

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

MASON LAKE

Plaintiff

vs

CITY OF PORTLAND

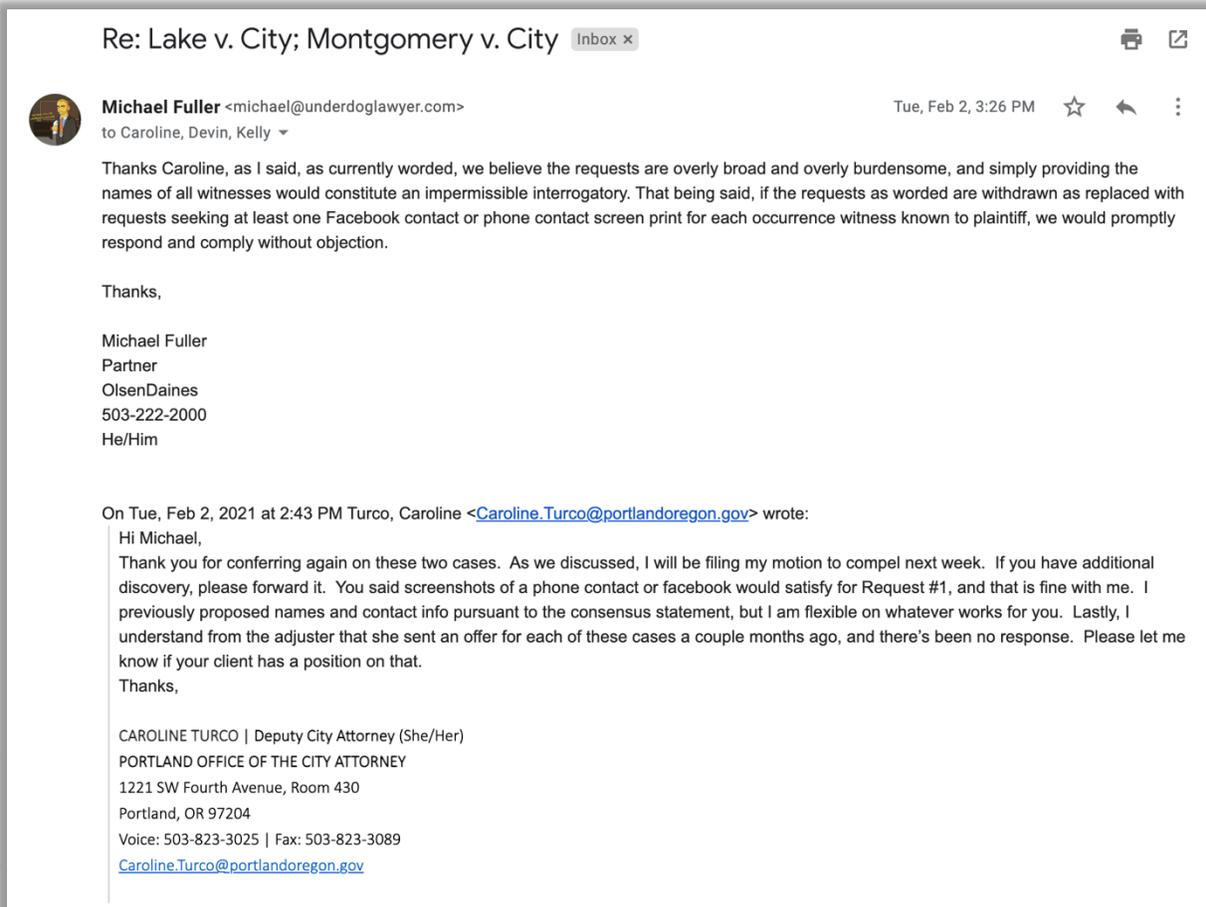
Defendant

Case No. 20CV19838

**PLAINTIFF’S RESPONSE TO
DEFENDANT’S MOTION TO
COMPEL**

Oral Argument: Not Requested
Court Reporting: Not Requested

INTRODUCTION



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2 **INTRODUCTION**

3 As evidenced by the email above, plaintiff offered a compromise to defendant
4 that would have permitted defendant to withdraw request one as currently drafted,
5 and permitted defendant to re-serve a request that was more narrowly tailored, that
6 would have provided defendant the discovery it sought (essentially an interrogatory
7 response identifying the names of all known witnesses) but without requiring
8 plaintiff to search for and produce for inspection hundreds of thousands of pages of
9 documents, simply because the documents happen to contain the name of a witness.
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12 Defendant refused plaintiff's proposed compromise and filed its motion to
13 compel instead.
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2 **RESPONSE TO MOTION**

3 **DEFENDANT’S REQUEST NO. 1:** All documents containing names and addresses of
4 witnesses to the incident.
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7 **PLAINTIFF’S RESPONSE TO REQUEST NO. 1:** Plaintiff objects because this request is
8 vague and very broad and overly burdensome and seeks documents that are not
9 relevant. To the extent these requests seek information that is privileged or work
10 product, plaintiff respectfully objects and respectfully will not produce information
11 that is privileged or work product.
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14 **PLAINTIFF’S ARGUMENT IN SUPPORT OF OBJECTION:** Request one is objectionable
15 because it would require plaintiff to search for and make available for inspection “all
16 documents” containing any name of any witness to the incident. If plaintiff were
17 compelled to respond to request one as drafted, they would be required to review
18 literally hundreds of thousands of pages of documents. For instance, Mayor Wheeler
19 is an occurrence witness to the incident. Request one would literally require plaintiff
20 to produce to defendant any Facebook post containing Mr. Wheeler’s name, any
21 Twitter Tweet containing Mr. Wheeler’s name, including every Tweet ever made by
22 Mr. Wheeler, any press release or other statement containing Mr. Wheeler’s name,
23 every phone book containing Mr. Wheeler’s name, every City Hall directory
24 containing Mr. Wheeler’s name, every news story containing Mr. Wheeler’s name,
25 every Voter Pamphlet containing Mr. Wheeler’s name, etc.
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2 The consensus statement defendant references in its motion does not permit
3 the type of broad, burdensome request defendant made to plaintiff in this case.
4 Rather, the statement acknowledges that when responding to an otherwise
5 unobjectionable request for documents, a responding party is permitted to withhold
6 the responsive documents and instead to list witness contact information to “avoid
7 having to produce documents which might otherwise be protected”. The purpose of
8 the consensus statement is to avoid the production of privileged or work product
9 documents, not to permit a defendant to request that a plaintiff produce every single
10 document that may contain the name of any witness.
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13 For all these reasons, defendant’s motion should be denied with leave to re-
14 serve a more narrowly tailored request that would not require plaintiff to literally
15 review and make available for inspection hundreds of thousands of pages of
16 documents, just because the documents happen to contain the name of a witness in
17 this case.
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2 **DEFENDANT’S REQUEST NO. 8:** All documents relating to any interaction Plaintiff
3 has had with a Portland Police Officer or any other law enforcement officer since
4 May 31, 2020, including but not limited to notes, emails, correspondence, video, or
5 audio records.
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8 **PLAINTIFF’S RESPONSE TO DEFENDANT’S REQUEST NO. 8:** Plaintiff objects because
9 this request is vague and very broad and overly burdensome and an undue invasion
10 of privacy and seeks documents that are not relevant and plaintiff will produce
11 responsive documents that are relevant to a claim or defense in this case.
12 Notwithstanding the objections, please see attached documents. Plaintiff continues
13 to search for responsive documents and will supplement production as additional
14 documents are found. To the extent these requests seek information that is
15 privileged or work product, plaintiff respectfully objects and respectfully will not
16 produce information that is privileged or work product.
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21 **PLAINTIFF’S ARGUMENT IN SUPPORT OF OBJECTION:** Defendant’s two justifications
22 for request eight is that responsive documents “go to Plaintiff’s awareness and
23 familiarity with police commands” and that “any other subsequent protest activity,
24 including injuries, is relevant to Plaintiff’s claim for damages.” Motion pg. 3.
25 Defendant can ask plaintiff about familiarity with police commands during their
26 deposition – there is no reason to invade plaintiff’s privacy and to burden plaintiff
27 with the task of searching for and making available “all” documents in any way
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2 relating to “any” interaction with “any” law enforcement officer. Defendant’s second
3 justification is a red herring because no evidence in the record suggests that plaintiff
4 was injured a subsequent time in the same way alleged in the operative complaint.
5 Defendant’s motion should be denied with respect to request eight. To the extent this
6 Court overrules plaintiff’s objections to request eight, plaintiff intends to similarly
7 request that the officers at issue in this case produce all documents relating to any
8 interaction with any protester.
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12 **DEFENDANT’S REQUEST NO. 9:** All documents relating to any protest or march for
13 which Plaintiff was involved since 2010, including but not limited to notes, emails,
14 correspondence, video, audio records, photographs and social media posts.
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17 **PLAINTIFF’S RESPONSE TO DEFENDANT’S REQUEST NO. 9:** Plaintiff objects because
18 this request is vague and very broad and overly burdensome and an undue invasion
19 of privacy and seeks documents that are not relevant. To the extent these requests
20 seek information that is privileged or work product, plaintiff respectfully objects and
21 respectfully will not produce information that is privileged or work product.
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24 **PLAINTIFF’S ARGUMENT IN SUPPORT OF OBJECTION:** Defendant’s two justifications
25 for request nine is that responsive documents “go to Plaintiff’s awareness and
26 familiarity with police commands” and that “any other subsequent protest activity,
27 including injuries, is relevant to Plaintiff’s claim for damages.” Motion pg. 3.
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2 Defendant can ask plaintiff about familiarity with police commands during
3 their deposition – there is no reason to invade plaintiff’s privacy and to burden
4 plaintiff with the task of searching for and making available “all” documents in any
5 way relating to “any” protest or march over the past ten years. Defendant’s second
6 justification is a red herring because no evidence in the record suggests that plaintiff
7 was injured a subsequent time in the same way alleged in the operative complaint.
8 Defendant’s motion should be denied with respect to request nine. To the extent this
9 Court overrules plaintiff’s objections to request nine, plaintiff intends to similarly
10 request that the officers at issue in this case produce all documents relating to any
11 protest or march over the past ten years.
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16 **CONCLUSION**

17 For all these reasons, plaintiff’s objection to requests one, eight, and nine
18 should be sustained, and defendant’s motion should be denied with leave to re-serve
19 more narrowly tailored requests.
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21 February 23, 2021
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23 **RESPECTFULLY FILED,**

24 /s/ Michael Fuller

25 **Michael Fuller, OSB No. 09357**

26 Lead Trial Attorney for Plaintiff

OlsenDaines

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28

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2 **CERTIFICATE OF SERVICE**

3 I caused this document to be served on:

4 **City of Portland**
5 **c/o Deputy City Attorney Caroline Turco**
6 **Portland Office of the City Attorney**
7 caroline.turco@portlandoregon.gov

8 February 23, 2021

9 /s/ Michael Fuller
10 **Michael Fuller, OSB No. 09357**
11 Lead Trial Attorney for Plaintiff
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15 Portland, Oregon 97204
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