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HONORABLE RICHARD EADIE

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

EATTLE CITIZENS AGAINST THE TUNNEL
and ELIZABETH CAMPBELL,

NO. 09-2-36276-9SEA

Plaintiffs/Petitioners,

DECLARATION OF
DEBORAH L. CADE

v.

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION; PAULA HAMMOND, IN
HER OFFICIAL CAPACITY AS SECRETARY
OF THE WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION,

Defendants/Respondents.

ELIZABETH A. CAMPBELL,

(CONSOLIDATED WITH
NO. 09-2-40939-1SEA)

Plaintiff/Petitioner,

v.

CITY OF SEATTLE, a municipal corporation,

Defendant/Respondent.

1 DEBORAH L. CADE declares as follows:

2 1. I am an assistant attorney general representing Defendants Washington State
3 Department of Transportation and Paula Hammond (collectively, "WSDOT"), and the City of
4 Seattle ("City") in this matter.

5 2. The complaint in this matter was filed on October 6, 2009, by Plaintiffs'
6 former counsel, David Bricklin. I spoke with Mr. Bricklin on the phone on October 26, 2009,
7 regarding scheduling a hearing on a motion to dismiss this matter. Attached as Exhibit 1 is a
8 true and correct copy of email correspondence between me and Mr. Bricklin regarding this
9 scheduling. At the time, my plan was to note the hearing for December 4, 2009.

10 3. At that time, the earliest date that a motion could be heard by this Court was
11 January 8, 2010. Because briefing deadlines would occur over the holidays when both of us
12 had time off scheduled, Mr. Bricklin and I agreed on a briefing schedule under which his
13 response brief would be due on December 28, 2009.

14 4. On November 6, 2009, Ms. Campbell filed a lawsuit against the City of Seattle
15 like the case filed against WSDOT, this matter also alleged violations of the State
16 Environmental Protection Act (SEPA) in relation to the Alaskan Way Viaduct Central
17 Waterfront Replacement Project. WSDOT filed a motion to intervene in the case filed against
18 the City and a motion to consolidate the two cases. A hearing on those motions was noted for
19 December 29, 2009.

20 5. On December 22, 2009, I received an email from Elizabeth Campbell, copying
21 me on an email she sent to Mr. Bricklin in which she terminated his representation of the
22 Plaintiffs. Mr. Bricklin then contacted me on December 23, 2009, to ask that the hearings on
23 the pending motions be set over by three weeks in order to allow him time to withdraw from
24 the case. I agreed to re-note the motions to give him time to withdraw.

25 6. Mr. Bricklin filed a notice of intent to withdraw on December 23, 2009, which
26 was effective on January 8, 2010. To give Mr. Bricklin adequate time to withdraw and to

1 provide the case file to Plaintiffs, WSDOT re-noted the hearing on the motions to intervene
2 and consolidate for January 19, 2010,¹ and re-noted the hearing on the motion to dismiss for
3 March 12, 2010, which at that time was the earliest that the motion could be heard.

4 7. On or about February 12, 2010 (after the two cases were consolidated),
5 WSDOT and the City filed an amended motion to dismiss (“Defendants’ motion to dismiss”).
6 The amended motion included legal arguments to support the position that the City had not
7 taken a final action as required for SEPA review.

8 8. On or about February 23, 2010, Ms. Campbell filed a motion to continue the
9 hearing on Defendants’ motion to dismiss, claiming that she needed more time to prepare and
10 respond. Defendants filed a response opposing the request for a continuance on March 2,
11 2010. On March 5, 2010, the Court denied Ms. Campbell’s request to continue the hearing,
12 but ordered that it would discuss the need for additional response time at the hearing on
13 March 12, 2010. At the hearing, the Court entered an order continuing the hearing on
14 Defendants’ motion to dismiss to April 30, 2010, which was the first date available at that
15 time. On March 26, 2010, Ms. Campbell filed a response to Defendants’ motion to dismiss.

16 9. At WSDOT’s request, the Court also entered a protective order stating that
17 WSDOT would not be required to respond to Ms. Campbell’s discovery requests until after
18 the April 30, 2010 hearing.

19 10. On March 29, 2010, Ms. Campbell filed a motion for issuance of subpoenas
20 duces tecum, seeking to depose Governor Christine Gregoire, Senator Mary Margaret
21 Haugen, and several WSDOT and City staff. WSDOT filed a response on April 5, 2010. The
22 Court entered an order denying the motion on April 8, 2010.

23 11. On April 6, 2010, Ms. Campbell filed a Motion for an Order to Show Cause,
24 alleging WSDOT was not complying with the Public Records Act. WSDOT filed a response
25

26 ¹ The motions to intervene and consolidate were granted on January 26, 2010.

1 on April 14, 2010. On April 21, 2010 the Court granted Ms. Campbell's motion and
2 scheduled a show cause hearing for April 30, 2010, at 1:30 p.m., after the hearing on
3 Defendants' motion to dismiss.

4 12. On April 12, 2010, Plaintiffs hired attorney Jill Smith. Ms. Smith entered her
5 appearance on April 14, 2010. Ms. Smith did not contact me prior to agreeing to represent
6 Plaintiffs to find out if Defendants would agree to a continuance. I told Ms. Smith right after
7 she entered her appearance that the hearing on Defendants' motion to dismiss had already been
8 continued twice and that we would not agree to postpone the hearing for a third time. Attached
9 as Exhibit 2 is a true and correct copy of my email to Ms. Smith. Two weeks after being hired
10 by Plaintiffs, and four days before the hearing, Plaintiffs filed a motion requesting a
11 continuance and a motion to shorten time. No note for hearing was served on my office.

12 I declare under penalty of perjury under the laws of the State of Washington that the
13 foregoing is true and correct.

14 DATED this 27th day of April, 2010, at Tumwater, Washington.

15 
16 _____
17 DEBORAH L. CADE

Cade, Deborah (ATG)

From: Dave Bricklin [bricklin@bnd-law.com]
Sent: Monday, October 26, 2009 10:59 AM
To: Cade, Deborah (ATG)
Subject: FOLLOW UP

Deborah,

A couple of follow-ups to our telephone call this morning. One, I'm confirming that you've agreed to let each side have 35 interrogatories. Please confirm. Thanks.

Two, you are going to note your sj mtn for Dec. 4. I think you need to clear that with the judge's clerk. When you do, would you please let me know what time that day that will be? Thanks.

Three, we started out talking about the need to modify the case schedule, but didn't come back to that. Do you want to address that now or just wait till after the Dec. 4 hearing. I think both of our clients want to keep this litigation moving. If you're not successful on Dec. 4, it will be to our mutual advantage to have an alternate case schedule ready to propose to the judge. Do you want to work on that now so we have it ready to go if your motion isn't granted on Dec. 4?

Four, because I'm a bit uncertain about the precise nature of your sj mtn, I'd like to schedule the deps we discussed between Nov. 11 and Nov. 18. I'll get you dep notices by the end of this week, but you might alert "the likely suspects" now so they (and you) can hold time on their calendars.

Thank you.

David Bricklin
Bricklin & Newman, LLP
1001 Fourth Avenue, Suite 3303
Seattle, WA 98154
1-206-264-8600
1-206-264-9300 (fax)
bricklin@bnd-law.com
<http://www.bnd-law.com>

Cade, Deborah (ATG)

From: Cade, Deborah (ATG)
Sent: Friday, April 16, 2010 4:40 PM
To: jill.smith@naturalresourcelawgroup.com
Cc: 'Kipnis, Brian (USAAW)'; Phily, Amanda (ATG)
Subject: RE: Campbell

Jill, I will not agree to postponing the hearing in the State case. Your message asked for two additional weeks regarding the motion set for April 23, which is Campbell's motion in the federal case. That is your motion that you can reschedule. I have postponed the state hearing twice now, and have made numerous plans around that April 30 date that I cannot change now. You do not have my permission or concurrence to reschedule the state hearing.

From: Kipnis, Brian (USAAW) [mailto:Brian.Kipnis@usdoj.gov]
Sent: Friday, April 16, 2010 4:30 PM
To: jill.smith@naturalresourcelawgroup.com
Cc: Cade, Deborah (ATG)
Subject: RE: Campbell

I am not involved at all in the State case Jill.

As to the federal case, there are actually two motions currently pending. The first is Ms. Campbell's motion for a TRO, which is actually noted for Friday, April 23rd. I have also filed a motion to dismiss the complaint on behalf of the federal government. That is also noted for Friday April 23rd, which means your response is due on Monday.

Speaking for myself, but I think also true for Deborah Cade, I would rather not be working on this over the weekend if you are going to continue. I suppose if you are going to represent to us that you are going to renote, we can rely on that.

From: jill.smith@naturalresourcelawgroup.com [mailto:jill.smith@naturalresourcelawgroup.com]
Sent: Friday, April 16, 2010 4:25 PM
To: Kipnis, Brian (USAAW)
Subject: Re: Campbell

Brian - I do need some extra time in the case before judge Eadie, so I will be renoting the motion in that case for May 7. I have a call in to judge Eadie's bailiff to confirm that the date is available.

I entered an appearance in the federal case today as well, and it is my understanding that a hearing is scheduled for April 30 in that case, and I would like to get a continuance on that hearing as well.

Sent from my BlackBerry® smartphone, powered by CREDO Mobile.

From: "Kipnis, Brian (USAAW)" <Brian.Kipnis@usdoj.gov>
Date: Fri, 16 Apr 2010 19:16:14 -0400
To: <jill.smith@naturalresourcelawgroup.com>
Cc: Cade, Deborah (ATG)<DeborahC@ATG.WA.GOV>
Subject: Campbell

Ms. Smith:

I am representing the federal defendants in the Campbell case. Deborah Cade indicated that you had left a message with her indicating that you were going to renote Ms. Campbell's TRO application. If that is so, could you please let us know ASAP?

Thank you,

Brian C. Kipnis

Assistant United States Attorney

Senior Litigation Counsel

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Western District of Washington

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