

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  
ZACHARY DAHLE

I, ZACHARY DAHLE, 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 ZACHARY DAHLE - 1

HOWARD F. DELANEY, City Attorney  
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1 2. I am employed as a police officer for the City of Spokane Police  
2 Department (SPD), and have been since April, 2003. Before that, I was a police  
3 officer for approximately 3 years for the City of Seattle, Washington. I currently  
4 hold the rank of Senior Police Officer.  
5

6 3. I am a defendant in this lawsuit.  
7

8 4. I was on duty assigned to the patrol division on the evening of March  
9 18, 2006. I had just finished wrapping up an investigation at Second Avenue and  
10 Browne Street when I heard a "Code 6" come over the police radio, which was an  
11 emergency code meaning officers needed backup assistance immediately. I drove  
12 with my emergency lights and siren activated to the ZipTrip store on Division  
13 Street and entered the store. I heard a lot of yelling and screaming in the store  
14 from the suspect that was fighting against several officers' efforts to restrain him.  
15

16 5. Even though handcuffed, he was struggling hard against the officers,  
17 who were repeating commands to the suspect to "relax" and to "stop fighting." I  
18 asked if leg restraints were needed and it was agreed that I should obtain them. I  
19 went to my patrol car and obtained leg restraints. It took several officers to apply  
20 the leg restraints to the suspect because he refused to bend his knees, and was  
21 exceptionally strong. Once the restraints were applied, the leg restraints were  
22 attached to the handcuffs via a strap.  
23  
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25 6. Even through restrained, the suspect (later identified as Mr. Otto  
26 Zehm) kept fighting against the restraints, screaming incomprehensible things,  
27 and continually trashing and kicking his legs. It appeared to me that he had  
28

1 kicked the store shelving. He was kicking so much and with so much strength  
2 that he actually stretched the strap between his hands and ankles.

3  
4 7. At one point I heard an officer call out "he's spitting." A short time  
5 later I saw that a plastic mask had been applied to his face, and I saw that it had  
6 a band around his hair.

7  
8 8. Even though he had the mask on he continued to thrash and scream.  
9 At one point, the screaming stopped and I heard someone say that he had stopped  
10 breathing. Paramedics were right there and assisted Mr. Zehm. Mr. Zehm was  
11 ultimately taken to the hospital by ambulance. He died two days later.

12  
13 9. I learned, from the media and the City Attorney's Office, that the  
14 Zehm family and their lawyers had been making allegations that Mr. Zehm died as  
15 a result of the actions of the police officers at the scene. Since I was one of the  
16 officers at the scene, I was afraid that my wife and I would be sued.

17  
18 10. The City Attorney's Office has been in touch with me several times  
19 since this event occurred. It was always explained to me from the outset that the  
20 City Attorney's Office represented me and that what was communicated between  
21 me and the City Attorney's Office with respect to this incident was within the  
22 attorney/client privilege. The attorney that I met with most was Assistant City  
23 Attorney Rocky Treppiedi. During the three and one-half years since this incident  
24 happened, I know that the City has received letters from the lawyers representing  
25 Mr. Zehm's family, as well as a claim for damages, and then a lawsuit which  
26 named me as a defendant.  
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DECLARATION OF ZACHARY DAHLE - 3

HOWARD F. DELANEY, City Attorney  
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1 11. I have been subpoenaed by the U.S. Attorney's Office to testify before  
2 a federal Grand Jury about these events. During my testimony, I was asked by  
3 the prosecutor in front of the Grand Jury about what I had talked to my attorney  
4 about. I did not have an attorney with me in the Grand Jury. There was no judge  
5 present. I trusted the prosecutor to ask only those things that were appropriate to  
6 ask, and I assumed that if he asked me a question about what I talked to my  
7 attorney about that he had the right to do so. I do not understand the  
8 technicalities of the attorney/client privilege. I basically know that what my  
9 attorney and I discuss is confidential and that I cannot be forced to tell other  
10 people about those things.  
11  
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13  
14 12. I was subpoenaed a second time to testify before the Grand Jury in  
15 June, 2009. I appeared at the designated place and time. While I was waiting to  
16 testify, I was asked by a female FBI agent to go into a conference room at the U.S.  
17 Attorney's Office. As I recall, there was the female agent, a male investigative  
18 agent, and a U.S. Assistant Attorney in the room. I was told I was free to go at any  
19 time. Their reference that I was free to go seemed odd.  
20

21 13. I was told by the agents that "new evidence" had come up, and that  
22 they knew more about what had happened at the ZipTrip store than the last time I  
23 had testified, and that now was the time for me to change my testimony if I  
24 wanted to avoid trouble. I told them, "No." I believe I then said, "There is nothing  
25 for me to change." I told them I had been completely truthful the first time I  
26 testified, and I would be truthful when I testify later that day.  
27  
28

1 14. I was then told something to the effect of, "Hey, we're all law  
2 enforcement officers here, we understand why you'd have covered up the first  
3 time, so you can talk to us." I may have laughed. It struck me as funny that they  
4 would make that kind of a statement. There was no cover up of any kind. They  
5 then walked out of the room.  
6

7 15. While they were out I read a document that was on the table that said  
8 that Officer Karl Thompson was scheduled to be indicted later that week. When  
9 they returned to the room they saw me looking at the document. I asked them  
10 why it said that he would in fact be indicted that week if this was a fair  
11 investigation that was still going on, and that it was my understanding that it was  
12 up to the Grand Jury, and we're still testifying. They did not answer me.  
13  
14

15 16. During my entire time in the conference room, I felt that they had  
16 accused me of lying without saying it. I felt like I was treated like a suspect, not a  
17 witness who was being asked to respond to questions. I felt like the "interview"  
18 was designed to instill fear in me as a witness as opposed to get truthful  
19 information. I told them that when I went into the Grand Jury room that day that,  
20 if asked, my story would be the same as the last time - the truth.  
21  
22

23 17. I was never told that there was a gag order that would prevent me  
24 from talking to my attorney, Rocky Treppiedi. To the contrary, when I was  
25 provided with a copy of the subpoena to testify before the Grand Jury, I was told  
26 by the Chief's Office to call Mr. Treppiedi.  
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18. I object to a stay of this lawsuit. I want my attorneys to do everything necessary to defend me and to bring a motion to dismiss. I want to get my name cleared from the Zehm family's allegations against me in this lawsuit.

DATED this 18<sup>th</sup> day of September, 2009.

  
\_\_\_\_\_  
ZACHARY DAHLE

CERTIFICATE OF SERVICE

I hereby certify that on the 21<sup>st</sup> day of September, 2009, I electronically filed the foregoing "Declaration of Zachary Dahle" 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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s/Doris Stragier  
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