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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 JAMES E. NICKS

I, JAMES E. NICKS, 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 JAMES E. NICKS - 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 Assistant Chief of Police. I was the
3 Acting Interim Chief of Police from mid-December 2005 until September 11, 2006
4 when a permanent Police Chief was hired by the City. Prior to that, I was the
5 Deputy Chief of Police under Police Chief Roger Bragdon from 2001 to 2005. I
6 have a Bachelor of Arts degree in Criminal Justice Administration from Columbia
7 Southern University, and I am a graduate of the Northwestern University School of
8 Police Staff and Command, and the Northwestern University Executive
9 Management Program. I have been a police officer since 1980, working for the
10 City of Ephrata and then for the City of Spokane since 1982, and have been
11 promoted through the ranks and have held the following ranks: police officer;
12 detective; sergeant; lieutenant; captain; and deputy chief.
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14
15

16 3. At all times relevant to this lawsuit I was the Acting Interim Chief of
17 Police.
18

19 4. I have been a personal target of the lawyers for the Zehm family's
20 allegations since approximately April, 2006. I have been personally sued in this
21 case.
22

23 5. The Office of the City Attorney has been my legal representative prior
24 to and since the events of March 18, 2006 involving Mr. Otto Zehm.
25

26 6. No "gag order" was issued by the SPD to prevent any officer from
27 conferring with the City Attorney's Office or Assistant City Attorney Rocco N.
28 Treppiedi about the Grand Jury subpoenas issued by the U.S. Attorney's Office.

DECLARATION OF JAMES E. NICKS - 2

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1 7. There was initial confusion in 2008 over an order telling officers not to
2 talk to other officers about the grand jury subpoenas; that order did **not** include
3 legal advisors.
4

5 8. I was subpoenaed by the U.S. Attorney's Office to testify to the Grand
6 Jury on November 21, 2008. During my testimony to the Grand Jury I was
7 questioned by U.S. Attorney Timothy Durkin. Mr. Durkin asked me about my
8 communications with Assistant City Attorney Rocco N. Treppiedi about this case.
9

10 9. During the course of the testimony I stated that I was unfamiliar with
11 court rules as it pertained to legal counsel and the Grand Jury process. I stated
12 any differences of opinion between the attorneys (U.S. Attorney's office and the
13 City Attorney's Office) needs to be worked out between them. I was not in a
14 position to answer Mr. Durkin's questions in this regard.
15

16 10. I object to a stay of this case and of the discovery as requested by the
17 U.S. Attorney's Office. I want my attorneys to gather all facts necessary to defend
18 me and to bring a motion to dismiss. I want to get my name cleared from the
19 allegations alleged against me in this lawsuit.
20

21 11. This matter has dragged on much too long without providing me and
22 other defendants to be able to present evidence to a court and clear our names.
23 The SPD, the Spokane County Sheriff, and the Spokane County Prosecutor
24 completed the investigation of the potential criminal charges in this matter in
25 October, 2006. Since then, the U.S. Attorney's Office has promised to have their
26 review completed by November, 2006, then by the end of the year (2006), then
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DECLARATION OF JAMES E. NICKS - 3

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1 early 2007, etc. They have reviewed and investigated this matter for over three
2 years. There are no criminal charges pending against me.

3
4 12. The plaintiffs have made spurious public allegations against me since
5 2006, but waited until 2009 to file suit against me. I am poised to fully defend
6 those allegations. I do not believe the U.S. Attorney's Office should be allowed to
7 interfere with the lawsuit against me, the City, or anyone else.

8
9 13. The Department of Justice has requested many forms of information
10 from the SPD during the course of their review and investigation. I am not aware
11 of the SPD interfering with their investigation in any way.

12
13 14. On the night of the incident at the ZipTrip store, I responded to the
14 scene and received a preliminary briefing about what had occurred. Prior to
15 making a brief statement to the media about what had occurred, I received
16 information that Mr. Zehm had "lunged" or "turned on" the first responding officer.
17 I do not recall which officer(s) gave me that particular information. When I made
18 my first comments to the news media, I used the phrase "lunged."

19
20 15. As the investigation progressed, it was determined that Mr. Zehm had
21 not "lunged" at Officer Thompson. The fact that a "lunge" did not occur was
22 clarified and made public upon completion of the investigation.

23
24 16. On May 30, 2006 I conducted a press conference at which I, in part,
25 discussed a small portion of the autopsy report. I was criticized shortly thereafter
26 by the Center for Justice, which represents Mr. Zehm's estate, for having
27 mentioned anything about the autopsy results. However, my statements about
28

1 the autopsy report were accurate and true, and I made them because I believed
2 that the results needed to be placed in context for the public, since earlier media
3 reports had, in a way, taken the results out of context. I was not aware of any
4 order or law prohibiting me from making such statements, and therefore, I do not
5 believe I violated any court order in making my comments. I had not seen the
6 court order referred to by the Center for Justice at the time I made my comment.
7

8
9 17. In general, as one of the chief administrative officers of the police
10 department, I can attest to the difficult problems encountered pertaining to the
11 release of documents and information from a law enforcement agency, especially
12 during the pendency of a criminal case. From the news media's point of view, as
13 well as from other members of the public, they might want instant access to every
14 bit of information as it is learned by every police officer. However, from a legal and
15 practical point of view, there are restrictions on what information can or should be
16 disclosed and when. This can frustrate the media, the public, and our own
17 agency. Unfortunately, that is a conflict that we have to live with and deal with on
18 a daily basis.
19

20
21 18. Also, there are times when the media may focus on an issue that is
22 important to them, but is something that our law enforcement agency cannot
23 comment on until the investigation is complete, or perhaps even until we obtain
24 approval from the prosecutor. In this case, for example, the SPD was criticized for
25 not distributing the security video right away. However, we did not do so because
26 we were informed by the Spokane County Prosecutor's Office that the rules of
27
28

1 ethics would prevent disclosure when we were initially receiving the requests for
2 disclosure. We disclosed the videos as soon as the prosecutor determined that it
3 was appropriate to do so. They were not "hidden from" or "withheld from" the
4 public; we simply had to wait until we were authorized to do so.
5

6 DATED this 18 day of September, 2009.

7
8 
9 James E. Nicks

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 2009, I electronically filed the foregoing "Declaration of James E. Nicks" 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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DECLARATION OF JAMES E. NICKS - 7

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