

STATE OF IDAHO }
COUNTY OF KOOTENAI } SS
FILED:

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CLERK DISTRICT COURT

DEPUTY

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19
20 IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF
21 IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

22
23 TINA JACOBSON,
24
25 Plaintiff,
26
27 vs.
28 JOHN DOE and/or JANE DOE,
29
30 Defendants.

Case No. CV-2012-3096

AFFIDAVIT OF DAVE OLIVERIA IN
SUPPORT OF MOTION TO QUASH
SUBPOENA DUCES TECUM

COPY

31 STATE OF IDAHO)
32) ss.
33 County of Kootenai)

34 DAVE OLIVERIA, being first duly sworn, upon oath deposes and says:

35 1. I am over the age of 18 and am competent to make the statements contained
36 herein.

1 2. I am an employee in the news department of *The Spokesman-Review* newspaper,
2 published by Cowles Publishing Company ("Cowles Publishing").

3 3. I have been employed by Cowles Publishing for 28 years. I worked as a reporter
4 for *The Spokesman-Review* for nine years and then for thirteen years as associate editor of the
5 Opinion Page. For the past eight and one-half years, I have been the reporter, administrator and
6 facilitator of the "*Huckleberries*" blog, of which Cowles Publishing is the service provider. I
7 have also written a weekly column titled "*Huckleberries*" for *The Spokesman-Review*, devoted
8 to events and news in North Idaho, for 28 years. I consider my duties concerning the blog as
9 part of my reporting duties.

10 4. The purpose of the *Huckleberries* blog is to stimulate conversation, discussion
11 and opinions by individuals concerning issues of national, local and regional importance in
12 North Idaho. I frequently initiate such discussions and rendering of opinions by posting about
13 a person, event or issue, to which posting other readers of the blog respond.

14 5. The service agreement that is posted online by *The Spokesman-Review*
15 concerning its blog policy states that, although *The Spokesman-Review* may disclose
16 demographic information about posters in the blog, "we will not reveal your personal identity
17 in connection with the disclosure of such information." In *The Spokesman-Review's* published
18 privacy policy, *The Spokesman-Review* states that it will not disclose personal information
19 unless "we are required to do so by law" or for other reasons relating to compliance with the
20 law or legal process, defending *The Spokesman-Review's* rights and property, protecting against
21 misuse or unauthorized use of *Spokesman-Review* sponsored web services or protecting the
22 personal safety or property of blog users or the public.

23 6. In my experience, anonymity for posters on the *Huckleberries* blog is critical,
24 because it allows individuals to openly express their opinions and comments about national,
25 regional and local issues without fear of repercussion or retaliation concerning the same.
26 Potential repercussions could include negative impact on a poster's employment or harassment
27 by persons arising out of the blog postings. In my experience, if identities of posters were
28 publicly disclosed, this would inhibit the free flow of information and discussion on the blog

1 and would discourage people from posting comments on the blog, the end result being that
2 discussion and expression of opinions on matters of public importance would dwindle, or
3 perhaps dry up completely.

4 7. On February 14, 2012, I chose as a topic to be discussed on the *Huckleberries*
5 blog, the visit of Republican presidential candidate Rick Santorum to North Idaho. Part of the
6 postings on the blog on that day included postings by *Spokesman-Review* reporter Jonathan
7 Blunt of live tweeting concerning candidate Santorum's visit to the Coeur d'Alene Resort Event
8 Center. A copy of this live tweeting is attached hereto as Exhibit "A," and by this reference
9 made a part hereof. Posted as part of the live streaming was a photograph of Rick Santorum
10 addressing persons in attendance at the Coeur d'Alene Resort Event Center, and the photograph
11 depicted Tina Jacobson sitting on a stage with other persons behind Mr. Santorum. That
12 photograph is included as part of Exhibit "A."

13 8. In response to the live streaming and posting of the photograph, several
14 individuals posted comments on the blog relating to the Santorum event. All of these
15 comments were posted anonymously.

16 9. Attached hereto as Exhibit "B" and by this reference made a part hereof are the
17 blog postings concerning the Santorum event and the photograph that was posted.

18 10. Some of the initial comments on the blog were directed at identifying which
19 persons were on stage with Mr. Santorum. Tina Jacobson was identified as being one of those
20 on the stage, and comments on the blog, somewhat imaginatively and perhaps sarcastically,
21 addressed her attire. In one blog posting, a poster identified as "almostinnocentbystander"
22 stated, somewhat fancifully, "Is that the missing \$10,000 in Kootenai County Central
23 Committee funds actually stuffed inside Tina's blouse??? Let's not try to find out." I did not
24 view this posting as a factual assertion that Tina Jacobson had stolen \$10,000. Two subsequent
25 postings, one by "Phaedrus" and one by "OutofStaterTater," addressed
26 almostinnocentbystander's comment, and there was a follow-up posting by
27 almostinnocentbystander at 5:20 p.m. on February 14, 2012. There have been no other postings
28 about almostinnocentbystander's original post on the *Huckleberries* blog, other than posters

1 commenting on the litigation initiated by Ms. Jacobson.

2 11. I removed the two postings by almostinnocentbystander and the postings by
3 Phaedrus and OutofStaterTater prior to 6:00 p.m. on February 14, 2012, not because I believed
4 the postings were defamatory, but because it was my opinion the postings included *ad hominem*
5 comments about Tina Jacobson, and I try to discourage such personal comments on the
6 *Huckleberries* blog.

7 12. Subsequently on February 16, 2012, I was visited by John Cross of the Region 1
8 Republicans, who asked me to provide the identity of the poster almostinnocentbystander. He
9 indicated he was representing local Republicans who were upset about the posting. I did not
10 provide the information requested.

11 13. After informing almostinnocentbystander of this visit, I posted the following
12 statement on the *Huckleberries* blog:

13 On Tuesday, Huck's online poster almostinnocentbystander made a
14 baseless allegation against Tina Jacobson, Chairwoman of the
15 Kootenai County Republican Central Committee. I deleted that
16 post and three others that referred back to it as soon as I saw them.
17 I also informed almostinnocentbystander that posting privileges at
18 Huck's online have been revoked. In response today,
19 almostinnocentbystander e-mailed this: 'I apologize for and retract
20 my derogatory and unsubstantiated commentary regarding Tina
21 Jacobson.' Huck's online commenters should feel free to flag posts
22 they think are inappropriate -- DFO.

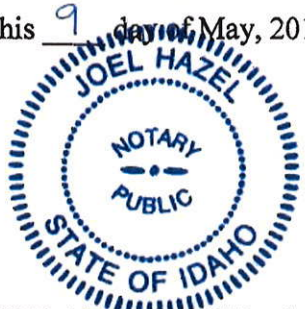
23 The posting privileges were temporarily revoked not because I believed the
24 almostinnocentbystander postings to be factually derogatory but because, as part of the
25 standards for posting on the *Huckleberries* blog, we try to discourage what might be viewed as
26 *ad hominem* comments about persons by posters. My understanding with
27 almostinnocentbystander during my conversations with this source, both by e-mail and
28 telephone, was that his/her identity was confidential and the identity and substance of those
conversations, other than what was posted on the blogs, would not be disclosed by me. It was
my impression, based on conversations and e-mail exchanges with almostinnocentbystander,
that almostinnocentbystander was fearful of repercussions that might be levied against him/her

1 as a result of the postings that occurred on February 14, 2012, if the identity was revealed.

2 14. My follow-up conversations and e-mail exchanges with
3 almostinnocentbystander were confidential, and although I have learned of
4 almostinnocentbystander's identity, I am compelled as a reporter not to reveal this person's
5 identity and believe it would be a violation of my reporter's privilege if I did. I fear that if I
6 reveal the identity, this would discourage other persons from communicating with me
7 confidentially about matters posted on the blog or reported on in my *Huckleberries* column or
8 elsewhere in *The Spokesman-Review* because of their concern that their confidentiality would
9 be compromised, the result being that the free flow of information and opinion would be
10 stifled.

11 15. Information retained by *The Spokesman-Review* includes the e-mail address that
12 a person has used to register at Spokesman.com, which allows them to post on a blog such as
13 *Huckleberries*. *Spokesman-Review* computer files contain a timestamp, a user name, a user IP
14 address and a user e-mail as to persons who post on *Spokesman-Review* blog sites.

15 DATED this 9 day of May, 2012.



16
17 D. J. Oliveria
18 DAVE OLIVERIA

19
20 SUBSCRIBED AND SWORN to before me this 9 day of May, 2012.

21
22 Joel Hazel
23 Print Name: Joel Hazel
24 Notary Public for the State of Idaho
25 Residing at Coeur d'Alene
26 My appointment expires: 9/19/2017
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CERTIFICATE OF SERVICE

I certify that on this the 11th day of May, 2012, I caused a true and correct copy of AFFIDAVIT OF DAVE OLIVERIA IN SUPPORT OF MOTION TO QUASH SUBPOENA DUCES TECUM to be forwarded, with all required charges prepaid, by the method(s) indicated below, to the following person(s):

C. Matthew Andersen
Winston & Cashatt
250 Northwest Blvd., Suite 206
Coeur d'Alene, ID 83814

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Via Fax: (208) 765-2121
- Via email: cma@winstoncashatt.com