

HONORABLE LONNIE R. SUKO

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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
STEVEN S. BRAUN

I, STEVEN S. BRAUN, 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 STEVEN S. BRAUN - 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 Senior Police Officer.

3 3. I am a defendant in this lawsuit.

4 4. On March 18, 2006 I was on patrol duty when I was dispatched to
5 check out a suspicious person at an ATM machine at a bank near downtown
6 Spokane. I was several miles away, and as I proceeded toward the location I
7 received significant information about the nature of the suspicious person activity,
8 and as I got closer to the scene I received information that led me to believe that
9 the complainant/victims believed that the individual had robbed them at the ATM
10 machine, and that they were following the individual in their car as he walked
11 and, at times, ran from the bank.

12 5. During my drive toward the bank the dispatchers dispatched a
13 backup officer to the call as potential danger on the call increased. Also, a third
14 officer, Karl Thompson, was apparently nearby, and drove toward the activity.

15 6. Before I could find the suspect, Officer Thompson located the suspect
16 and said over the air that the suspect had entered a ZipTrip store on Division
17 Street. I was just a short distance away and immediately went to the ZipTrip
18 store. I did not see them at first, but when I located them it was obvious that: (a)
19 Officer Thompson was struggling mightily to obtain control of the suspect, and
20 that (b) they had been struggling for quite a while, as I saw TASER wire on the
21 floor and other objects spilled nearby.

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DECLARATION OF STEVEN S. BRAUN - 2

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1 7. I immediately assisted Officer Thompson in trying to get control of the
2 suspect. The suspect was extraordinarily strong, and was screaming like an
3 animal. I used several different tactics to try to get the suspect under control,
4 none of which worked. At various times I used my TASER, the stun drive on the
5 TASER, my baton, as well as "hands on" techniques. Together, both Officer
6 Thompson and I were becoming physically exhausted in our efforts to control the
7 individual, and the suspect was not close to becoming under control and seemed
8 to have extraordinary endurance as well as strength. At one point, both Officer
9 Thompson and I used our radios to request immediate backup assistance due to
10 our inability to control the suspect.
11

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14 8. After a while several officers arrived and they relieved Officer
15 Thompson and I of our efforts to gain control of the suspect.

16 9. The backup officers were finally able to handcuff the suspect, later
17 identified as Otto Zehm. The suspect continued to scream, thrash about, and
18 resist all efforts to calm down and keep him under control. The officers ultimately
19 placed him in leg restraints and hobbled him.
20

21 10. Since Mr. Zehm had been TASERed, through standard procedure, we
22 called for and waited for a fire truck with paramedics to remove the TASER barbs
23 from Mr. Zehm and evaluate his medical condition. After the paramedics had
24 arrived, and while we were waiting for an ambulance to take Mr. Zehm to the
25 hospital for further evaluation, he apparently stopped breathing and his heart
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1 stopped beating. He was given emergency treatment by the paramedics, but they
2 were unable to resuscitate him.

3
4 11. Mr. Zehm was then transported by ambulance to a local hospital. I
5 was so concerned about his extraordinary strength and endurance that I followed
6 the ambulance in my patrol car in case he regained consciousness and began
7 attacking the medical personnel and police officer that were in the ambulance.

8
9 12. Mr. Zehm died two days later. After a short period of time it became
10 obvious in the news media that Mr. Zehm's next of kin were threatening to sue the
11 City, and probably the officers that were at the scene. Since I was one of the
12 officers who had attempted to gain custody of him, I knew that if a suit were filed I
13 would likely be one of the people they would sue, even though I knew I had done
14 nothing wrong.

15
16 13. During the past 3-1/2 years the City Attorney's Office has been in
17 touch with me with respect to the potential that a claim would be filed against me,
18 and, once a claim was filed, they worked with me to ensure that I was properly
19 represented by legal counsel from the City Attorney's Office.

20
21 14. It has always been my understanding that the City Attorney's Office
22 acted as my personal legal representative in all matters involving this incident. I
23 have conferred on several occasions with the City Attorney's Office since this
24 incident, and have always considered my discussions with the City Attorney's
25 Office to be within the attorney/client privilege.
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DECLARATION OF STEVEN S. BRAUN - 4

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1 15. I have been subpoenaed to testify before a federal Grand Jury that
2 had been investigating this matter. I conferred with the City Attorney's Office
3 about the subpoena and the Grand Jury process, within the attorney/client
4 privilege.
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6 16. All of my testimony before the Grand Jury has been truthful and
7 under oath.
8

9 17. During my Grand Jury testimony I was asked by one of the
10 prosecutors about what I reviewed with my attorney in my attorney's office. The
11 prosecutor also asked me about other matters I might have reviewed with my
12 attorney. He asked several questions about how many times I met with my
13 lawyer, and where, etc.
14

15 18. I have never been informed by the Police Chief's Office that I was not
16 allowed to discuss either the terms of the subpoena regarding the Grand Jury or
17 any other aspect of this case with the City Attorney's Office. To the contrary, it
18 has been made clear to me by both the police department on the City Attorney's
19 Office that the City Attorney's Office is my legal representative in this matter.
20

21 19. I object to a stay of this matter. I want to gather all facts necessary to
22 defend myself and to bring a motion to dismiss. I want to get my name cleared
23 from the allegations alleged against me in this lawsuit.
24

25 DATED this 18 day of September, 2009.

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28 STEVEN S. BRAUN

DECLARATION OF STEVEN S. BRAUN - 5

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2009, I electronically filed the foregoing "Declaration of Steven S. Braun" with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

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