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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

ANDY NGO,

Plaintiff,

v.

ROSE CITY ANTIFA, an unincorporated  
association; BENJAMIN BOLEN, an  
individual; JOHN HACKER, an individual;  
CORBYN (KATHERINE) BELYEA, an  
individual; JOSEPH CHRISTIAN EVANS,  
an individual; MADISON LEE ALLEN, an  
individual; DOES 1-50,

Defendants.

Case No.: 20CV19618

**PLAINTIFF NGO’S MEMORANDUM IN  
OPPOSITION TO DEFENDANT  
BOLEN’S ORS 31.150 SPECIAL  
MOTION TO STRIKE**

Plaintiff Andy Ngo ("Ngo"), by and through undersigned counsel, hereby responds to Defendant Benjamin Bolen’s (“Bolen”) Special Motion to Strike on the grounds set forth as follows:

**Preliminary Statement**

Violent assault is not protected speech under Oregon law. Defendant Bolen’s attempt to avoid liability for battery, assault, and intentional infliction of emotional distress by relying on Oregon’s Anti-SLAPP statute fails for several independent reasons. First, Bolen has failed to carry his burden of establishing that Ngo’s claims arise from “conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.” *See* ORS 31.150(d). Ngo’s claims against Bolen arise entirely from the allegation that Bolen punched Ngo in the abdomen on May 1, 2019. Compl. at 5-7; Declaration of Andy Ngo filed herewith at ¶ 4. Bolen has acknowledged that such allegation is

1 the basis of Ngo’s claims and further concedes such conduct does not constitute protected speech.  
2 Def.’s Mot. at 2 (“the conduct in the Complaint regarding [Bolen] is an alleged punch, and therefore  
3 [is] not itself protected speech...”).

4         Aware that Ngo’s allegations do not facially give rise to an anti-SLAPP defense, Bolen  
5 manufactures several unpled facts—none of which are supported by admissible evidence—in an  
6 attempt to attack Ngo’s motives for filing suit. Namely, Bolen argues that Ngo “stridently opposes  
7 the Black Lives Matter movement and antifascists,” of which Bolen is allegedly one, and that  
8 therefore Ngo must have filed the action in order to suppress speech or petition activities protected  
9 by the anti-SLAPP statute—an absurd and baseless accusation which Ngo denies categorically.  
10 Def.’s Mot. ¶ 16; Ngo Decl. ¶ 18. In effect, Bolen urges this Court to require Ngo to proffer  
11 evidence (without the benefit of any discovery) before he be permitted to assert claims, of any sort,  
12 against his attackers simply because Ngo is alleged to be of an adverse political persuasion to the  
13 defendants. The law does not permit such a tortured procedure, which would not only violate *Ngo*’s  
14 free-speech and due process rights, but also immunize Bolen and others to take further violent  
15 actions against Ngo and other reporters covering matters of national public interest.

16         Even if Bolen had met his initial burden of proving that Ngo’s claims “arise[] out of a  
17 statement, document, or conduct” protected by the anti-SLAPP statute (he has not), Bolen’s Motion  
18 nevertheless fails because Ngo has pled sufficient facts to state his claims against Bolen, each of  
19 which is supported by admissible evidence sufficient to establish the “minimal merit” of Ngo’s  
20 claims.

21         Bolen’s Motion rests largely on his rote denial that he attacked Ngo. Bolen Decl. ¶ 3  
22 [arguing that Ngo misidentified Bolen as his attacker]. His denial of liability, however, is easily  
23 overcome by Ngo’s evidence, including photographic evidence, that Bolen is the attacker identified  
24 in the Complaint. Binding anti-SLAPP authority instructs this Court to refrain from weighing such  
25 evidence when ruling on the anti-SLAPP motion, as such tasks are to be left to the jury following

1 the completion of discovery and presentation of admissible evidence to the jury. Instead, at this  
2 early stage in this case, the Court need only inquire as to whether such evidence exists at all—it  
3 does. Accordingly, Bolen’s Motion fails and should be denied by the Court.

4 **Statement of Facts: Antifa & the Portland Riots.**

5 It is common knowledge that beginning with the multi-week occupation of the Park Blocks  
6 in downtown Portland in the fall of 2011 by Occupy Portland, radical Leftist groups have rapidly  
7 grown in number and influence in the City of Portland. Of these various radical leftist groups,  
8 Antifa, has become the overwhelming front-runner in size, notoriety, and unfortunately, violence.  
9 Antifa is an organization comprised of extremist, far-left violent individuals who are known for  
10 their militant opposition to the government, law enforcement, and people perceived as “right-  
11 wing<sup>1</sup>.” The City’s political leaders routinely allow Antifa to engage in large assemblies without  
12 permits and to block traffic in violation of Oregon criminal statutes (*e.g.*, ORS 166.025(1)(d)), and  
13 most pertinently for this case, to “engage[] in fighting or in violent, tumultuous and threatening  
14 behavior” (ORS 166.025(1)(a)). Very few arrests have been made in comparison to the number of  
15 crimes committed and the overwhelming majority of those arrested are released without bail and the  
16 charges are almost always dropped. Ngo. Decl. at ¶ 13.

17 Portland-based Rose City Antifa is one of the nation’s largest Antifa cells. *Id.* at ¶ 13. In  
18 November 2016, Ngo began covering Antifa as a relatively unknown<sup>2</sup> freelance journalist. Within  
19 months, Antifa set its sights on Ngo and began threatening him and his family. *Id.* at ¶ 16. From  
20 January 2017 until May 2019 and continuing to today, Antifa and its members have subjected Ngo  
21 to hundreds of threats, attacks, and otherwise harassed him in an attempt to intimidate him into not  
22 writing stories that raised public awareness about Antifa and its members’ violent propensities. *Id.*  
23 at ¶ 12. The threats and attacks eventually culminated in the events giving rise to this action, which

24 \_\_\_\_\_  
25 <sup>1</sup> [https://thehill.com/opinion/criminal-justice/500764-why-its-likely-to-be-antifa-not-neo-nazis-  
behind-the-anarchy-in-america](https://thehill.com/opinion/criminal-justice/500764-why-its-likely-to-be-antifa-not-neo-nazis-behind-the-anarchy-in-america)

26 <sup>2</sup> As of October 2017, Ngo had less than 4,000 Twitter followers.

1 attacks caused Ngo to sustain serious bodily injuries, including a subarachnoid brain hemorrhage.

2 **Ngo’s Motivation in Bringing this Action.**

3 Ngo included Bolen in this action to seek redress for the physical injuries sustained after  
4 Bolen struck Ngo in the abdomen with his fist on May 1, 2019. Compl. at ¶ 23. Ngo’s Complaint  
5 is entirely devoid of allegations to support any other basis for including Bolen in this action, and  
6 that is because *there is no other basis*. Ngo Decl. at ¶ 18.

7 **ARGUMENT**

8 **A. The Special Motion to Strike Under Oregon Law.**

9 ORS 31.150 provides a “special motion to strike,” which may be made under this section  
10 against any claim in a civil action that arises out of, in pertinent part<sup>3</sup>:

11 (c) Any oral statement made, or written statement or other document presented, in a  
12 place open to the public or a public forum in connection with an issue of public  
interest; or

13 (d) Any other conduct in furtherance of the exercise of the constitutional right of  
14 petition or the constitutional right of free speech in connection with a public issue or  
an issue of public interest.

15 ORS 31.150(2). The special motion to strike is “to be liberally construed in favor of the exercise of  
16 the rights of expression described in ORS 31.150(2),” including subsections (c) & (d). ORS  
17 31.152(4).<sup>4</sup>

18 ORS 31.150 requires the Court to engage in a two-pronged process to rule on the special  
19 motion to strike. The Court must first decide whether Bolen has satisfied the threshold burden of  
20 showing that Ngo’s claims against him arise from of “a statement, document or conduct described

21 \_\_\_\_\_  
22 <sup>3</sup> Ngo omits subsections (a) and (b) because Bolen does not allege either subsection applies.

23 <sup>4</sup> In California, “[t]he directive to construe the statute broadly was added in 1997, when the  
24 Legislature amended the anti-SLAPP statute ‘to address recent court cases that have too narrowly  
25 construed California’s anti-SLAPP suit statute.’” *Nygaard, Inc. v. Uusi-Kerttula*, 159 Cal. App. 4th  
26 1027, 1039 (2008). Following California’s experience, the Oregon Legislature added a similar  
instruction to ORS 31.150 in 2009. ORS 31.152(4) (SB 543 of 2009) amended Oregon’s statute to  
add the “liberally construed in favor of the exercise of the rights of expression” language.

1 in subsection (2)” of the anti-SLAPP statute. ORS 31.150(2)(c)-(d) (the “arising out of” prong).  
2 Subsection B, *infra* of this Opposition demonstrates why Bolen cannot satisfy this burden.

3 If the Court nevertheless finds that Bolen has made this initial showing, the burden of proof  
4 and persuasion shifts to Ngo to show “that there is a probability that the defendant will prevail on  
5 the claim by presenting substantial evidence to support a prima facie case.” ORS 31.150(3). *Staten*  
6 *v. Steel*, 222 Or. App. 17, 27 (2008), *rev. den.*, 345 Or. 618 (2009). If the plaintiff fails to meet his  
7 burden for any reason, the Court is to grant defendant’s motion and enter a judgment of dismissal  
8 without prejudice. ORS 31.150(1).

9 The role of the court with respect to the evaluation of evidence in an anti-SLAPP motion is  
10 unique in Oregon civil procedure. Crucially, and unlike the court’s role upon summary judgment,  
11 the court must consider Ngo’s evidence and draw the reasonable inferences from that evidence **in**  
12 **favor of Ngo**, *OEA v. Parks*, 253 Or. App. 558, 566–67 (2012), *rev. den.*, 353 Or. 867, 306 P.3d  
13 639 (2013). “Thus, where there is a conflict between the parties’ proffered factual narratives and  
14 evidence [courts] necessarily adopt the version most favorable to Ngo, so long as it is supported by  
15 substantial evidence.” *Plotkin v. State Accident Insurance Fund*, 280 Or. App. 812, 816 (2016); *see*  
16 *Young v. Davis*, 259 Or. App. 497, 508 (2013) (stating that “the presentation of substantial evidence  
17 to support a *prima facie* case is, in and of itself, sufficient to establish a probability that the  
18 defendant will prevail” and, thus, survive the motion to strike).

19 **B. Ngo’s Claims Do Not Arise Out of Conduct Described in ORS 31.150(2).**

20 Under ORS 31.150(3), this Court must first decide whether Ngo’s claim “arises out of a  
21 statement, document or conduct described in subsection (2) of this section.” It does not.

22 **i. Allegations regarding matters not raised in Ngo’s Complaint may not be**  
23 **considered and must be struck.**

24 It is well-established that “Oregon’s anti-SLAPP statute was modeled on California statutes,  
25 citing the legislative history of ORS 31.150 to 31.155, in stating that it was intended that California

1 case law would inform Oregon courts regarding the application of ORS 31.150 to ORS 31.155.”  
2 *Page v. Parsons*, 249 Or. App. 445, 461, 277 P.3d 609 (2012). Indeed, California precedent is  
3 binding on this Court. *Id.* Turning to California law in accord with *Page*, “a defendant who denies  
4 engaging in the alleged conduct may rely on the plaintiff’s allegations **alone** in assessing whether  
5 the conduct at issue is protected activity.” *Abir Cohen Treyzon Salo, LLP v. Lahiji*, 40 Cal. App.  
6 5th 882, 888 (2019) (emphasis added) (citing *Bel Air Internet, LLC v. Morales*, 20 Cal. App. 5th  
7 924, 929 (2018)). *Lahiji* makes clear that the allegations in “plaintiff’s complaint ultimately  
8 define[] the contours of the claims.” *Id.*, 40 Cal. App. 5th at 888; *see Bel Air*, 20 Cal. App. 5th at  
9 936. Allowing a defendant to rely on information outside of the allegations contained in plaintiff’s  
10 complaint alone is inappropriate and “would have the perverse effect of making anti-SLAPP relief  
11 unavailable when a plaintiff alleges a baseless claim, which is precisely the kind of claim that [the  
12 anti-SLAPP law] was intended to address.” *Id.*

13 Here, Bolen attempts to satisfy his initial burden by referencing a variety of “facts,” none of  
14 which are alleged in the Complaint or supported by admissible evidence. Specifically, Bolen argues  
15 that Ngo is a “right wing provocateur, agitator, political pundit, and social media personality who  
16 publicly and stridently opposes the Black Lives Matter movement and antifascists,” of the same sort  
17 Bolen is alleged to be.<sup>5</sup> Def. Mot. p. 1. Bolen then stretches his assertions beyond the bounds of  
18 reason, claiming that the mere “fact” that Ngo is a “right wing provocateur” (he is not) somehow  
19 leads to the inexorable conclusion that Ngo filed this action for the purpose of suppressing speech  
20 or petitioning activities—he did not, nor has Bolen identified any speech or petitioning activities  
21 that have allegedly been suppressed or even could be suppressed by virtue of his having been  
22 named a defendant in this action. Not only is Bolen’s thought-chain unsupported by admissible  
23 evidence and flat wrong, it rests on entirely unpled material which the Court cannot properly  
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25 <sup>5</sup> In truth, Ngo is a reporter known for his journalistic contributions relating to the recent wave of  
26 violent clashes involving left- and right-leaning political groups. His personal political leanings are  
neither alleged in the Complaint, nor relevant to the personal injury claims he asserts.

1 consider when ruling on Bolen’s Motion. As such, by operation of law, Bolen has failed to carry  
2 his initial burden under the anti-SLAPP analysis and the Court should deny the Motion.

3 **ii. The Challenged Conduct Exclusively Pertains to a Physical Assault.**

4 Upon properly limiting the scope of analysis to the four corners of Ngo’s Complaint, it  
5 becomes clear that Bolen has not and cannot satisfy his initial burden under the anti-SLAPP  
6 analysis. Ngo’s claims arise out of the May 1, 2019 incident when Bolen struck Ngo in the  
7 abdomen with his fist. Compl. at 5-7. Such conduct is not an “oral statement[s] made or written  
8 statement or other document presented, in a place open to the public or a public forum in connection  
9 with an issue of public interest” (ORS 31.150(2)(c)), nor is such conduct “in the furtherance of the  
10 exercise of the constitutional right of petition or the constitutional right of free speech in connection  
11 with a public issue or an issue of public interest.” (ORS 31.150(2)(d)). *See generally Staten*, 222  
12 Or. App. at 27. No Oregon court has held that a physical assault may properly give rise to an anti-  
13 SLAPP defense; in fact, Ngo is unaware of any case in the United States where a court has held  
14 anti-SLAPP applies to physical assaults, nor has Bolen cited any such authority. As stated above,  
15 Bolen acknowledges the physical assault is the basis of Ngo’s claims, and Bolen also acknowledges  
16 such conduct is not protected constitutional activity. Def.’s Mot. at 2 (“the conduct in the  
17 Complaint regarding [Bolen] is an alleged punch, and therefore [is] not itself protected speech...”);  
18 *see State v. Chakerian*, 325 Or. 370, 376 n.9 (1997) (“when a person physically assaults another,  
19 such conduct—even if it includes an underlying message or is accompanied by speech—is not  
20 protected expression.”).

21 Thus, even if Bolen had limited the scope of his Motion to the four corners of the  
22 Complaint, Bolen has not met his initial burden under ORS 31.150(2) by showing that Ngos’ claims  
23 arise out of “conduct in the furtherance of the constitutional right to free speech in connection with  
24 a public issue or an issue of public interest” or oral or written statements “presented in a place open  
25 to the public or a public forum in connection with an issue of public interest.” Bolen’s failure to  
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1 meet this burden is dispositive and therefore, Bolen’s Motion should be denied.

2 **C. Assuming *Arguendo* that Bolen Satisfies His Burden, Ngo Has Nevertheless**  
3 **Established a Probability He Will Prevail on the Merits of His Claims.**

4 In the event this Court finds Bolen has satisfied its threshold showing, the burden then shifts  
5 to Ngo to establish that there is a probability that Ngo will prevail on the claim by presenting  
6 substantial evidence to support his claims, and “that there is a probability” that they will prevail on  
7 the merits of their claims. *Neumann*, 358 Or. at 725. Ngo satisfies this requirement as substantial  
8 evidence supports a finding that Ngo properly identified Benjamin Bolen as the individual who  
9 struck him in the stomach, and each of Ngo’s three (3) claims against Bolen are well pled.

10 **i. Ngo has substantial evidence to support a finding that Bolen is the**  
11 **individual who assaulted him.**

12 Bolen alleges that he is not the individual who assaulted Ngo. Bolen Decl. ¶ 22. Ngo alleges  
13 Bolen is the individual who assaulted him outside the ICE detention center located at 4310 S.  
14 Macadam Avenue in downtown, Portland. Ngo Decl. ¶ 4. Ngo identified Bolen in great detail as a  
15 “heavy-set white man [who sported] a brimmed, black beanie, white-framed sunglasses, dark  
16 bandanna with white patterning, and black gloves with hard extensions near the knuckle area [who  
17 also] carried a distinctive skateboard.” Compl. ¶ 22. Ngo encountered Bolen again after he was  
18 assaulted at approximately 6:00 p.m. on the freeway overpass on NE 12th Avenue. Ngo Decl. ¶ 6.  
19 Ngo carefully checked the video footage he recorded immediately after the attack and compared the  
20 footage with Bolen to confirm that he was in fact, the individual who punched him in the stomach.  
21 *Id.* at ¶ 6. Ngo also captured a photograph of Bolen during this encounter which revealed Bolen’s  
22 mid-length wavy, light brown hair, which matches the same hairstyle Bolen sported in his 2016  
23 booking photograph, as well as his recent photograph published on Portland State University’s  
24 website. *Id.* at ¶ 6. Ngo also has multiple photographs of Bolen which show a wide variance in  
25 appearance due to weight loss and weight gain and different hair styles, Ngo Decl. ¶ 6, and

1 numerous other individuals familiar with Bolen and his frequent presence at Antifa rallies positively  
2 identified Bolen independently. *Id.* at ¶ 6.

3 Moreover, on July 29, 2020, the Honorable Jolie A. Russo modified Bolen’s conditions of  
4 release regarding criminal action 3:20-cr-00216-BR pending in the U.S. District Court for the  
5 District of Oregon for charges of assaulting a police officer to prohibit Bolen from being present  
6 between 10:00 p.m. and 6:00 a.m. within five blocks surrounding the federal courthouse in Portland  
7 Oregon unless for employment purposes. *See* Exhibit 1 hereto, Order to Modify Conditions of  
8 Release.<sup>6</sup> Judge Russo’s Order specifically addresses (1) the time frame and (2) location as to where  
9 Antifa has conducted riots for more than 100 days straight<sup>7</sup>. Regarding whether the violence is, in  
10 fact, Antifa, U.S. Attorney General William Barr said<sup>8</sup> to CNN, “I’ve talked to every police chief in  
11 every city where there’s been major violence, and they all have identified Antifa as the ramrod for  
12 the violence.” Bolen has engaged in police resistance efforts since as early as 2007, whereas Bolen  
13 and Chris Knudtsen “trained with Rose City Copwatch” which is was an organization which  
14 effectively shares the same fundamental principles as Rose City Antifa.<sup>9</sup>

15 Bolen’s own testimony further corroborates Ngo’s testimony, in that Bolen testified: (1) he  
16 attended the protest outside the ICE detention center in downtown Portland, Bolen Decl. ¶ 22; (2)  
17 saw Ngo in attendance, and wore clothing identical to that which Ngo described and observed  
18 Bolen wearing (*e.g.*, a black shirt, sweatshirt or hoodie, black hat, black glove, face covering, and  
19 sunglasses), *id.*; and (3) wore such clothing for the specific purpose of making it difficult to be  
20 identified. *Id.* Bolen further testified that he observed Ngo being met by protestors with derision  
21 and jeers, *id.*, and that he is aware of Ngo’s articles which he perceives to be “anti-Muslim” or  
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23 <sup>6</sup> This is a true copy of an order downloaded from the federal PACER system and plaintiff asks this  
Court to take judicial notice of it pursuant to Rule 201 of the Oregon Rules of Evidence.

24 <sup>7</sup> <https://www.oregonlive.com/portland/2020/09/100-days-of-protests-in-portland.html>

25 <sup>8</sup> <https://www.capradio.org/news/npr/story?storyid=909245646>

26 <sup>9</sup> <https://www.theskanner.com/news/northwest/2286-keeping-watch-on-the-cops-2007-07-19>

1 “anti-Islamic.” *Id.* ¶ 18. Perhaps most compelling is Bolen’s own photographic comparison. Bolen  
2 Decl. ¶¶ 27-29. While Bolen offers a side-by-side comparison of two photographs, the photographs  
3 are even *more* indicative that Bolen was in fact, the individual who struck Ngo in the stomach. Ngo  
4 Decl. ¶ 9.

5 At its core, Bolen has not offered any evidence other than his own rote denial of liability to  
6 support his allegation that Ngo misidentified him, while Ngo offers overwhelming evidence  
7 confirming Bolen is, in fact, the individual who punched Ngo in the stomach. And “where there is a  
8 conflict between the parties’ proffered factual narratives and evidence [courts] necessarily adopt the  
9 version most favorable to plaintiff, so long as it is supported by substantial evidence.” *Plotkin*, 280  
10 Or. App. at 816. (2016). That standard is amply met on the record before the Court, and any factual  
11 disputes raised by Bolen may be decided by the jury following trial.

12 Bolen’s Motion rests entirely on the issue of identification of Ngo’s attacker which, for  
13 reasons discussed above, does not carry Bolen’s Motion. Further, substantial evidence establishes a  
14 probability that Ngo will prevail on the merits of his claims in all other respects, as discussed below.

15 **ii. Ngo establishes a probability on prevailing on Count 1: Assault.**

16 In order to properly plead a claim for assault, Ngo must allege: (1) an actor acts intending to  
17 cause a harmful or offensive touching with the person of another...or an imminent apprehension of  
18 such contact; and (2) ...the other person is thereby put in imminent apprehension.” *Skille v.*  
19 *Martinez*, 288 Or. App. 207, 214 (2017).

20 Here, Ngo has alleged Bolen “intended offensive or harmful contact with [Ngo] and/or put  
21 him in apprehension of such offensive or harmful contact with his person”, Compl. at ¶ 57, Ngo  
22 Decl. ¶ 5, and further specifies that such “acts or omissions of Bolens were the legal and proximate  
23 cause of [Ngo’s] injuries.” Compl. at ¶ 59; Ngo Decl. ¶ 5.

24 **iii. Ngo establishes a probability on prevailing on Count 2: Battery.**

25 Similarly, in order to properly plead a claim for battery, Ngo must allege: (1) an actor acts  
26

1 intending to cause a harmful or offensive touching with the person...or imminent apprehension of  
2 such contact; and (2) a harmful or offensive contact with the person of the other directly or  
3 indirectly results. *Skille*, 288 Or. App. at 214.

4 As stated above, Ngo has alleged, supported by evidence, that Bolen “intended offensive or  
5 harmful contact with [Ngo] and/or put him in apprehension of such offensive or harmful contact  
6 with his person”, Compl. at ¶ 57; Ngo Decl. ¶ 5, that such “acts or omissions of Bolen’s were the  
7 legal and proximate cause of [Ngo’s] injuries,” Compl. at ¶ 59; Ngo Decl ¶ 5, and that Bolen struck  
8 Ngo in the abdomen with his fist on May 1, 2019. Compl. ¶ 23; Ngo Decl. ¶ 5.

9 **iv. Ngo establishes a probability on prevailing on Count 3: Intentional**  
10 **Infliction of Emotional Distress.**

11 Last, a claim for intentional infliction of emotional distress is well pled where plaintiff  
12 alleges: (1) the defendant intended to inflict severe emotional distress on the plaintiff; (2) the  
13 defendant’s acts were the cause of the plaintiff’s severe emotional distress; and (3) the defendant’s  
14 acts constituted an extraordinary transgression of the bounds of socially tolerable conduct. *Mullen v.*  
15 *Meredith Corp.*, 271 Or. App. 698, 607-08 (2015).

16 Ngo’s Complaint alleges Bolen intended to inflict severe mental or emotional distress on  
17 Ngo, Compl. ¶ 71, Ngo Decl. ¶ 5, Bolen’s actions caused Ngo to suffer severe emotional damage;  
18 Compl. ¶ 72, Ngo Decl. ¶ 5, Bolen’s actions consisted of multiple, extraordinary transgressions of  
19 the bounds of social toleration, namely the use of physical violence and intimidation tactics of  
20 threatened violence and stalking to both retaliate against Ngo for his unfavorable news coverage of  
21 Antifa and suppress any such news coverage in the future; Compl. ¶ 73, Ngo Decl. ¶ 5; Bolen  
22 caused Ngo to suffer severe emotional distress, for which Ngo received medical treatment; Compl.  
23 ¶ 74, Ngo Decl. ¶ 5, and Bolen’s actions or omissions proximately resulted in damages to Ngo.  
24 Compl. ¶ 75; Ngo Decl. ¶ 5.

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**Conclusion**

Ngo’s claims against Bolen are entirely unrelated to the claims that Oregon’s anti-SLAPP statute was intended to eliminate short of full-scale litigation. Bolen’s attempt to hide behind the veil of ORS 31.150 is improper, frivolous, and intended to cause unnecessary delay in the litigation and gives rise to attorney’s fees pursuant to pursuant to ORS 31.152(3).

Bolen cannot satisfy his initial burden; however, even if this Court were to hold Bolen did satisfy his burden, Ngo has presented substantial evidence to demonstrate a probability of success on the merits. Accordingly, Ngo respectfully requests that this Court deny Bolen’s special motion to strike in its entirety, and further hold that Bolen’s motion is frivolous or alternatively, solely intended to cause unnecessary delay, and award Ngo attorney’s fees pursuant to ORS 31.152(3).

Dated: October 5, 2020.

Respectfully submitted,

/s/ James L. Buchal  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

v.

Benjamin Bolen

Case No. 3:20-cr-00216 - BR

ORDER TO MODIFY CONDITIONS OF  
RELEASE

**IT IS ORDERED THAT the conditions of release be modified as follows:**

**Ordering the REMOVAL of following the conditions:**

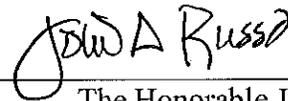
Do not enter within a five-block radius of the U.S. Courthouse in Portland, Oregon or the Multnomah County Justice Center unless prior approval is obtained from U.S. Pretrial Services.

Comply with the following curfew: 8pm to 6am unless otherwise directed by U.S. Pretrial Services.

**And REPLACE with the noted condition:**

The defendant shall not be present between 10 pm and 6 am within the five blocks surrounding the federal courthouse in Portland, Oregon, defined as SW Washington Street to the north, the Willamette River on the east, SW Market Street to the south and SW Park Avenue to the west, unless for employment purposes.

IT IS SO ORDERED THIS 29 day of July, 2020.



The Honorable Jolie A. Russo  
U.S. Magistrate Judge

**Submitted by U.S. Pretrial Services**

**CERTIFICATE OF SERVICE**

I, Carole Caldwell, hereby declare under penalty of perjury under the laws of the State of Oregon that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I am an employee of Murphy & Buchal LLP and my business address is 3425 SE Yamhill Street, Suite 100, Portland, OR 97214.

On October 5, 2020, I caused the following document to be served:

**PLAINTIFF NGO’S MEMORANDUM IN OPPOSITION TO DEFENDANT BOLEN’S ORS 31.150 SPECIAL MOTION TO STRIKE**

in the following manner on the parties listed below:

Hilary Boyd, Esq.	( ) (BY FEDERAL EXPRESS)
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