IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STACEY KALBERMAN,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	Civil Action No.:
	*	2012CV216247
GEORGIA GOVERNMENT TRANSPARENCY AND CAMPAIGN FINANCE COMMISSION, f/k/a GEORGIA STATE ETHICS COMMISSION, HOLLY LABERGE, in her Official capacity as Executive Secretary of the Georgia Transparency and Campaign Finance Commission,	*	
	*	
Defendants	*	

AFFIDAVIT OF BRYAN K. WEBB

After being properly sworn, Bryan K. Webb testifies as follows:

1.

My name is Bryan K. Webb. I am competent in age and mind to give the testimony in this affidavit, and I present this affidavit for use in the above-styled case on behalf of the Office of the Attorney General in response to Plaintiff's Motion for Sanctions currently pending before this Court.

2.

I earned my J.D. from the University Of Alabama School Of Law in 1992. I have practiced law as a member of the State Bar of Georgia for 21 years. My practice has focused almost exclusively on litigation.

3.

I was first employed by the Georgia Department of Law in January 1997, and worked as an Assistant Attorney General until February 2001, when I was promoted to section head of the Department's employment litigation section. I remained in that position until February 2007 when I left the Department of Law to begin a private law practice. I returned to the Department of Law in September 2010 and have been employed as a Senior Assistant Attorney General since that time.

4.

I am a member in good standing of the State Bar of Georgia and I am not aware of any complaints filed against me.

5.

I was assigned as the lead attorney for the above-styled action in June 2012, and I remained the lead attorney through the discovery period, trial, and post-trial negotiations of the parties ending in May 2014.

6.

As the lead attorney in the case, it was my responsibility to conduct the discovery in the case, including serving discovery requests to the opposing party, responding to any discovery requests sent to the Defendant, and taking or defending any depositions in the case.

7.

On March 21, 2013, pursuant to an agreement with opposing counsel, I sent a compact disc containing documents produced in the case *Streicker vs. Georgia Government Transparency and Campaign Finance Commission*, Civil Action No. 2012CV16254, Superior Court of Fulton County, which was a pending case that involved substantially the same set of facts. Included on that disc was the "investigation file" (or the file as maintained by the Defendant Commission) as compiled relating to several complaints made by third-parties and alleging violations of the Georgia campaign ethics laws by then gubernatorial candidate Nathan Deal.

8.

The compact disc was an exact duplicate of one compiled by members of the Georgia Government Transparency and Campaign Finance Commission's staff. At the time the disc was created, I was responding to requests for production of documents that had been served in the Streicker matter. At that time, I was

working with Holly LaBerge, Lisa Dentler, and Elisabeth Murray-Obertein to compile the responsive documents. I sent the disc to opposing counsel as in the same form that it was provided to me and I did not add or remove any document from the disc.

9.

On March 26, 2013, Plaintiff served requests for production of documents to the Defendant.

10.

On March 22, 2013, Plaintiff served a subpoena to third-party internet mail provider Google, seeking in pertinent part:

> *All emails, messages, and attachments that were delivered to or sent from the email address holly.laberge@gmail.com from July 1, 2011 through the date of response to this Subpoena, including without limitation any emails, messages, or attachments that were deleted.*

A similar request was made to Google for the personal emails of Dentler. Plaintiff served a subpoena to internet mail provider Yahoo seeking the private emails of Murray-Obertein.

11.

On April 19, 2013, Plaintiff served requests for production of documents to Holly LaBerge in her official capacity as Executive Secretary of the Defendant Commission.

12.

On April 3, 2013, I served a Motion to Quash the subpoena to Google objecting to Google's production of all emails appearing on the private email accounts of LaBerge and Dentler. I served a similar Motion to Quash on behalf of Ms. Murray-Obertein to Yahoo.

13.

After filing the motion to quash, I had several conversations with opposing counsel about the mechanics of the subpoena to Google and how we might best be able to get the information that Plaintiff wanted without increasing the time and expense of arguing the motion to quash before the Court and also protecting the legitimate privacy interests of LaBerge, Dentler, and Murray-Obertein.

14.

On April 4, 2013 I sent the motion to quash to LaBerge and Dentler informing them that we should begin to fashion a compromise so that the parties could avoid the litigation on the subpoena and motion to quash. In the email, I discuss with them that a consent protective order had been proposed by Plaintiff's counsel. Because I believed that proposed consent protective order would not address all of their privacy concerns I requested that an alternative be suggested. I wrote:

> *I did want you to know about the consent protective order that has been proposed and for you to give me your thoughts about it. Also,*

whether or not in order to put the issue behind us either of you [LaBerge, Dentler, Murray-Obertein] have a suggestion as to a way for the production of legitimately relevant documents to the extent they exist that I might propose to the other side. Of course, if you do not have any such documents (work related) that are on your personal accounts then I would need to know that and we may need to get affidavit from each of you swearing to that so that I can use them in any defense of a potential motion to compel.

15.

Through discussion with opposing counsel, and LaBerge, Dentler, and Murray-Obertein, it was agreed that the staff would go through their private email accounts and produce any "work related" documents and items that were found in their private email account.

16.

On May 1, 2013, I met with LaBerge to discuss the discovery requests and the agreement with opposing counsel to produce all "work related" documents on the personal email accounts of LaBerge, Dentler, and Murray-Obertein. There were no other limitations on the agreement beyond "work related" and I did not communicate any other limitations.

17.

During the May 1, 2013, meeting, LaBerge printed out and handed to me one document that existed on her Gmail account. LaBerge presented an email exchange between her and former Commissioner Joshua Belinfante dated June 6,

2011. I recognized that this document may be significant in the case as it was evidence that LaBerge had communicated with Mr. Belinfante on at least two separate occasions prior to the June 9, 2011 meeting wherein former Commissioner Patrick Millsaps and Commissioner Hillary Stringfellow informed Plaintiff that her salary would be reduced.

18.

The substance of the June 6, 2011 email between Belinfante and LaBerge involved LaBerge thanking Belinfante for a conversation he had with LaBerge gauging her interest in the Executive Secretary position should it become vacant. The email exchange also was for the purpose of setting up a phone conference between Belinfante and Millsaps for later that same day.

19.

Subsequent to the May 1, 2013 meeting LaBerge, Dentler, and Murray-Obertein produced documents in response to the agreement. Each represented, and I understood, that what was given to me was all of their work related emails.

20.

On July 22, 2013, I served to Plaintiff's counsel documents responsive to her requests for production of documents to Defendant Commission, LaBerge in her official capacity, and pursuant to the agreement between counsel for work related

documents found on personal email accounts. Included in this production was the Belinfante email which I knew could be beneficial to the plaintiff.

21.

Exhibit No. 1 is an exact duplicate of the documents given to me by LaBerge, Dentler, and Murray-Obertein that were produced to Plaintiff pursuant to the agreement between counsel for work related documents found on personal email accounts. These are all the documents I received from LaBerge, Dentler, and Murray-Obertein, and I produced all the documents I received.

22.

On July 23, 2013, at 3:20 p.m., Plaintiff sent an Open Records Act request to LaBerge via email. Among the records requested, Plaintiff requested the following which are pertinent to this motion for sanctions:

> *3.) Any and all e-mails sent to or received by holly.laberge@gmail.com. . .and/or any other personal/ private e-mail address (i.e. any email address that is not an official State of Georgia email address) maintained by a Commission employee, since September 2011, containing communications, information, documents, discovery requests, files, or data related to Complaints filed with the Georgia State Ethics Commission and the Georgia Government Transparency and Campaign Finance Commission concerning Nathan Deal and the subsequent investigation/consent orders/fines (In the matter of Nathan Deal, Before the Georgia Government Transparency and Campaign Finance Commission, State of Georgia Case Nos. 20100033(a), 2010-033(b), 2010-0033(c), 2010-0039, 2010-0063, 2011-0008, 2011-0009) (the "Deal Matters") that were prepared maintained or received in the performance of a service or function for or on behalf of the Commission.*

23.

The July 23, 2013, Open Records Act request was sent directly to LaBerge.

24.

At 3:26 p.m., on July 23, 2013, LaBerge forwarded the Open Records Request to me.

25.

At 3:42 p.m., on July 23, 2013, LaBerge sent an email to me stating that: there were no other documents that she had that were responsive to the Open Records request and that all such documents had been turned over during the discovery production in the case. In the email, LaBerge informed me that:

> *On further examination that items 1,2, and 3 were satisfied when we gave you our copies of our personal emails an anything that was sent to or received from a work email in regards to them. . .I don't see that any of this is new material that we haven't already given them before.*
> . .

26.

On July 26, 2013, LaBerge responded to Plaintiff's Open Records Request stating that there were no additional documents to produce to Plaintiff that had not already been produced.

27.

On July 31, 2013, LaBerge's deposition was taken. During the deposition, LaBerge testified that she had produced all documents that she had that were requested by Plaintiff.

28.

On August 1, 2013, the deposition of Murray-Obertein was taken by Plaintiff. During her deposition, Murray-Obertein testified that she believed that she was pressured by LaBerge to settle three of the ethics cases against the Nathan Deal Campaign and to make a "number [amount of a fine] work for all three cases." (Murray-Obertein dep. pp. 54:21-55:1]. Murray-Obertein further testified that LaBerge told her that she "had to settle these three cases." (Id. at 55:4-5).

29.

Murray-Obertein further testified:

Q: Who was she [LaBerge] pressured by to assess that dollar amount number?

A: I believe she [LaBerge] was pressured by Chris Riley or somebody in the Governor's Office, because she told me that—
She was at the beach, of course. She always goes out of town the week before a disaster happens, and she told me that – I believe it was Chris Riley, or it could have – No. It could have been Ryan [Teague] or both had called her on a cell phone while she was at the beach.

Q: Someone from the governor's inner circle at least?

A: Called her and pressured her about taking a low number.

(Murray-Obertein dep. pp. 55:14-56:3).

30.

Murray-Obertein further testified:

Q: So the 71,000 approximately dollars in fines you proposed were reduced down to just over 3,000, correct?

A: Uh-huh.

Now I remember what the—Holly said was the difference between what the governor really wanted and what Randy [Evans] wanted. Randy wanted to go to trial on everything, and she was telling me that the governor wants to settle. He does not want to go to trial.

And I was told that one of the reasons why he doesn't want to go to trial is because it would go over to the AG's Office and that Sam Olens is – a possibility he might run against him for governor—I don't know if any of this is true or not: I was told that – and that the governor did not want to be in the hands of Sam Olens.

So that was my understanding of what the difference was, because Randy wanted to have trials on all of it, if we weren't going to settle on their number: and Holly was saying that she was being pressured from the governor's people to settle, because he did not want to have a trial and to an APA hearing and have Sam Olens in charge of his case.

(Murray-Obertein dep. pp. 57:8-58:13).

31.

I recall being at the Murray-Obertein deposition and recall thinking that this was the first time that I had heard that LaBerge was allegedly "pressured" into settling the Deal Campaign ethics complaints.

32.

After Murray-Obertein's deposition, I questioned LaBerge about the testimony Murray-Obertein had given on this point, and LaBerge confirmed that she had received phone calls from Riley and Teague while she was on vacation on

the beach. LaBerge further told me that during the telephone calls she believed that Teague had attempted to leverage the proposal that the legislature would give the Defendant Commission "rule-making authority" against settlement of the Deal Campaign ethics complaints.

33.

LaBerge also informed me that she had spoken to then Commissioner Kevin Abernethy about the phone conversations at the time they took place, and that Abernethy told her that she should write an account of the telephone conversations to have in the event that she ever needed to use it in the future.

34.

LaBerge told me that after she wrote the account, she housed the document in a place outside of the official file. I recall her gesturing as if she took the document and put it off to the side on a shelf. LaBerge told me that it was not part of the official Commission file.

35.

At the end of the conversation, LaBerge offered to get the document and bring it back to me. I told her that she did not need to at that time because I did not want to interrupt our meeting.

36.

Shortly thereafter, I requested that LaBerge bring the document to me. It was brought to me in a yellow file folder and was entitled "Memorandum of Record."

37.

Upon receiving the document, I read its contents and began looking to whether or not it was responsive to any of the document production requests that were propounded by Plaintiff. I assumed that it would be.

38.

Upon reviewing the requests as written by Plaintiff, I determined that the document was not responsive. It was not a "correspondence" as requested by Plaintiff in Request for Production No. 2 to LaBerge, as the document was not sent to and received by anyone. Indeed, based upon the description of the purpose of the document by LaBerge, it was clearly intended by her to not be received by anyone until she might need to use it in the future. In addition, the document was not part of the official Commission file and was not responsive to Requests Nos. 2 to the Commission. LaBerge had chosen not to make the document part of the official Commission file complied in the investigation and resolution of the ethics complaints against the Deal Campaign.

39.

I conferred and discussed the responsiveness of the document with colleagues in the Department of Law, my Division Director, Solicitor General, and Chief Deputy, and after each of us reviewed the documents we agreed that the "Memorandum of Record" was not responsive to any requests for production made by Plaintiff.

40.

I did not prepare a "privilege log" as suggested by Plaintiff in her motion because I was not objecting to production of the "Memorandum of Record" on the basis of any privilege. After review, the document was determined to not be responsive to the specific requests as served by Plaintiff. Had the document been "correspondence" or part of the official investigation file as maintained by the Commission, I would have produced the document. However, because it did not meet the description of information sought by Plaintiff, it was not responsive, and production was not objected to on the basis of any privilege. Therefore, no privilege log was required.

41.

As it relates to the text messages detailed at the beginning of the "Memorandum of Record," I did not inquire whether there were copies of those texts. I had previously been told by LaBerge that I had been given everything that

was responsive to the discovery requests and to the agreement between counsel for "work related" documents sent from or received from her private email account, and the July 23, 2013, Open Records Act request.

42.

In addition, LaBerge had testified under oath on July 31, 2013 that she had produced and given to me all documents that she had that were responsive to each of Plaintiff's requests and the agreement for work-related emails.

43.

I believed LaBerge that she had given to me all of the documents that she had meeting the descriptions set forth in Plaintiff's discovery request. I did not believe that she had any more documents to produce.

44.

At the beginning of 2014, I began to prepare for the trial of the case.

45.

On February 7, 2014, I filed a Motion in Limine seeking to exclude from the trial of the case evidence on the following topics:

a) Any and all testimony from John Hair concerning the alleged actions of Holly LaBerge, his employment, and his termination from employment;

b) Any and all testimony from John Hair concerning the resolution of the complaints against the Nathan Deal campaign;

c) Any and all testimony from Elizabeth Murray Obertein concerning the resolution of the complaints against the Nathan Deal Campaign;

d) Any and all testimony from Elisabeth Murray Obertein concerning the alleged actions of Holly LaBerge, her employment, and her termination from employment;

e) Any and all testimony from any of the witnesses concerning the resolution of the complaints against the Nathan Deal campaign.

The Motion in Limine was made in good faith and not disingenuous as alleged by Plaintiff. The basis for the motion was that any evidence on these topics, whether true or false, was not relevant or material to a job action taken more than a year after Plaintiff resigned her position. The motion was a simple motion pointing out that any of the actions taken by LaBerge and members of the Commission after Plaintiff resigned from her employment on June 17, 2011 could not have informed the decision-makers and probed their state of mind concerning the employment action actually at issue in the case involving Plaintiff.

46.

My argument was that the evidence was not relevant or material to probe the state of mind of the decision-makers at the time that Plaintiff resigned her employment. My argument was based upon the real concern that the trial would spin into several mini-trials on the alleged bad acts of LaBerge who was not a decision-maker in Plaintiff's employment. The motion was not based upon the truth or falsity of any evidence. Further, the purpose of the motion was not to conceal any information from the Court, but rather, it was an attempt to keep the

trial focused on the actual employment action at issue involving Plaintiff and not be a trial about the actions of LaBerge.

47.

Plaintiff used Murray-Obertein's testimony concerning the call LaBerge received at the beach in her response to the Motion in Limine.

48.

Ultimately the Court denied the Motion in Limine. During the trial, Plaintiff put on Murray-Obertein as a witness and questioned her extensively on the resolution of the Deal Campaign ethics complaints. I did not object to the subject matter of the resolution of the complaints on the basis of relevance.

49

I believed at the time that I had lost the motion in limine and that the Court would allow testimony about the resolution of the Deal Campaign ethics complaints. Therefore, I did not make a wholesale objection to Murray-Obertien's testimony as elicited by Plaintiff.

50.

Further, I did not impeach Murray-Obertein on her testimony concerning her knowledge of the telephone calls received by LaBerge from Teague and Riley at the beach.

51.

In December 2013, LaBerge, along with several other individuals, was served with a subpoena from the federal government seeking documents related to the ethics complaints against the Deal Campaign. The Law Department, which did not represent LaBerge with respect to the subpoena, urged LaBerge to comply fully and told her that the Memorandum would be responsive to that subpoena.

52.

In addition, during trial preparation, I spoke to LaBerge about the "Memorandum of Record." I informed her that I did not intend to go into the information concerning the resolution of the Deal Campaign complaints at trial, and that I was filing a motion in limine on the basis of its relevance to the employment action concerning Plaintiff.

53.

I further told her that I would not be asking her about the "Memorandum of Record" and that it was possible that the motion in limine would be granted and that the trial would focus on the May-June 2011 timeframe and the decisions made at that time.

54.

I advised LaBerge during trial preparation meetings that she would be called for the purposes of cross-examination by Plaintiff. I told her that she should be

familiar with her deposition testimony when asked a question because any deviation from that testimony could lead to Plaintiff going back to the deposition to impeach her on any such deviation.

55.

I instructed LaBerge that the subject matter of the "Memorandum of Record" might come up at the trial during her cross-examination by Plaintiff. I even gave her several examples of questions which might elicit such testimony. I further instructed her that if she were asked a direct question that called for her testimony on the matter that she was obligated to tell the truth about it.

56.

I fully expected Plaintiff to ask LaBerge questions concerning the calls from Teague and Riley at the beach because Murray-Obertein had testified to those facts and I believed that Plaintiff would question LaBerge about it on cross-examination.

57.

On July 14, 2014, I watched on television, LaBerge's interview with Dale Russell of FOX 5 news.

58.

During that interview, I noticed a screen shot of a Google mail message that was described in the interview piece as a text message from Riley to LaBerge. I immediately recognized that if the screen shot was of a document from LaBerge's

Gmail account, and it was what it was reported to be, that it was not given to me by LaBerge for production in this case back in July 2013.

59.

I was shocked to see the screen shot as LaBerge had assured me, and counsel for Plaintiff, that she had produced all the documents she had that met the descriptions given to her during the discovery.

60.

This particular document, a "work related" document that was sent from or received by LaBerge on her Gmail account, was responsive to both the agreement reached between counsel for the parties related to the March 2013, Google subpoena, and the July 23, 2013 Open Records Act request.

61.

Prior to July 14, 2014, I had not seen the Gmail document that appeared in the television interview, nor had I been told of its existence by LaBerge. Had I been given the document by LaBerge I would have produced it with all other documents passing through her Gmail account. Had I been shown the document or known of its existence, I would have instructed LaBerge to give it to me for production just as I had all other documents given to me which passed through her Gmail account.

62.

On July 18, 2014, after reviewing documents produced by LaBerge to Open Records Act requests, I found out about several other documents which were "work related" and which passed through her Gmail account. (Exhibit No. 2). I was never given those documents by LaBerge to produce to Plaintiff, nor was I ever shown those documents. Had the documents been given, I would have produced them to Plaintiff because they are clearly responsive to Plaintiff's requests.

Further AFFIANT SAYETH NOT.

BRYAN K. WEBB

Sworn and subscribed before
me this 21 day of August, 2014.

Notary Public
My commission expires: My Commission Expires: 5/16/2016