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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

DEFENDANT’S MOTION TO COMPEL  
PRODUCTION OF DOCUMENTS

**ORAL ARGUMENT REQUESTED**

Defendant City of Portland (“City”) requests oral argument on its Motion to Compel the Production of Documents in response to Defendant City’s First Request for Production to Plaintiff (“RFP”). The time estimated is 30 minutes. The services of a court reporter are requested.

**UTCR 5.010(3) CERTIFICATE OF COMPLIANCE**

Pursuant to UTCR 5.010(3), counsel for Defendant hereby certifies that a good faith effort was made to confer with Plaintiff’s counsel to resolve, without success, the issues disputed in this motion. Specifically, counsel for Defendant City conferred with counsel for Plaintiff, Mr. Michael Fuller, via telephone on September 3, 2020. Defense counsel followed up by letters on October 21, 2020 and December 7, 2020, without any response. Additionally, Defense counsel left a voicemail on December 17, 2020, without any response. Lastly, Defense counsel called on February 2, 2021 and counsel conferred. Given the passage of time (nearly seven months) since the Request for Production was served, Defense counsel believes a motion is necessary to complete discovery.

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1 **MOTION**

2 Pursuant to ORCP 46 A(2), Defendant moves to compel production of documents  
3 responsive to Defendant’s Request for Production. Specifically, Defendant seeks an order  
4 from the Court on requests numbered 1, 8, and 9.

5 **FACTUAL BACKGROUND**

6 This case arises out of the recent protests in Portland in response to the murder of George  
7 Floyd. Plaintiff attended a protest on May 31, 2020 wherein they<sup>1</sup> alleges that they suffered  
8 injuries as a result of City officers launching “a projectile into plaintiff’s arm.” (Amended  
9 Complaint, ¶ 1). Plaintiff’s Complaint states a single claim of battery and seeks up to \$450,000  
10 in damages. (Amended Complaint, ¶ 3).

11 On July 13, 2020, Defendant City forwarded to Plaintiff’s counsel via email Defendant’s  
12 Request for Production. (Declaration of Caroline Turco (“Turco Decl.”), ¶ 3; Ex. 2). On August  
13 12, 2020, Plaintiff’s counsel served his Response to Defendant’s Request for Production (Turco  
14 Decl., ¶ 4; Ex. 3). As described above, counsel subsequently conferred on the items of  
15 outstanding discovery.

16 **POINTS AND AUTHORITIES**

17 **A. Standard of Review**

18 ORCP 43 B (4) states that “A party served in accordance with subsection B(1) of this  
19 rule is under a continuing duty during the pendency of the action to produce promptly any  
20 item responsive to the request and not objected to that comes into the party’s possession,  
21 custody, or control.”

22 ORCP 43 B(2) states that within 30 days after service of a request for production of  
23 documents in accordance with ORCP 43 B(1), a party must produce a statement that, except  
24 as specifically objected to, any requested item within the party’s possession or custody is  
25 provided, or will be provided or made available within the time allowed. ORCP 43 B(3)

26 <sup>1</sup> The City’s Motion uses the pronouns “they” and “their” for Plaintiff [Mason Lake]  
consistent with the pronouns indicated in Plaintiff’s Amended Complaint.

1 states that any objection not stated in accordance with ORCP 43 B(2) is waived.

2       The City’s ability to mount a defense to Plaintiff’s allegations has been hindered by  
3 Plaintiff’s delay in providing any documents to support their claim. The City is entitled to  
4 confront the allegations against it by requesting production of documents in Plaintiff’s  
5 custody, including but not limited to, documents related to Plaintiff’s claim for damages.  
6 With no clear indication from Plaintiff that they intend to comply with the City’s discovery  
7 request, the City now seeks the assistance of the Court to compel Plaintiff to respond  
8 pursuant to ORCP 46.

9       **B. Argument**

10       1.       Request Number 1

11       This request seeks witness names. The witnesses would presumably be the  
12 individuals with whom Plaintiff attended the protest. These names are discoverable, and  
13 under the Multnomah County Motion Judges Consensus Statement, they should be produced.  
14 These documents could take the form of Facebook entries or screenshots of a phone contact,  
15 or as the consensus statement says, the names and contact information could be listed.

16       2.       Requests Number 8 and 9

17       These requests seek documents related to other protest activity by Plaintiff. Request  
18 number 8 looks for any interaction with police since the date of the incident, and request  
19 number 9 looks for notes, emails, correspondence, video, audio records, photographs, and  
20 social media posts relating to other protest activity both before and after the incident giving  
21 rise to the Complaint. These documents are discoverable, as they go to Plaintiff’s awareness  
22 and familiarity with police commands. Additionally, any other subsequent protest activity,  
23 including injuries, is relevant to Plaintiff’s claim for damages.

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1 **CONCLUSION**

2 For the reasons stated above, Defendant City requests an order form the Court  
3 granting Defendant's Motion

4 DATED: February 8, 2021.

5 Respectfully submitted,

6 /s/ Caroline Turco

7 Caroline Turco, OSB No. 083813

8 Deputy City Attorney

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

10 *Of Attorneys for Defendant City of Portland*

1 **CERTIFICATE OF SERVICE**

2  
3 I hereby certify that I served the foregoing DEFENDANT’S MOTION TO COMPEL  
4 PRODUCTION OF DOCUMENTS on:

5 Michael Fuller 6 Underdog Lawyer 7 US Bancorp Tower 8 111 SW Fifth Ave., Suite3150 9 Portland, OR 97204	<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>
8 Kelly Donovan Jones 9 Law Office of Kelly D. Jones 10 819 SE Morrison Street, Suite 255 11 Portland, OR 97214 <i>Of Attorneys for Plaintiff</i>	

12 Dated: February 8, 2021

13  
14 /s/ Caroline Turco  
15 CAROLINE TURCO, OSB #083813  
16 Deputy City Attorney  
17 caroline.turco@portlandoregon.gov  
18 Fax: (503) 823-3089  
19 *Of Attorneys for Defendant*