

Honorable Catherine Shaffer
Hearing Date/Time: August 11, 2016 at 9:30 a.m.
Without Oral Argument

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

DINH ET AL.,

Plaintiff,

v.

RIDE THE DUCKS INT'L, ET AL.,

Defendants.

No. 15-2-28905-5 SEA

DECLARATION OF BRIAN TRACEY
IN SUPPORT OF DEFENDANTS RIDE
THE DUCKS OF SEATTLE, LLC,
ERIC BISHOP, AND JANE DOE
BISHOP'S MOTION FOR LIMITED
PROTECTIVE ORDER TO PREVENT
DISSEMINATION OF DISCOVERY
MATERIALS TO THE MEDIA WHILE
LITIGATION IS PENDING

I, Brian Tracey, hereby declare as follows:

1. I am over the age of 18, competent to testify, and have personal knowledge of the matters set forth herein.

2. I am the President and CEO of Ride the Ducks of Seattle, LLC, a named Defendant in this case.

3. I have reviewed Ms. Karen Koehler's social-media accounts, notably her Twitter account (<https://twitter.com/k3velvethammer>), and find her postings about Ride the Ducks of Seattle ("RTDS") to be intentionally inflammatory, inaccurate and to my mind designed to mislead the public about the facts of her case. I also believe that these inaccurate posts are part

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1 of a broader campaign to manipulate the media to publish stories that amplify these
2 inaccuracies while helping market her law firm's practice.

3 4. I believe that this campaign of publishing falsehoods and inaccuracies created
4 by Koehler is intended to lead viewers or readers to the conclusion that all Duck vehicles are
5 inherently unsafe, a construct that is in sharp contrast to the data, which shows RTDS to be
6 among the safest commercial fleets on the road, with that data showing RTDS' accidents per
7 mile to be dramatically lower than King County Metro's bus service.

8 5. One example of this coverage is a March 29, 2016 KING5 story, which featured
9 photos from the March 25, 2016 inspection that I believe Koehler took during an open-door
10 inspection in which attorneys representing plaintiffs came to our facility.

11 6. I believe Koehler took photos at this discovery session and supplied them to
12 KING5 as part of her campaign to discredit RTDS' safety worthiness. That story asserted that
13 maintenance problems at our facility caused the September 24, 2015 accident, although there is
14 no factual evidence to support that conclusion.

15 7. As a result of the March 29, 2016 KING5 story, I have heard from various
16 sources that tourists and Seattle residents who were planning on touring with our company
17 changed their plans as a direct result of the news story.

18 8. Another example is a June 29, 2016 article written in a Seattle alternative
19 newspaper, *The Stranger*, and a KIRO TV news story that aired on June 4, 2016 featuring an
20 interview with Koehler, which implied that the legal defense used by RTDS is citing federal
21 law that was discriminatory and harbored anti-Asian sentiments. This is categorically not true,
22 and is in direct conflict with our company's history and culture, which demonstratively
23 embraces diversity and inclusion. I believe the article was intended to cast RTDS in a negative
24 light.

1 9. After the June 29, 2016 article in *The Stranger* and the June 4, 2016 KIRO story,
2 I, along with others from RTDS, received communications that were very negative and accused
3 us of being racially motivated by citing the law.

4 10. Articles such as the March 29, 2016 story on KING5 and the June 29, 2016
5 article in *The Stranger* are highly misleading and factually inaccurate.

6 11. RTDS is not the only one concerned with Koehler's use of digital media; she is
7 a named defendant in at least one civil suit where a member of the Washington State Bar
8 accuses her of using digital media to defame the client of a competing attorney. In that action,
9 the plaintiff describes her published statements regarding the case as "irrefutably false and
10 defamatory" (16-2-16400-5 SEA).

11 12. I believe in absence of court protection, Koehler or other attorneys will share
12 pictures and videos of our Duck vehicles and component parts to the media or via social media
13 in a similar fashion, which will further malign RTDS. Such stories will, I believe, be highly
14 unfavorable to RTDS, and would significantly jeopardize the court's ability to empanel an
15 impartial jury.

16 I declare under penalty of perjury under the laws of the state of Washington that the
17 foregoing is true and correct.

18
19 DATED this 3rd day of August, 2016.

20
21 By: _____

22 Brian Tracey
23 President and CEO
24 Ride the Ducks of Seattle, LLC