza told Attorney Borzouye that he would withdraw that threat if Attorney Borzouye were to pay money to one of several specified entities.

23. On or about June 13, 2011, Attorney Borzouye moved for leave to withdraw from his representation of RLF and me.

24. That motion was not made by order to show cause and did not seek an immediate stay of all proceedings.

25. Various Defendants opposed that motion; RLF and I did not do so.

THE STAY

26. Although Attorney Borzouye did not obtain a temporary stay when he made his motion for leave to withdraw from his representation, this Court's Order dated July 22, 2011, determining his motion contained a stay of all proceedings herein, except that RLF and I were permitted to tender proof of service of the original Summons (Exh. "1"), the original Complaint (Exh. "2"), the so-called "Amended Summons" (Exh. "3"), and the Amended Complaint

(Exh. "4") to the New York County Clerk for filing (which we then did). A copy of the July 22, 2011, Order is submitted as **Exhibit "7."**

27. I do not know whether Attorney Borzouye served copies of the July 22, 2011, Order upon all Defendants in the manner and within the time limit provided therein. I do know that he did not serve that Order upon RLF and upon me in the manner and within the time limit provided therein.

28. Notwithstanding the facts set forth in paragraph 27, above, I treat the stay as binding and as in full force and effect. For such reasons, the first paragraph of the proposed order to show cause addresses the stay and asks this Court to modify it to allow me to proceed with the balance of this application at this time.

29. Given the number of Defendants named in this action, the complexity of this case, and the short Statutes of Limitations applicable to defamation and other intentional torts I must make this application at this time.

**SECOND PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

30. The primary purpose of the second paragraph of the proposed order to show cause is to allow me to proceed, pursuant to CPLR 305(a) and 3025(b), with a new Supplemental Summons (Exh. "5") and a Second Amended Complaint (Exh. "6").

31. This relief is necessary for three reasons. One relates to The Washington Post; one relates to the joinder of additional Defendants; and one relates to better statement of my causes of action.

32. On or about July 25, 2011, I was advised by KEVIN T. BAINE, ESQ. and CHETAN PATIL, ESQ., counsel at THE WASHINGTON POST COMPANY, that it was improper for RLF and for me to name "THE WASHINGTON POST COMPANY" as a Defendant in this action because it is merely a holding company; that the correct Defendant's name is THE WASHINGTON POST, LLC; and that they would not consent to a substitution of the correct party for the incorrect party. Thus, I must formally add the correct party as an additional Defendant. I will discontinue this action against the incorrect party after all necessary steps are accomplished.

33. Unfortunately for RLF and for me, after the Amended Complaint (Exh. "4") was filed by the New York County Clerk on May 16, 2011, additional persons and entities published false and libelous matter "of and concerning" RLF and "of and concerning" me on the Internet and the World Wide Web. I need to add them as additional Defendants as well.

34. Although I was unable to secure the services of a substitute attorney-of-record in Attorney Borzouye's place, either on a fee basis or a pro bono publico basis, I was able to obtain some

legal advice concerning my pleading from attorneys who have more experience than I do.

35. The proposed Second Amended Complaint (Exh. "6") addresses various technical matters. For example, it obeys the part of CPLR 3014 which directs that separate causes of action shall be separately stated and numbered. Now, only the Defendant or Defendants who published a particular defamatory statement must answer for it.

36. Similarly, I have added causes of action for injurious falsehood, and I have separately stated them and numbered them, just as I have with the causes of action for libel.

37. Because I am not admitted to practice law in New York, I cannot represent RLF at this time. The Second Amended Complaint deletes the reference to RLF from the caption, and deletes and discontinues (CPLR 3217[b]), without prejudice, all causes of action previously interposed by RLF. The "without prejudice" aspect of this relief is consistent with CPLR 3217(b) and (c), and preserves RLF's ability to interpose those causes of action in a new action if it becomes able to retain counsel before the Statutes of Limitations applicable to its causes of action expire.

38. Google presents a unique problem. It has refused to preserve information in its possession, custody, and/or control in the absence of a formal court order. I need that information to identify, locate, and serve a number of Defendants who are anonymous

users of the Internet and the World Wide Web. I understand that I cannot obtain temporary and preliminary injunctive relief (CPLR 6301) unless I state a cause of action for permanent injunctive relief. The proposed Second Amended Complaint (Exh. "6") addresses this, too (last cause of action).

39. The proposed Second Amended Complaint (Exh. "6") also clarifies the causes of action for intentional infliction of severe emotional distress, intentional interference with contract, violation of Civil Rights Law §§ 50 and 51, and adds a new cause of action for prima facie tort. It also clarifies the *ad damnum* clause. Finally, it withdraws all applications for prior restraints against additional publications and republications.

**THIRD PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

40. On September 15, 2011, parties who chose to do so appeared before this Court on the return date of Attorney Randazza's motion for admission *pro hac vice*. This Court granted that motion and a copy of its Order is submitted as **Exhibit "8."**

41. On the same occasion, this Court fixed a briefing schedule for motions to dismiss made by various Defendants. Approval of the Second Amended Complaint (Exh. "6") will entitle those Defendants who have pending motions to rest on those motions, but they should be afforded an opportunity to withdraw those motions, and to serve and file substitute motions if they deem themselves advised to do so.

42. That makes necessary the establishment of a new briefing schedule. The provisions for service and filing of papers in the proposed order to show cause are designed to address this issue. Dates must be set for two purposes: (A) one is a schedule for the service and filing of papers on *this motion*; and (B) the other is a schedule for the service and filing of papers on motions to dismiss, whether already pending or new. New motions will probably fall into two categories: (i) some may be substitute motions made by Defendants who have already made motions to dismiss and wish to serve substitute motions; and (ii) and some may be initial motions made by newly joined additional Defendants.

**FOURTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

43. I believe that Attorney Borzouye failed to take all necessary steps to protect RLF and me when he decided that he wanted to terminate his representation and withdraw. I prepared and tendered to this Court a proposed order to show cause on that subject, but this Court was of the view that I cannot seek relief against him in this action because he is not a party to this action, and so it declined to issue that proposed order to show cause.

44. I understand that attorneys who have appeared on behalf of litigants, and certain others, can be non-party respondents under certain circumstances. I cannot take steps to appeal as of right or to move for permission to appeal from the July 22, 2011,

Order (Exh. "7") unless this Court lifts and dissolves so much of the stay as prevents that.

**FIFTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

45. It is a privilege, not a right, for an out-of-state attorney to appear in a New York Court *pro hac vice*. Attorney Randazza demonstrated -- by threatening to instigate a criminal prosecution of Attorney Borzouye in California -- that he is not fit to appear *pro hac vice* for dozens of Defendants, or even one Defendant. Rule 3.4(e) of the Rules of Professional Conduct carries forward former DR 7-105 unchanged. The current Rule provides as follows: "A lawyer shall not * * * (e) present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter." Plainly, Attorney Randazza obtained a distinct advantage for dozens of Defendants by intimidating Attorney Borzouye to the point at which he quit and left both RLF and me "high and dry."

46. I cannot take steps to appeal as of right or to move for permission to appeal from the September 15, 2011, Order (Exh. "8") unless this Court lifts and dissolves so much of the stay as prevents that.

**SIXTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

47. This part of the proposed order to show cause is simple. It provides for the removal of RLF from the caption of this action

and for the voluntary discontinuance of its causes of action, without prejudice, so that they can be brought again if circumstances change and I find an attorney who will represent it.

**SEVENTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

48. This part of the proposed order to show cause is also not complex. The original Summons (Exh. "1") and the so-called "Amended Summons" (Exh. "3") have three identical deficiencies. The so-called "Amended Summons" (Exh. "3") also has a fourth deficiency. None of these irregularities and omissions is jurisdictional; all of them are subject to repair or being disregarded; and no Defendant has complained about any of them.

49. First, the original Summons (Exh. "1") and the so-called "Amended Summons" (Exh. "3") failed to state that the basis of venue in New York County is my residence in New York County at all times material to this case. Second, both of those papers failed to state that my residence address in New York County has been 67 Wall Street, Apt. 24G, New York, New York 10005, at all times material to this case. Third, both of those papers failed to state the date on which they were filed by the New York County Clerk. It was May 11, 2001, for the original Summons (Exh. "1"), and it was May 16, 2011, for the so-called "Amended Summons" (Exh. "3").

50. The statement of the nature (CPLR 2101[c]) of the so-called "Amended Summons" (Exh. "3") should have been "Supplemental Summons."

51. The face of the Complaint (Exh. "2") and the face of the Amended Complaint (Exh. "4") should be deemed to state that they were filed by the New York County Clerk on May 11, 2011, and May 16, 2011, respectively, for the same reasons.

52. No Defendant has complained about any of these irregularities and omissions. They should be deemed corrected and/or disregarded (CPLR 305[c], 2001).

**EIGHTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

53. This part of the proposed order to show cause is also not complex, and it is directly related to the sixth and seventh parts thereof. It seeks coordinated correction of proof of service of papers erroneously labeled "Amended Summons" when they should have been labeled "Supplemental Summons."

54. Thus, this part of the order to show cause seeks an order, to be made pursuant to CPLR 305(c), 306(a), 2001, and 2101(c), deeming the expression "Supplemental Summons" to be substituted in every affidavit of service filed with respect to the service of a paper labeled "Amended Summons" on the grounds that no Defendant has (i) objected to the sufficiency of such proof of service; or (ii) moved to strike such proof of service; or (iii) claimed that a substantial right has been prejudiced; or (iv) claimed any other legally cognizable prejudice.

**NINTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

55. This, too, is not a complex element of my application. I am willing to voluntarily discontinue all causes of action I have interposed against (A) MARTHA SPERRY, INDIVIDUALLY; (B) THE MARTHA SPERRY DAILY; (C) ADVANTAGE ADVOCATES; (D) LORI D. PALMIERI, INDIVIDUALLY; (E) PALMIERI LAW; (F) HESLEP & ASSOCIATES; (G) UNIVERSITY OF ST. THOMAS SCHOOL OF LAW; and (H) DEBORAH K. HACKERSON -- with prejudice.

**TENTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

56. This request for relief stems from the fact that some Defendants have committed torts anonymously. Their anonymity has made service of process upon them impossible, despite duly diligent efforts. This dovetails with the joinder of Google and the request for orders temporarily, preliminarily, and permanently forbidding Google to destroy material evidence pertaining to such parties who have been anonymous users of the Internet and the World Wide Web. I require a substantial, and, indeed, indefinite extension of time to track down these individuals and/or entities so that service of process may be effected (CPLR 306-b). The foregoing constitutes good cause shown and/or (ii) the interest of justice within the meaning of the statute.

**ELEVENTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

57. This part of the proposed order to show cause pertains to proposed new Defendant Google. Unfortunately, Google has refused to preserve information that will or may enable me to determine the identities and locations of the anonymous Defendants.

**TWELFTH PARAGRAPH OF PROPOSED
ORDER TO SHOW CAUSE**

58. Attorney Randazza represents ERIC TURKEWITZ, THE TURKEWITZ LAW FIRM, SCOTT GREENFIELD, SIMPLE JUSTICE NY, LLC, BLOG.SIMPLEJUSTICE.US, KRAVET & VOGEL, LLP, CAROLYN ELEFANT, MYSHINGLE.COM, MARK BENNETT, BENNETT AND BENNETT, ERIC L. MAYER, ERIC L. MAYER, ATTORNEY-AT-LAW, NATHANIEL BURNEY, THE BURNEY LAW FIRM, LLC, JOSH KING, AVVO, INC., JEFF GAMSO, GEORGE M. WALLACE, WALLACE, BROWN & SCHWARTZ, "TARRANT84," BANNED VENTURES BANANI, BRIAN L. TANNEBAUM, TANNEBAUM WEISS, COLIN SAMUELS, ACCELA, INC., CRIME AND FEDERALISM, "JOHN DOE" #1, ANTONIN I. PRIBETIC, STEINBERG MORTON, ELIE MYSTEL, ABOVEHELAW.COM, BREAKING MEDIA, LLC, DAVID C. WELLS AND DAVID C. WELLS, P.C.

59. He has asserted that one or more of these Defendants was entitled to receive additional copies of papers by mail and that they did not receive such additional copies of papers by mail.

60. I do not know whether either part of that proposition is true. I am, however, willing to serve additional copies of papers by mail if this Court (A) finds that any such Defendant was enti-

tled to additional copies of papers by mail, and (B) did not receive such additional copies by mail, and if this Court will extend the time for me to do so (CPLR 2004). It should also allow me to file proof of such additional service.

TECHNICAL MATTERS

61. No prior application has been made to this Court or any other Court for any of the relief requested herein or any similar relief except as is revealed in this affidavit.


62. In view of the complexity of this matter, I request leave to settle an order following the announcement of this Court's decision.

63. A stamped, self-addressed envelope ("SASE") is submitted herewith.

64. My fax number is (212) 618-1705. The Court may use this number to furnish to me a copy of this order to show cause in the form in which it is issued by this Court.

65. In setting the dates in the order to show cause, I ask this Court to bear in mind the magnitude of the papers and the large number of sets of papers I must prepare and serve. In view of the fact that Google is entitled to a prompt hearing on the temporary restraining order, the papers should be served upon it

forthwith, but there should be additional time for me to accomplish service on the many remaining Defendants.



JOSEPH RAKOFSKY

Sworn to before me on this
22 day of December, 2011



NOTARY PUBLIC

YONATAN SUSSMAN
Notary Public, State of New York
No. 01SU8113697
Qualified in Queens County
Certificate Filed in New York County
Commission Expires August 2, 2012

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

-----X
JOSEPH RAKOFSKY, *et ano.*

Plaintiffs,

INDEX NO. 105573/2011

-against-

**SUPPLEMENTAL
AFFIDAVIT**

THE WASHINGTON POST COMPANY, *et al.*

Defendants.
-----X

STATE OF NEW YORK)
) SS:
COUNTY OF NEW YORK)

JOSEPH RAKOFSKY, being duly sworn, deposes and says:

1. I am the plaintiff in the above-entitled action and have knowledge of the facts of this case.

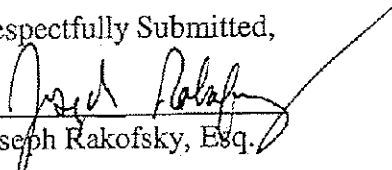
2. I make this affidavit in support of plaintiff's order to show cause. The averments set forth in this affidavit are true to the best of my knowledge, information and belief.

3. On December 22, 2011, I gave notice to Google, Inc., by electronic mail, that I have submitted an order to show cause to this Court and am seeking a temporary restraining order pending a hearing on a preliminary injunction, specifically because

Google, Inc. has expressly refused to preserve the information I seek unless I can obtain a Court Order.

Dated: New York, New York
December 23, 2011

Respectfully Submitted,



Joseph Rakofsky, Esq.

(Appearing *pro se*)

4400 US-9
Freehold, NJ 07728
Bar: 03446-2009
Tel: (877) 401-1529
Fax: (212) 618-1705
JosephRakofsky@gmail.com

Sworn to before me on the
23 day of December, 2011



HERMAN FOGAH
Notary Public, State of New York
Qualified in Queens County
Reg. No. 01FO8214379
My Commission Expires Dec. 7, 2013