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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ESTATE OF OTTO ZEHM, deceased, and  
ANN ZEHM, in her personal capacity and  
as representative of the Estate of Otto  
Zehm,

Plaintiffs,

v.

CITY OF SPOKANE, JIM NICKS, KARL  
THOMPSON, STEVEN BRAUN, ZACK  
DAHLE, ERIN RALEIGH, DAN TOROK,  
RON VOELLER, JASON UBERAGA, and  
THERESA FERGUSON, each in their  
personal and representative capacities,

Defendants.

NO. CV-09-80-LRS

DECLARATION OF  
THERESA FERGUSON

I, THERESA FERGUSON, declare under penalty of perjury, that the  
following is true and correct.

1. I make the following declaration based upon my own personal  
knowledge.

DECLARATION OF THERESA FERGUSON –  
1

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1           2.     I am employed as a police officer for the City of Spokane Police  
2 Department (SPD). I currently hold the rank of Detective and work in the Major  
3 Crimes Unit. I have been a police officer since March, 1986.

4  
5           3.     I am a defendant in this lawsuit.

6           4.     At the time of the incident which is the subject matter of this lawsuit,  
7 I responded to the scene as one of the investigators for SPD. I subsequently  
8 conducted the investigation as the lead investigator.

9  
10          5.     The SPD Critical Incident Protocol was invoked by Chief Nicks at this  
11 time. Spokane County Sheriff Office Detective Charles Haley was assigned to work  
12 with me and did so during the initial 24 hours. I did not have a designated  
13 “shadow” detective from Spokane County past the initial contacts with involved  
14 officers and used four different Spokane County detectives to “shadow” my  
15 activities. A Spokane County Sheriff Office detective was present during my taped  
16 interviews with Officer Thompson and Officer Braun and a civilian witness.  
17 Resources were limited as this investigation continued therefore I conducted  
18 activities without a “shadow,” however, my activities were conducted with the  
19 knowledge of my supervisor and that of the Spokane County Major Crimes  
20 Supervisor as indicated by their review of my reports. At no time was I instructed  
21 to involve another detective in these activities, many of which were follow-up  
22 contacts with individuals who had already completed reports  
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1           6.     To the best of my recollection, at the time I arranged for Officer  
2 Thompson's taped interview, he advised me that no "lunge" had occurred as had  
3 been reported.  
4

5           7.     After a number of failed disc copies, I finally obtained surveillance  
6 video from all four camera angles of the ZipTrip which displayed portions of the  
7 incident. I reviewed all four angles immediately which included a clear video of  
8 Otto Zehm holding a 2 liter Pepsi bottle. I completed a report relating the  
9 successful video copying of the four angles which was read and approved by  
10 Sergeant Joe Peterson and Spokane County Sheriff Office Sergeant James  
11 Goodwin.  
12

13           8.     The Pepsi bottle, although clearly seen in Mr. Zehm's hands on the  
14 video, was later submitted for latent print examination. This test did not reveal  
15 prints.  
16

17           9.     A Skills Kin payroll check was found on Mr. Zehm's personal property  
18 on the scene of 3-18-06.  
19

20           10.    On or about 4-5-06, when I reviewed all of the officers' reports, I  
21 learned that a "spit mask" was applied to Mr. Zehm. I immediately confirmed that  
22 2 medical masks were on scene on 3-18-06, but were not seized for evidentiary  
23 value as it was believed that they were medical debris left by medical personnel. I  
24 contacted Paul Binkowski of Fire Station 3 and showed him scene photos which  
25 depicted 2 medical masks. He gave me a Hudson RCI Nonrebreather mask as a  
26 representation of the one given to officers on 3-18-06 used to contain spitting. He  
27  
28

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3

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1 also explained these masks were commonly used to contain spitting. I contacted  
2 Forensic Technician Craig Coppock on 4-6-06 and learned that medical debris had  
3 been bagged for disposal but had not been disposed. I immediately recovered two  
4 masks and the tube for the "spit mask" that was not attached to it when medical  
5 personnel gave it to officers for application. Both masks were placed in the  
6 Property facility. I contacted the four Spokane Fire Department medics who were  
7 on scene regarding the use of the mask. On 4-11-06, I reviewed the video  
8 surveillance and created a time line per Dr. Sally Aiken's request. The time line  
9 included the mask application. I submitted the time line and the requested  
10 employment and medical records to Dr. Aiken on 4-11-06. The fax cover sheet  
11 included a request for contact with me if she needed anything else. I prepared  
12 reports on the mask usage, recovery and SFD medical responder interviews which  
13 were read and approved by Sergeant Joe Peterson and Spokane County Sheriff  
14 Office Sergeant Jim Goodwin. On 5-3-06, I provided Dr. Aiken with a copy of  
15 video surveillance per her request. On 5-4-06, I submitted transcribed statements  
16 of Officer Thompson and Officer Braun plus Officer Erin Releigh's report to Dr.  
17 Aiken. Officer Erin Releigh's report clearly describes the mask application.

18  
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22  
23 11. On 5-31-06, I forwarded my investigative file to the Spokane County  
24 Prosecutor's Office. My summary report concluded no finding of criminal activity  
25 on the part of the officers. I made NO recommendation to decline criminal charges  
26 or any recommendation whatsoever as to the prosecutor's decision regarding this  
27 case. The investigative file included all investigative reports, the autopsy report,  
28

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4

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1 the four video camera angles, and additional video and audio recordings for this  
2 review. Further, this case was not and has not been suspended as indicated by  
3 the narrative portion of my reports. I have followed up on any and all requests  
4 from the prosecutor's office as already stated.  
5

6 12. I subsequently learned the Secret Service would assist SPD with a  
7 vacuum metal deposition examination, known for seriously disrupting the original  
8 item tested. This test was discussed with Deputy Prosecuting Attorney Jack  
9 Driscoll prior to being conducted as it was an evidentiary item pursuant to the  
10 criminal investigation.  
11

12 13. On 7-19-06, Spokane County Deputy Prosecutor Jack Driscoll  
13 recommended that Grant Fredericks, a nationally recognized forensic video  
14 analyst whom Mr. Driscoll heard as a presenter at a conference, conduct an  
15 analysis of the entire video surveillance, including all four camera views. Mr.  
16 Driscoll had received copies of all four camera views in late May of 2006. Neither  
17 Spokane County Prosecutor's Office or SPD had funds to pay for the analysis. It  
18 was suggested that I contact Mr. Treppiedi as a representative of the City  
19 Attorney's Office to inquire about payment options.  
20  
21

22 14. On 7-22-06, Chief Deputy Prosecutor Jack Driscoll, Officer John  
23 McGregor, SPD video technician, and I met with Grant Fredericks. Prior to this  
24 meeting, Mr. Fredericks advised the master copies of the video discs would provide  
25 the best analysis. Mr. Fredericks requested the master copies for all camera  
26 views, including the corrupted discs, for the best analysis product (see Exhibit A,  
27  
28

1 itemization of the items received as prepared by Mr. Fredericks, attached and fully  
2 incorporated hereto into this Declaration.) He was provided the requested items  
3 with the complete knowledge of Mr. Driscoll. My supervisor was informed of the  
4 request for the analysis, the request for the master copies, the scheduled meeting  
5 on 7-22-06 and the results of that meeting. Per the report of Mr. Fredericks, the  
6 master copies and additional items released to him, were in his custody during the  
7 entire analysis activity until they were handed back to me (see Exhibit B, Chain of  
8 Custody report, attached and fully incorporated hereto into this Declaration). His  
9 analysis and report is independent as there were no instructions or advisements  
10 proposed other than the request for a forensic analysis.  
11  
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13  
14 15. In July or August of 2006, I met with F.B.I Special Agent Lisa  
15 Jangaard per her request to go through my investigative file. We went through it  
16 page by page and copies were made of any document she requested. Agent  
17 Jangaard made additional requests over time for property viewing, property items  
18 and other documentation. These requests were promptly handled directly and  
19 were also delivered by me to her office. The only time I recall that I did not  
20 personally provide a requested item(s) was on 2-10-09 when I was unavailable and  
21 could not deliver same day or next day service. I arranged for the Property facility  
22 to release items to her and she contacted Officer John McGregor for a video/audio  
23 recording. Letters I wrote to Special Agent Jangaard in which I documented items  
24 being delivered to her ended with the offer to contact me if she had any questions.  
25  
26

27 I was not asked for a "complete" file copy until it came to my attention, on or  
28

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1 about 3-17-09, that a "complete" copy had not been received. I was not advised as  
2 to what a "complete" copy entailed. "Complete" file is not a phrase that I am  
3 familiar with in my work unit. Although I had provided for every request that I  
4 understood Agent Jangaard wanted, I immediately copied every document,  
5 including previously requested and unrequested items which were part of my case  
6 file, hand delivering them to the F.B.I. I continued to provide documents and/or  
7 items to the F.B.I. as I thought the F.B.I. likely did not have copies. These were  
8 items listed in various reports and should have been known to the F.B.I. I  
9 continued to provide the F.B.I. with documents and/or items prior to and after  
10 receiving a Grand Jury subpoena in April of 2009. I have no recollection of any  
11 follow up call from the F.B.I. or the U.S. Attorney's Office as to NOT receiving  
12 requested items or clarifying items which had been requested. Nothing was  
13 withheld from either government agency and I made every effort to comply with  
14 government requests as timely as humanly possible.  
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19 16. In October of 2006, Deputy Chief Al Odenthal informed me that if we  
20 continued with the investigation, we would be arrested for obstruction per the U.S.  
21 Attorney's Office. Subsequently, my activities ceased other than to provide for  
22 requests of materials from the F.B.I.  
23

24 17. The only inquiries I recall making of Mr. Treppiedi prior to the  
25 Department of Justice ordering this investigation to cease, involved the  
26 appropriateness of the release of Mr. Zehm's payroll check to an attorney on Mrs.  
27 Zehm's behalf, a discussion of altering the appearance and contents of the Pepsi  
28

1 bottle for vacuum metal deposition in anticipation of a civil claim and inquiring as  
2 to payment options for a video analysis.

3  
4 18. I have investigated this incident to the best of my ability with the  
5 available resources.

6 19. I have had attorney/client communication with the Office of the City  
7 Attorney, including Assistant Attorney Rocco N. Treppiedi, regarding the civil claim  
8 since the investigation was forwarded to the Spokane County Prosecutor's Office.

9  
10 I was a potential defendant per the Center for Justice's comments regarding my  
11 actions as the lead investigator.

12 20. When the Center for Justice notified the City of its allegations, they  
13 indicated the investigation was somehow inappropriate and that I might be named  
14 as a defendant. I maintained contact with the City Attorney's Office in  
15 anticipation of the civil lawsuit. The City Attorney's Office informed me that even  
16 if I was not named as a defendant, I would be considered a designated  
17 representative of the City in the civil case because I was the lead investigator.  
18

19  
20 21. When the civil suit was filed, I was named as a defendant. I  
21 subsequently met with Assistant Rocco Treppiedi to discuss their claims against  
22 me. In those meetings, I reviewed the lawsuit as well as discussed my personal  
23 defenses.  
24

25 22. My only discussion with Rocco Treppiedi referencing the Grand Jury  
26 was to learn about the process. There was no briefing or preparation for my  
27 testimony and, in fact, Mr. Treppiedi advised me to review my reports, answer  
28

DECLARATION OF THERESA FERGUSON –

8

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1 questions as fully as possible and to tell the truth. The “debriefing” that occurred  
2 involved my disappointment with the conduct of the U.S. Attorney Timothy Durkin  
3 and frustration with the adversarial, biased nature of this experience. It was my  
4 impression that the Grand Jury questions asked and comments made by the  
5 prosecutors were not a search for the truth.  
6

7           23. I have testified before a Grand Jury proceeding under a subpoena  
8 from the U.S. Attorney’s Office. The Assistant U.S. Attorney Timothy Durkin  
9 repeatedly asked about my discussions with my attorney Rocco Treppiedi and the  
10 City Attorney’s Office, which I believe are privileged. Mr. Durkin persisted with  
11 those questions even when I testified that his questions were enmeshed with the  
12 civil suit. I was not represented by counsel and there was no judicial presence to  
13 clarify this procedure.  
14  
15

16           24. I am not aware of any “gag order” from the SPD administration that  
17 prevents me from speaking to an attorney of my choice or the City Attorney’s  
18 Office.  
19

20           25. I respectfully object to a stay in this matter as a defendant in a civil  
21 lawsuit. I want all facts gathered which are necessary to defend myself and to  
22 bring a motion to dismiss myself from the suit. This has been a long, arduous  
23 three and a half years and I am eager to clear my name of the allegations set forth  
24 against me in this lawsuit.  
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DATED this 21<sup>st</sup> day of September, 2009.

*Theresa Ferguson 09/21/09*  
THERESA FERGUSON

CERTIFICATE OF SERVICE

I hereby certify that on the 21<sup>st</sup> day of September, 2009, I electronically filed the foregoing "Declaration of Theresa Ferguson" with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Breean L. Beggs  
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Jeffry Finer  
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06-0079962

Spokane Police Department

**Evidence of Grant Fredericks  
Forensic Video Analyst**

On July 22, 2006, I met with Det. Terry Ferguson, Officer John McGregor and Prosecutor Jack Driscoll at the Spokane Police Department regarding the in-custody death of Mr. Otto ZEHM that occurred on March 18, 2006.

Det. Ferguson requested that I provide a thorough examination of a number of video and audio exhibits and to produce a detailed account of the events depicted on the exhibits.

At the meeting Det. Ferguson and Officer McGregor provided me with the following Items:

- Item #1: Various Reports and Statements
- Item #2: CD of the Washington Trust Bank (CD#A3Z17D5207942)
- Item #3: CD of Zip Trip Master#1 (CD# UGO5C24151148 6 80C2)
- Item #4: CD of Zip Trip Master#2 (CD# UGO5C24151106 6 80C2)
- Item #5: Zip Trip 3/18/06 Copy #2 (CD# UGO5C24150901 6 80C2)
- Item #6: Zip Trip 3/18/06 Copy #1 (CD# UGO5C24150901 6 80C2)
- Item #7: Zip Trip 3/20/06 Copy #2 (CD# UGO5C24150901 6 80C2)
- Item #8: Zip Trip 3/20/06 Copy #1 (CD# UGO5C24150900 6 80C2)
- Item #9: McGregor AVI's (5031C1051 15228 13)
- Item #10: McGregor AVI's (5031C1051 15228 13)

On August 29, 2006, I received an e-mail from Mr. Rod Ekholm, from the Spokane County Communications Department. The e-mail contained a number of audio files relating to a 911 call and to police communication from March 18, 2006.

On September 12, 2006, I received a second e-mail from Mr. Rod Ekholm containing additional audio relating to this incident.

For the purpose of this report, I did not examine the contents of Item #1, since my analysis would be conducted best in the most independent manner possible.

An examination of Items #2 through #10, showed that Item #6 was broken and not usable. Item's #5, 7, 8 and 9 were duplicates of contents of Items #2, #3 and #4.

Therefore, for the purpose of this report, I relied on Items #2, #3, #4 and on the audio provided by Mr. Ekholm. Item #2 was contained in an SPD Property bag with the tracking number of 06-0079962:039. The CD was accompanied by a business card from Mr. John Weber of the Washington Trust Bank and appears to be the first generation of data from the bank's ATM. Items #3 & #4 were contained in an SPD Property bag with the tracking number of 06-0079962:036 and contained a yellow tag indicating they were received from Mr. Ian Johnston or Rikki Lewis of Zip Trip. The contents of Items #3 and #4 appear to be first generation of data from the Zip Trip Digital Video Recorder (DVR).

In this report, the video contents of Items #3 and #4 will be referred to as the Zip Trip Video. The video contents of Item #2 will be referred to as the Washington Trust Bank Video. The audio content will be identified as 911, Police Dispatch, Fire Dispatch or Ambulance Dispatch.

Confidential EXHIBIT A

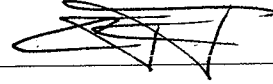
9/22/2006

DECLARATION OF THERESA FERGUSON-12

**Exhibit Continuity Report**

Grant Fredericks  
Ph: 509-467-3559

The information contained in this Exhibit Continuity Report is true and accurate. Signature: \_\_\_\_\_



**Forensic Project: OTTO ZEHM**

**Case # 06-0079962**

**Package ID: 100**

**Time Received: 07/22/2006 10:30**

**Custody Via: Hand delivery**

**EVIDENCE: ID# 215 Reports/Statements - Various Reports & Statements**

**Exhibit Source:** Terry Ferguson      **Date Returned:** 09/22/2006 15:00  
**Returned To:** Terry Ferguson      **Returned Via:** Hand delivery

Deposit Time	Removal Time	Location	Analyst
07/22/2006 13:15	09/22/2006 13:40	LOCKER 11	GF

**EVIDENCE: ID# 216 CD - Washington Trust Bank (A3Z17D5207942)**

**Exhibit Source:** Terry Ferguson      **Date Returned:** 09/22/2006 15:00  
**Returned To:** Terry Ferguson      **Returned Via:** Hand delivery

Deposit Time	Removal Time	Location	Analyst
07/22/2006 13:15	08/15/2006 9:00	LOCKER 11	GF
08/15/2006 12:00	09/22/2006 13:40	LOCKER 11	GF

**EVIDENCE: ID# 217 CD - Zip Trip Master #1 (UG05C24151148 6 80C2)**

**Exhibit Source:** Terry Ferguson      **Date Returned:** 09/22/2006 15:00  
**Returned To:** Terry Ferguson      **Returned Via:** Hand delivery

Deposit Time	Removal Time	Location	Analyst
07/22/2006 13:15	08/15/2006 9:00	LOCKER 11	GF
08/15/2006 12:00	09/22/2006 13:40	LOCKER 11	GF

**EVIDENCE: ID# 218 CD - Zip Trip Master #2 (UG05C24151106 6 80C2)**

**Exhibit Source:** Terry Ferguson      **Date Returned:** 09/22/2006 15:00  
**Returned To:** Terry Ferguson      **Returned Via:** Hand delivery

Deposit Time	Removal Time	Location	Analyst
07/22/2006 13:15	08/15/2006 9:00	LOCKER 11	GF

**EVIDENCE: ID# 219 CD - Zip Trip 3/18/06 Copy #2 (UG05C24150901 6 80C2)**

<b>Exhibit Source:</b> Terry Ferguson	<b>Date Returned:</b> 09/22/2006 15:00
<b>Returned To:</b> Terry Ferguson	<b>Returned Via:</b> Hand delivery

Deposit Time	Removal Time	Location	Analyst
07/22/2006 13:15	08/15/2006 9:00	LOCKER 11	GF
08/15/2006 12:00	09/22/2006 13:40	LOCKER 11	GF

**EVIDENCE: ID# 220 CD - Zip Trip 3/18/06 Copy #1 (UG05C24150901 6 80C2)**

<b>Exhibit Source:</b> Terry Ferguson	<b>Date Returned:</b> 09/22/2006 15:00
<b>Returned To:</b> Terry Ferguson	<b>Returned Via:</b> Hand delivery

Deposit Time	Removal Time	Location	Analyst
07/22/2006 13:15	08/15/2006 9:00	LOCKER 11	GF
08/15/2006 12:00	09/22/2006 13:40	LOCKER 11	GF

**EVIDENCE: ID# 221 CD - Zip Trip 3/20/06 Copy #2 (UG05C24150901 6 80C2)**

<b>Exhibit Source:</b> Terry Ferguson	<b>Date Returned:</b> 09/22/2006 15:00
<b>Returned To:</b> Terry Ferguson	<b>Returned Via:</b> Hand delivery

Deposit Time	Removal Time	Location	Analyst
07/22/2006 13:15		LOCKER 11	GF

**EVIDENCE: ID# 222 CD - Zip Trip 3/20/06 Copy #1 (UG05C24150900 6 80C2)**

<b>Exhibit Source:</b> Terry Ferguson	<b>Date Returned:</b> 09/22/2006 15:00
<b>Returned To:</b> Terry Ferguson	<b>Returned Via:</b> Hand delivery

Deposit Time	Removal Time	Location	Analyst
07/22/2006 13:15	09/22/2006 13:40	LOCKER 11	GF

**EVIDENCE: ID# 223 CD - McGregor AVI's (5031C1051 15228 13)**

<b>Exhibit Source:</b> Terry Ferguson	<b>Date Returned:</b> 09/22/2006 15:00
<b>Returned To:</b> Terry Ferguson	<b>Returned Via:</b> Hand delivery

Deposit Time	Removal Time	Location	Analyst
07/22/2006 13:15	09/22/2006 13:40	LOCKER 11	GF

**EVIDENCE: ID# 224 CD - McGregor AVI's (5031C1053 15238 13)**

<b>Exhibit Source:</b> Terry Ferguson	<b>Date Returned:</b> 09/22/2006 15:00
<b>Returned To:</b> Terry Ferguson	<b>Returned Via:</b> Hand delivery

Deposit Time	Removal Time	Location	Analyst
07/22/2006 13:15	09/22/2006 13:40	LOCKER 11	GF