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

MASON LAKE,

Plaintiff,

v.

CITY OF PORTLAND,

Defendant.

Case No. 20CV19838

ANSWER TO FIRST AMENDED  
COMPLAINT

Claim Not Subject to Mandatory Arbitration

Filing fees waived pursuant to ORS 20.140

Defendant City of Portland (“City”) responds to plaintiff’s First Amended Complaint in correspondingly numbered paragraphs as follows.

1.

Defendant City is without knowledge or complete information to admit or deny the allegations in paragraph 1 of plaintiff’s Complaint and therefore denies the allegations

2.

Defendant City is without knowledge or complete information to admit or deny the allegations in paragraph 2 of plaintiff’s Complaint and therefore denies the allegations.

CLAIM FOR RELIEF

(Battery)

3.

Defendant City admits the first sentence of paragraph 3. As to the remainder of the paragraphs, defendant City is without knowledge or complete information to admit or deny the allegations in paragraph 3 of plaintiff’s Complaint and therefore denies the allegations.

1 PRAYER FOR RELIEF

2 4.

3 Paragraph 4 speaks for itself and requires no answer from Defendant City.

4 REQUEST FOR JURY TRIAL

5 5.

6 Paragraph 5 speaks for itself and requires no answer from Defendant City.

7 FIRST AFFIRMATIVE DEFENSE

8 (Oregon Tort Claim Act Limitation on Claims and Damages –  
9 ORS 30.260 *et seq.*)

10 6.

11 Plaintiff’s claims and damages against defendant City are subject to all the  
12 limitations, conditions, and immunities contained in the Oregon Tort Claims Act, ORS  
13 30.260 *et seq.*, including, but not limited to, the limitations on liability listed at ORS 30.272.

14 SECOND AFFIRMATIVE DEFENSE

15 (Justification)

16 7.

17 The actions by defendant City’s police officers were lawful, justified, and privileged,  
18 as those actions were necessary to carry out their duties as police officers for the City in  
19 accordance with ORS 161.190 *et seq.*

20 THIRD AFFIRMATIVE DEFENSE

21 (Good Faith)

22 8.

23 Any enforcement actions taken or any other conduct by defendant City’s police  
24 officers were done in good faith based on reasonable grounds by defendant City’s police  
25 officers.

26 ///

1 **FOURTH AFFIRMATIVE DEFENSE**

2 **(Riot, Civil Commotion, Mob Action Immunity – ORS 30.265(6)(e))**

3 9.

4 The claims asserted in plaintiff’s Complaint arise out of riot, civil commotion, or mob  
5 action or out of an act or omission in connection with the prevention of the foregoing, and  
6 accordingly, defendant City is immune pursuant to ORS 30.265(6)(e).

7 **FIFTH AFFIRMATIVE DEFENSE**

8 **(Failure to State a Claim)**

9 10.

10 Plaintiff’s Complaint fails to state a claim upon which relief may be granted.

11 **SIXTH AFFIRMATIVE DEFENSE**

12 **(Fault of Others)**

13 11.

14 The plaintiff’s damages were caused in whole or in part by the actions of others.

15 **SEVENTH AFFIRMATIVE DEFENSE**

16 **(Failure to Mitigate)**

17 12.

18 Plaintiff has failed to mitigate damages by not using reasonable care in the  
19 circumstances then and there existing and in the time after this incident.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 **(Reservation of Rights to Assert Additional Defenses)**

22 13.

23 Defendant City reserves the right to assert any additional affirmative defenses which  
24 discovery or other investigation may reveal to be appropriate.

25 WHEREFORE, having fully answered plaintiff’s Complaint, defendant City prays  
26 that: plaintiff’s Complaint be dismissed and that judgment be entered in its favor; defendant

1 City of Portland be awarded its costs and disbursements incurred herein, in addition to such  
2 other relief as may be justified and equitable.

3 DATED: January 7, 2021.

4 Respectfully submitted,

5 /s/ Caroline Turco

6 Caroline Turco, OSB No. 083813

7 Deputy City Attorney

8 Email: [caroline.turco@portlandoregon.gov](mailto:caroline.turco@portlandoregon.gov)

9 *Of Attorneys for Defendant City of Portland*

1 **CERTIFICATE OF SERVICE**

2  
3 I hereby certify that I served the foregoing ANSWER TO FIRST AMENDED  
4 COMPLAINT on the following parties by the method indicated:

5 Michael Fuller 6 Underdog Lawyer 7 US Bancorp Tower 8 111 SW Fifth Ave., Suite 3150 9 Portland, OR 97204 10 Kelly Donovan Jones 11 Law Office of Kelly D. Jones 12 819 SE Morrison Street, Suite 255 13 Portland, OR 97214 14 <i>Of Attorneys for Plaintiff</i>	<input type="checkbox"/> <b>Electronic service</b> - UTCR 21.100 (1)(a) <input type="checkbox"/> <b>Mail</b> in a sealed envelope, with postage paid, and deposited with the U.S. Postal Service. <input type="checkbox"/> <b>Hand delivery</b> <input type="checkbox"/> <b>Facsimile transmission</b> <input checked="" type="checkbox"/> Courtesy copy via <b>Email</b>
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15 Dated: January 7, 2021

16 /s/ Caroline Turco  
17 CAROLINE TURCO, OSB #083813  
18 Deputy City Attorney  
19 Email: caroline.turco@portlandoregon.gov  
20 Fax: (503) 823-3089  
21 *Of Attorneys for Defendant City of Portland*