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on behalf of the ACLU Foundation of Oregon, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

CARRIE MEDINA,

Plaintiff,

v.

CITY OF PORTLAND, a municipal corporation, **CITY OF GRESHAM**, a municipal corporation, **TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON**, a municipal corporation, **OFFICER TAYLOR LETSIS**, as both an individual and in his official capacity as an officer of the Gresham Police Department, **UNKNOWN POLICE OFFICERS NOS. 1, 2 AND 3**, both as individuals and in their capacities as officers of the Portland Police Bureau,

Defendants.

Case No. _____

**COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF, COMPENSATORY
DAMAGES, STATUTORY
DAMAGES, AND ATTORNEYS' FEES
(42 U.S.C. § 1983; 42 U.S.C. § 2000aa et
seq.; 28 U.S.C. § 2201; ORS 28.010)**

DEMAND FOR JURY TRIAL

Plaintiff Carrie Medina, by and through her attorneys, Charles J. Paternoster, Alan J. Galloway, and Tim M. Cunningham, Cooperating Attorneys for the ACLU Foundation of Oregon, Inc., does hereby state and allege as follows:

NATURE OF THE ACTION

1.

This is a civil action challenging violations of (i) Ms. Medina's constitutional right to speak and to film police conducting their activities in public, (ii) her constitutional right to be free from unreasonable search and seizure, (iii) her statutory right to retain journalistic materials in the absence of a subpoena under 42 U.S.C. § 2000aa, *et seq.*, and (iv) her right not to be unlawfully detained; all arising from an incident on February 12, 2013 when, as Ms. Medina broadcast a live report on an interaction between police and a suspect in custody, Officer Taylor Letsis of the Gresham Police Department

- (a) demanded to see the footage Ms. Medina was capturing, saying "It is not a choice,"
- (b) refused her offer to provide footage in response to a subpoena,
- (c) told her that if she did not allow him to search her phone that he would seize it,
- (d) interrupted her live Internet broadcast,
- (e) seized her smartphone, and – while other officers stood by –
- (f) seized and detained her,
- (g) searched her smartphone, and
- (h) reviewed her footage.

JURISDICTION AND VENUE

2.

This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this action arises under the Constitution and laws of the United States, including 42 U.S.C. § 1983 and 42 U.S.C. § 2000aa, *et seq.*

3.

This Court has subject matter jurisdiction over plaintiff's first claim for relief pursuant to 28 U.S.C. § 1343, because plaintiff seeks redress for the deprivation of rights, privileges, and immunities secured by the Constitution and laws of the United States, and this action seeks equitable relief, and other relief under the laws of the United States protecting civil rights, including without limitation 42 U.S.C. § 1983, 28 U.S.C. § 2201, and 42 U.S.C. § 2000aa, *et seq.*

4.

The Court has original jurisdiction over plaintiff's fifth claim under 42 U.S.C. § 2000aa-6(h).

5.

The Court has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. § 2201.

6.

The Court has supplemental jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367 because those claims are part of the same case or controversy as Ms. Medina's claims under the Constitution and laws of the United States.

7.

This Court has personal jurisdiction over all defendants because the acts and omissions of

the defendants from which this action arises occurred within the State of Oregon.

8.

This Court has personal jurisdiction over defendants City of Portland, City of Gresham, and Tri-County Metropolitan Transportation District of Oregon ("TriMet") because each municipality is domiciled in the State of Oregon.

9.

This Court has personal jurisdiction over Officer Taylor Letsis and Unknown Police Officers Nos. 1, 2, and 3 because, on information and belief, each has engaged in substantial and not isolated activities within the State of Oregon as members of the Gresham Police Department or Portland Police Bureau.

10.

Venue in this district is proper under 28 U.S.C. § 1391(b)(1) and (2) because defendants City of Portland, City of Gresham, and TriMet are located within this district, and the events or omissions giving rise to the claim occurred within this district.

PARTIES

11.

Plaintiff Carrie Medina serves as a “camera of accountability” who has reported on topics ranging from a bicycle accident to the pepper-spraying of a Portland high school student. Her reporting has covered the Occupy protests, and she is a co-founder of Film the Police Portland, an organization dedicated to advancing police accountability by filming police encounters in the Portland area. At all times relevant to this action, Ms. Medina was a citizen of Oregon. Carrie also works as a research assistant at Oregon Health & Sciences University, where she manages

an employee wellness program and helps promote OHSU events on social media, among other duties.

12.

Defendant City of Portland ("Portland") is a municipal corporation, chartered under the laws of Oregon, and is a public body liable for the acts and omissions of members of the Portland Police Bureau and other agents and employees acting within the scope of their agency and/or employment. Portland is a "person" as that term is defined in 42 U.S.C. § 1983.

13.

Defendant City of Gresham ("Gresham") is a municipal corporation, chartered under the laws of Oregon, and is a public body liable for the acts and omissions of members of the Gresham Police Department and other agents and employees acting within the scope of their agency and/or employment. Gresham is a "person" as that term is defined in 42 U.S.C. § 1983.

14.

Defendant TriMet is a municipal corporation of the State of Oregon, with its headquarters in Portland, which provides services in Multnomah, Clackamas and Washington Counties. Among those services are Transit Police Division ("Transit Police") services, which are provided pursuant to an intergovernmental agreement among TriMet, Portland, and Gresham (and though not relevant here, other municipalities). TriMet is a public body liable for the acts and omissions of members of the Transit Police and other agents and employees acting within the scope of their agency and/or employment. TriMet is a "person" as that term is defined in 42 U.S.C. § 1983.

15.

The Transit Police patrols are administered, coordinated, and directed by the Portland

Police Bureau under an agreement among TriMet, Portland and Gresham. The Transit Police Division Commander is selected jointly by Portland and TriMet. The Transit Police patrols are staffed by officers from the Portland Police Bureau, the Gresham Police Department, and officers from other jurisdictions. Selection and assignment of officers and deputies to the Transit Police are determined jointly by the command personnel of the officer's or deputy's jurisdiction (*e.g.*, Portland or Gresham), TriMet, and the Transit Police command personnel. Police officers assigned to the Transit Police are subject to the General Orders and training requirements of their respective jurisdictions, as well as the Transit Police's Standard Operating Procedures (except to the extent that they conflict with the General Orders of the officer's respective jurisdiction).

16.

At all times material to this action, defendant Officer Taylor Letsis was an employee of the Gresham Police Department, a subdivision of the City of Gresham, and acting within the scope of his employment and under color of law. Upon information and belief, at all times material to this action, defendant Officer Taylor Letsis was working as a member of the Transit Police, and acting within the scope of his employment and under color of law.

17.

On information and belief, at all times material to this action, defendants Unknown Police Officers Nos. 1, 2, and 3 were police officers employed by the Portland Police Bureau, a subdivision of the City of Portland, and acting within the scope of their respective employment and under color of law.

COMPLIANCE WITH ORS 30.275 - OREGON TORT CLAIMS NOTICE

18.

Plaintiff has complied with the applicable notice requirements under ORS 30.275.

19.

On or about August 5, 2013, plaintiff, through counsel, provided written notice to defendants by delivering an Oregon Tort Claims Notice, setting forth potential claims Ms. Medina intended to bring arising from an incident on February 12, 2013.

ALLEGATIONS COMMON TO ALL CLAIMS

20.

On February 12, 2013, Ms. Medina was riding a bus on SW 5th Avenue near the intersection of SW Broadway in Portland. Shortly after 5 p.m., she heard someone exclaim “Ooh, that must’ve hurt!” and observed two police officers arresting a young male rather roughly. Sensing that there was a possible story, she exited the bus and began capturing live video of a suspect whom the police had already taken into custody.

21.

Ms. Medina's smartphone, a Motorola "Droid" model, stored a variety of personal data. The data stored on Ms. Medina's phone included the physical addresses, phone numbers, and email addresses of other individuals, records of calls sent and received (including phone numbers, times, and durations), various applications and related application data, and various documents. These documents included personal photos and videos, as well as PDFs and Microsoft Word documents. Thanks to a service called Ustream, Ms. Medina's smartphone was set up to function like a live television camera.

22.

Ustream is a service that enables anyone with a smartphone to become a live broadcaster. The Ustream application runs on the user's phone, and gives the user the option to broadcast what their phone's camera "sees" over the Internet. When the user initiates the broadcast, the video captured by the user's phone can be viewed live over the Internet using a web browser. When the live broadcast is terminated, Ustream gives the user the option of archiving their broadcasts for later on-demand viewing. The archiving option has to be triggered by the user by responding "Yes" to a prompt that appears when a live broadcast stops. If (and only if) archived, videos are stored on Ustream's servers, and are viewable with common web browsers.

23.

On the day of the incident, Ms. Medina's footage was live-streamed over the Internet as she captured it, in real time, such that viewers could watch see and hear events unfold live.

24.

Ms. Medina's coverage of the police activities that day began with her telling viewers "And we are live!" Ms. Medina proceeded to narrate the scene and events to her viewers as she broadcast both live audio and video.

25.

Initially, there were two officers at the scene with the suspect already in custody. On information and belief, at least one of those officers was from the Portland Police Bureau.

26.

Throughout Ms. Medina's coverage of the story, Ms. Medina crossed no police lines. She remained at least 30 feet from the police. Her position was sufficiently far from the suspect that she was not interfering with police activities.

27.

During Ms. Medina's reporting, she observed several vehicles at or near the scene. One of these was a white car near the suspect marked "Transit Police." Ms. Medina also observed a car across the street marked "Portland Police," an SUV marked "Portland Police," and a gray unmarked SUV.

28.

Approximately 38 seconds into her report, a third officer proceeded to where the suspect was being detained, joining the two officers already there.

29.

Approximately one minute and twenty-eight seconds into her report, another officer arrived in the area and greeted Ms. Medina. Ms. Medina continued filming without incident, and he did not immediately join the other officers where the suspect was being detained.

30.

Approximately 2 minutes and 34 seconds into the report, an officer proceeded to where the suspect was being detained. That officer was wearing a vest emblazoned with "Portland Police" on the back. At this point, there were four officers where the suspect was being detained.

31.

In hopes of interviewing a bystander who had witnessed the arrest, Ms. Medina moved further south on 5th Ave, approaching the corner of SW 5th and SW Broadway, while continuing her live report. After determining that the witness appeared to have departed, she again focused on the vehicle containing the suspect, all the time remaining at least 30 feet from the four officers, namely Unknown Officers Nos. 1, 2, and 3 and Officer Letsis, who were standing near the Transit Police vehicle containing the suspect. Ms. Medina remained far enough away from the vehicle containing the suspect that she was not interfering with police activities.

32.

After Ms. Medina had been broadcasting for nearly four minutes without incident, she was approached by Officer Letsis.

33.

A transcript of Ms. Medina's encounter with Officer Letsis from the time he greeted her to the time he grabbed her smartphone out of her hands follows:

Officer Letsis	Hi.
Ms. Medina	Hi, there.
Officer Letsis	Can I see your video?
Ms. Medina	No.
Officer Letsis	Okay, I need to see your video to see if it has any evidence of a crime.
Ms. Medina	Um—
Officer Letsis	Yes. It's not a choice, ma'am.
Ms. Medina	It's not a choice?
Officer Letsis	It's not a choice. Either you can show it to me right now, and we can look over it and see if it has anything that I need, and if it doesn't, then you can keep it, and go on your way. If it does, if it does show something that we need, I'm going to either have you see if you can email it to me, or we may

	have to take the phone.
Ms. Medina	OK. Well, it's live...
Officer Letsis	OK
Ms. Medina	...on the Internet, so I don't have access to it, so that's one issue.
Officer Letsis	OK, well, then, why don't you show it to me?
Ms. Medina	Show you...
Officer Letsis	Yeah
Ms. Medina	OK, so, what's on this is, essentially, I get off the bus, I cross the street, he's already in custody...
Officer Letsis	OK, then show it to me.
Ms. Medina	...so there's no evidence of...
Officer Letsis	That's what I'm asking you to do. Is show it to me.
Ms. Medina	And if I refuse?
Officer Letsis	Then I'll have to seize the phone.
Ms. Medina	You're going to take my phone?
Officer Letsis	Yes.
Ms. Medina	And you have legal jurisdiction to—
Officer Letsis	Yes I do
Ms. Medina	—take my phone for not showing you—
Officer Letsis	No, no, no
Ms. Medina	So essentially I'm being searched.
Officer Letsis	No, you're not being searched.
Ms. Medina	It's a search of my phone.
Officer Letsis	Yes, because it could show evidence of a crime.
Ms. Medina	Right, well—
Officer Letsis	And I'm asking you to show it to me.
Ms. Medina	—if you were to subpoena that evidence, I would gladly give that to you.
Officer Letsis	Then show it to me. That's—that's what I'm asking.
Ms. Medina	I don't, I don't have— You're not legally asking me—

Officer Letsis	Yes, I am, ma'am.
Ms. Medina	—with a subpoena.
Officer Letsis	I don't need a subpoena to search your phone for evidence of a crime.
Ms. Medina	But you—you have to have some kind of ... probable cause...
Officer Letsis	Ma'am, do you want to hand me the phone, or would you like to show it to me?
Ms. Medina	I— I don't want to show you, but—
	[Noise as Officer Letsis forcibly grabs phone from Ms. Medina.]
Officer Letsis	Thank you.
Ms. Medina	—phone—at—will, however
	[End of broadcast as Ms. Medina's live-stream is terminated.]

34.

A true and correct copy of the video footage that Ms. Medina broadcast during the incident is provided herewith as Exhibit 1, and is available at <http://www.ustream.tv/recorded/29230171>.

35.

At the time that Officer Letsis searched and seized Ms. Medina's phone, there was no probable cause to believe the phone contained evidence of a crime. Ms. Medina had already explained that the suspect was "already in custody" by the time she began her live video report.

36.

At the time that Officer Letsis searched and seized Ms. Medina's phone, there was no probable cause to believe any footage on the phone was at risk of destruction or loss. Ms. Medina had already offered to provide the video footage in response to a subpoena.

37.

Officer Letsis' forcible seizure of Ms. Medina's smartphone halted Ms. Medina's live broadcast.

38.

As he seized the smartphone from Ms. Medina, Officer Letsis grabbed her wrist and jacket cuff, scratching Ms. Medina's hand with his nails and twisting her arm. As this occurred, Officer Letsis said "Stop resisting."

39.

Unknown Officer No. 1 approached Officer Letsis and Ms. Medina while Officer Letsis continued to hold Ms. Medina's arm. Once Officer Letsis had the phone, he continued to grip her arm for approximately 20 seconds. Unknown Officer No. 1 made eye contact with Officer Letsis, and shortly afterward Officer Letsis released Ms. Medina's arm.

40.

Officer Letsis proceeded to look at Ms. Medina's smartphone. During this time, another officer, Unknown Officer No. 2, approached Ms. Medina and Officer Letsis. Because the broadcast had been terminated, the Ustream application popped up a prompt on whether to archive the video or not. Officer Letsis appeared poised to press the "No," button which would have resulted in the loss of the footage that had been broadcast. In response, Ms. Medina protested to Unknown Officer No. 2 that Officer Letsis was deleting her video. Officer Letsis responded that he was not. Ms. Medina responded that Officer Letsis should then press the button to archive the video. Officer Letsis did so, and asked "What's next?" Ms. Medina then

walked him through responding "Yes" to prompts from the Ustream application asking whether to post the video to Twitter, Facebook, and YouTube.

41.

Officer Letsis then handed the phone back to Ms. Medina, and ordered her to show him the video. At this point in time, anyone with access to a web browser could view the video on the Ustream site, where it had been archived.

42.

Complying with Officer Letsis' order, Ms. Medina navigated to a public Ustream page where the now-archived video could be viewed in the smartphone's standard web browser.

43.

As soon as Ms. Medina pressed "play," to start the video, Officer Letsis grabbed the phone from her a second time. Officer Letsis did so without warning, and without the consent of Ms. Medina, despite the absence of any probable cause – or any reason at all – to suspect either that Ms. Medina had committed a crime, that the phone contained evidence of a crime, or that the evidence (which he himself had just archived to the Ustream web server) was in any danger of being destroyed.

44.

Officer Letsis studied the video playing on the screen of Ms. Medina's phone for approximately 10 seconds. Ms. Medina asked "Am I free to leave?" Officer Letsis replied that she was not. Then, while continuing to hold Ms. Medina's phone, Officer Letsis asserted that he could take her phone at any time, and warned that if she did not comply with future demands by police to see her video, her phone could be seized.

45.

At the end of this lecture, Ms. Medina put out her hand and Officer Letsis returned the phone. She then asked "Can I go?" Officer Letsis replied that she could go.

46.

Once Ms. Medina was given her phone back, she resumed her live broadcast, relating the incident that had just occurred while also directing her camera at the police car that remained on the scene, possibly with the suspect still inside. The follow-up segment lasted 4 minutes and 48 seconds.

47.

At the time that Officer Letsis seized and searched Ms. Medina's phone and detained her, Unknown Officers Nos. 1, 2, and 3 had a clear line of sight to where Ms. Medina and Officer Letsis were standing. Although Unknown Officer No. 1 and Unknown Officer No. 2 approached Officer Letsis, and although Unknown Officer No. 1 appeared to influence Officer Letsis to release Ms. Medina's arm, none of Unknown Officers Nos. 1, 2, or 3 ordered Officer Letsis to desist from the search and seizure of Ms. Medina's smartphone or the seizure and detention of Ms. Medina. None otherwise made any attempt to prevent or curtail the search and seizure of Ms. Medina's smartphone. Indeed, Unknown Officer No. 3 did not approach Ms. Medina at all.

48.

On approximately February 15, 2013, KGW television published a report on the incident. During the report, a person identified as Gresham police spokesman Claudio Grandjean asserted that Officer Letsis' conduct during the encounter had been legal. Officer Grandjean stated:

“He wasn't doing something illegal. Now, was he inappropriate, or... or or a little rough, or officious or whatever? We can look at that, but that's not nearly as important as was he doing something illegal.”

Thus, three days after the incident, the Gresham Police Department took a clear and public position that the actions of Officer Letsis were lawful.

49.

On March 5, 2013, barely three weeks after the incident, the Gresham Police Chief issued a memorandum. A true and correct copy of that memorandum, obtained through a public records request, is attached as Exhibit 2, and is hereby incorporated by reference.

50.

Upon information and belief, the March 5, 2013 memorandum was issued, at least in part, in response to the February 12, 2013 incident with Ms. Medina.

51.

In the March 5, 2013 memorandum, the Chief stated that "I highly discourage the seizing of property, or the arresting of persons, for simply recording your official actions without your knowledge."

52.

In the March 5, 2013 memorandum, the Chief stated that "I support the reasonable actions of officers to seize cell phones when there is probable cause to believe the recording contains evidence of a crime and there are exigent circumstances to seize the cell phone to prevent the destruction or loss of the evidence," but went on to warn that "[i]f no exigent circumstances that place the property at risk of destruction, you must obtain a search warrant to download the video."

53.

In the March 5, 2013 memorandum, the Chief stated that "The practice of video/audio recording officers is prevalent throughout the world and I believe the courts will take a very liberal view of a citizen's right to record an officer while on duty. It is common footage on television shows and internet videos, and we must recognize that it is part of doing business."

54.

As of February 12, 2013, it was clearly established that the public has a First Amendment right to record and broadcast audiovisual footage of the public activities of the police, to provide live coverage of events, and to disseminate that live coverage to the public.

55.

As of February 12, 2013, it was clearly established that under the Fourth Amendment people have a right to be free of unreasonable search and seizure of themselves and their property, and a privacy interest in their computers and in the data contained therein, including portable computing devices ranging from laptop computers to so-called smartphones.

56.

The need to train police officers to understand (i) the rights of persons under the First Amendment, including the right to film police activities and broadcast such footage to the public; (ii) the rights of persons implicated by searching and seizing smartphones under the Fourth Amendment; (iii) the statutory limits on seizing journalistic materials, and (vi) that it is unlawful to detain persons engaged in filming police activities; were clear at the time of, and before, the February 12, 2013 incident with Ms. Medina.

57.

It was clear, both before and on February 12, 2013, that failure to properly train police to understand, preserve, and protect expression and privacy rights under the First Amendment and Fourth Amendment would make violation of those constitutional rights likely, as would maintenance of, or indifference to, policies, customs, or practices inconsistent with the First and Fourth Amendments.

58.

In particular, it was predictable that improper training on the Fourth Amendment would lead to an incorrect understanding of those rights (such as that as evidenced by Officer Letsis' remarks to Ms. Medina), which would result in searches and seizures that, while convenient for officers involved, were unreasonable under the Fourth Amendment.

59.

Similarly, it was predictable that improper training as to the First Amendment could — in an age where video footage of police is "part of doing business" — result in the silencing of speech in a manner incompatible with the First Amendment, such as the termination of the live broadcast here.

60.

Portland, Gresham, and TriMet failed to adequately train and supervise Officer Letsis and the other individual defendants before and during the incident, and maintained policies that allowed and condoned the acts and omissions of the police during the incident, and which showed deliberate indifference to the rights of Ms. Medina under the First, Fourth, and

Fourteenth Amendments to the United States Constitution that defendants violated on February 12, 2013.

FIRST CLAIM FOR RELIEF

(42 U.S.C. § 1983 Claim for Violation of First Amendment Rights; Plaintiff against Defendant Officer Letsis)

61.

Plaintiff incorporates and re-alleges the facts set forth in Paragraphs 1 - 60 above.

62.

42 U.S.C. section 1983, originally part of the Civil Rights Act of 1871, 17 Stat. 13, creates a private right of action to vindicate violations of "rights, privileges, or immunities secured by the Constitution and laws" of the United States. Under the terms of the statute:

“Every person who, under color of [law] * * *causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.”

42 U.S.C. § 1983.

63.

42 U.S.C. § 1983 specifically provides civil remedies for First and Fourth Amendment violations, including monetary damages, attorney fees, and certain punitive damages.

64.

At all times relevant to the allegations in this complaint, Officer Letsis was an on-duty police officer acting under color of law.

65.

With respect to Ms. Medina's claims under 42 U.S.C. § 1983, Officer Letsis is a "person" for purposes of 42 U.S.C. § 1983.

66.

Observation, recording, and live broadcasting of police activity in public is a legitimate means of gathering information for public dissemination that is protected by the free speech and free press clauses of the First Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment to the United States Constitution.

67.

In seizing Ms. Medina's phone and stopping Ms. Medina's filming and journalistic activity, defendants violated Ms. Medina's clearly established First Amendment and Fourteenth Amendment rights under the United States Constitution, of which Officer Letsis knew, or of which reasonable police officers should have known.

68.

Based on Officer Letsis' conduct, Ms. Medina is entitled to an award of damages, injunctive relief, and declaratory relief.

69.

Officer Letsis is not entitled to qualified immunity because the rights of Ms. Medina that were violated were clearly established at the time of the conduct, including but not limited to, the right to record and broadcast live audiovisual footage of police activities in public.

70.

As a direct and proximate result of Officer Letsis' unconstitutional violations of

Ms. Medina's First Amendment rights, Ms. Medina suffered injuries, including without limitation physical and psychological injuries, the interruption of her live broadcast and corresponding loss of footage she would have otherwise captured.

71.

Based on Officer Letsis' conduct, plaintiff is entitled at least to compensatory damages, in the amount of twenty-one dollars.

72.

Ms. Medina is also entitled to declaratory relief, including a declaration stating that her rights were violated, and an injunction requiring defendants to impose new policies and training requirements to be consistent with the First and Fourteenth Amendments, and, in particular, to recognize, uphold, and protect the right to record and broadcast live audiovisual footage of police activities in public.

73.

Ms. Medina is further entitled to an award of all relevant attorney fees, expert fees and costs pursuant to 42 U.S.C. § 1988, which provides: “In any action or proceeding to enforce a provision of sections * * * 1983, * * * of this title, * * *, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney’s fee as part of the costs, * * *. In awarding an attorney’s fee under subsection (b) of this section in any action or proceeding to enforce a provision of section 1981 or 1981a of this title, the court, in its discretion, may include expert fees as part of the attorney’s fee.”

SECOND CLAIM FOR RELIEF

(42 U.S.C. § 1983 Claim for Violation of Fourth Amendment Rights; Plaintiff against

Defendant Officer Letsis)

74.

Plaintiff incorporates and re-alleges the facts set forth in Paragraphs 1 - 65 and 73 above.

75.

Under the Fourth Amendment to the United States Constitution, as incorporated through the Fourteenth Amendment to the United States Constitution, Ms. Medina has a right to be secure in her effects and free from unreasonable searches and seizures.

76.

In repeatedly seizing and searching Ms. Medina's phone, Officer Letsis violated Ms. Medina's clearly established Fourth Amendment rights under the United States Constitution, of which Officer Letsis knew, or of which reasonable police officers should have known, rendering Officer Letsis liable to Ms. Medina under 42 U.S.C. § 1983.

77.

Based on Officer Letsis' conduct, Ms. Medina is entitled to an award of damages, injunctive relief, and declaratory relief.

78.

Officer Letsis is not entitled to qualified immunity because the rights of Ms. Medina that were violated were clearly established at the time of the conduct, including without limitation her right to be free of unreasonable search and seizure of her property, including the smartphone in which she had a reasonable expectation of privacy, and of her person.

79.

Based on Officer Letsis' conduct, plaintiff is entitled at least to compensatory damages, in the amount of twenty-one dollars.

80.

Ms. Medina is further entitled to an award of attorney fees, expert fees and costs pursuant to 42 U.S.C. § 1988.

THIRD CLAIM FOR RELIEF

**(42 U.S.C. § 1983 Claim for Violation of First and Fourth Amendment Rights; Plaintiff
against defendants Unknown Officers Nos. 1, 2 and 3)**

81.

Plaintiff incorporates and re-alleges the facts set forth in Paragraphs 1 - 80 above.

82.

Unknown Officers Nos. 1, 2, and 3 each had knowledge of Officer Letsis' encounter with Ms. Medina, each had opportunities to intervene to protect Ms. Medina's First, Fourth and Fourteenth Amendment rights, including without limitation her right to continue her live broadcast, her right to privacy in her smartphone, and her right to be free from unreasonable searches and seizures, and the use of unreasonable force.

83.

Unknown Officers Nos. 1, 2, and 3 each failed to intervene to prevent the violations of Ms. Medina's First, Fourth and Fourteenth Amendment rights under the United States Constitution, of which Unknown Officers Nos. 1, 2, and 3 knew, or of which reasonable police

officers should have known, rendering Unknown Officers Nos. 1, 2, and 3 each liable to Ms. Medina under 42 U.S.C. § 1983.

84.

Based on the conduct of Officers Nos. 1, 2, and 3, Ms. Medina is entitled to an award of damages, injunctive relief, as well as declaratory relief.

85.

Unknown Officers Nos. 1, 2, and 3 are not entitled to qualified immunity because the rights of Ms. Medina that were violated were clearly established at the time of the conduct, including without limitation her right to continue her live broadcast and her right to privacy in her smartphone.

86.

As a direct and proximate result of Unknown Officers Nos. 1, 2, and 3's failure to intervene to cease Officer Letsis' unconstitutional violations of Ms. Medina's First and Fourth Amendment rights, Ms. Medina suffered injuries, including without limitation physical and psychological injuries, the interruption of her live broadcast and corresponding loss of footage she would have otherwise captured, and significant invasion of her privacy created by the unconstitutional search of her smartphone.

87.

Based on Unknown Officers Nos. 1, 2, and 3 conduct, including without limitation their failure to intervene to protect Ms. Medina's rights, plaintiff is entitled at least to compensatory damages, in the amount of twenty-one dollars.

88.

Ms. Medina is further entitled to an award of attorney fees, expert fees and costs pursuant to 42 U.S.C. § 1988.

FOURTH CLAIM FOR RELIEF

(Modell claim under 42 U.S.C. § 1983; Plaintiff against the City of Gresham, the City of

Portland, and Tri-Met)

89.

Plaintiff incorporates and re-alleges the facts set forth in Paragraphs 1 - 88 above.

90.

In interrupting her live broadcast, and in searching and seizing her smartphone, Officer Letsis violated Ms. Medina's clearly-established rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution.

91.

TriMet, Portland, and Gresham are “persons” under 42 U.S.C. § 1983.

92.

At all times relevant to this action, Officer Letsis and Unknown Officers Nos. 1, 2, and 3 were acting under color of law.

93.

On information and belief, as of February 12, 2013, Transit Police officers had a widespread custom and practice of seizing cameras and/or recording devices and searching such devices for video footage, in the name of searching for evidence, when persons recorded or broadcast audiovisual footage of the police in public, even in circumstances where there was no

reason to suspect the person capturing the footage of a crime and where no exigent circumstances existed, and Gresham, Portland, and TriMet were, or should have been, aware of this custom and practice.

94.

On information and belief, as of February 12, 2013, Gresham, Portland, and TriMet maintained official policies allowing Transit Patrol officers to seize cameras and/or recording devices and search such devices for video footage when persons recorded or broadcast audiovisual footage of the police in public, even in circumstances where there was no reason to suspect the person taking the footage of a crime and no exigent circumstances existed.

95.

On information and belief, as of February 12, 2013, Gresham, Portland, and TriMet failed to train Transit Police officers about the First and Fourth Amendment rights of the public and the press to observe, record and broadcast public scenes of police activity, displaying deliberate indifference to the constitutional rights enjoyed by all persons in the United States.

96.

On information and belief, as of February 12, 2013, Gresham, Portland, and TriMet failed to supervise and discipline Transit Police officers for unlawfully interfering with the First Amendment rights of the public and the press to observe, record and broadcast public scenes of police activity, displaying deliberate indifference to the constitutional rights enjoyed by all persons in the United States.

97.

On information and belief, the aforementioned unconstitutional policies, customs, and

practices of the Gresham, Portland, TriMet, and the Transit Police were the moving force behind Officer Letsis' violation of Ms. Medina's constitutional rights on February 12, 2013.

98.

As a direct and proximate result of the unconstitutional policies, customs, and practices of Gresham, Portland, TriMet, and the Transit Police, Ms. Medina suffered injuries, including without limitation physical and psychological injuries, the interruption of her live broadcast and corresponding loss of footage she would have otherwise captured, and invasion of her privacy. As a result of those injuries, plaintiff is entitled at least to compensatory damages in the amount of twenty-one dollars.

99.

Ms. Medina is entitled to declaratory relief, including a declaration stating that her rights were violated, and an injunction requiring defendants to revise policy and training requirements to be consistent with the Fourth and Fourteenth Amendments with respect to seizure of non-suspect bystanders and equipment used by non-suspect bystanders in the course of such activities, and the use of force and its effect on such activities.

100.

Ms. Medina is further entitled to an award of attorney fees, expert fees and costs pursuant to 42 U.S.C. § 1988.

FIFTH CLAIM FOR RELIEF

(The Privacy Protection Act (“PPA”), 42 U.S.C. §2000aa, et seq.; Plaintiff against the City of Gresham, the City of Portland, and Tri-Met)

101.

Plaintiff incorporates and re-alleges the facts set forth in Paragraphs 1 - 60 and Paragraphs 66 – 67 above.

102.

The Privacy Protection Act (“PPA”), 42 U.S.C. §2000aa, *et seq.*, prohibits government officials from searching for and seizing documentary materials or work product possessed by a person in conjunction with a purpose to disseminate a broadcast or similar form of communication to the public, and further prohibits searching for and seizing related work product materials possessed by a person reasonably believed to have a purpose to disseminate a broadcast or similar form of communication to the public.

103.

42 U.S.C. § 2000aa(b) provides that it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize documentary materials possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce.

104.

42 U.S.C. § 2000aa(a) further provides that it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search

for or seize work product materials possessed by a person reasonably believed to have a purpose to disseminate a broadcast or similar form of communication to the public, in or affecting interstate commerce.

105.

The PPA provides that a person aggrieved by a search for or seizure of materials in violation of the PPA shall have a civil cause of action for damages for such search or seizure.

106.

The PPA further allows causes of action against governmental units for the actions of their officers -- with no qualified immunity defense.

107.

The video footage that Officer Letsis sought, the Ustream software on Ms. Medina's smartphone, and the smartphone itself constituted documentary materials and work product possessed by Ms. Medina and Ustream. Ms. Medina's purpose was to, with the assistance of Ustream, broadcast the video footage to the public over the Internet. Ms. Medina, in fact, had informed Officer Letsis that the video was "live on the Internet."

108.

At no time did Officer Letsis ever have reason to believe that Ms. Medina had committed or was committing any criminal offense, much less probable cause to believe that Ms. Medina had committed or was committing any criminal offense related the video footage or other materials that he seized or searched for.

109.

At no time was there ever any reason to believe that the immediate seizure of the video

footage or other materials was necessary to prevent the death of, or serious bodily injury to, a human being.

110.

When Officer Letsis first seized and searched Ms. Medina's phone there was no reason to believe that the giving of notice pursuant to a *subpoena duces tecum* would result in the destruction, alteration, or concealment of any materials, including the footage. To the contrary, Ms. Medina had told Officer Letsis that "if you were to subpoena that evidence, I would gladly give that to you."

111.

At the time that Officer Letsis seized and searched Ms. Medina's phone a second time, there was no reason to believe that the giving of notice pursuant to a *subpoena duces tecum* would result in the destruction, alteration, or concealment of any materials, including the footage. To the contrary, Officer Letsis himself had just, pursuant to Ms. Medina's instruction, caused Ustream to archive the footage and make it publicly available on Twitter, Facebook, and YouTube.

112.

At no time relevant to this action was there ever a court order directing compliance with a *subpoena duces tecum* with respect to the materials.

113.

Under the PPA, Officer Letsis was required to obtain a subpoena before seizing and searching Ms. Medina video and phone. Officer Letsis not only did not pursue such a subpoena, but flatly stated that he did not need a subpoena to obtain the video.

114.

As a result of defendants' conduct, Ms. Medina is entitled to an award of liquidated damages in the amount of \$1000.

115.

Ms. Medina is entitled to her reasonable attorney fees and litigation costs pursuant to 42 U.S.C. § 2000aa-6(f).

SIXTH CLAIM FOR RELIEF

(Declaratory Relief under 28 U.S.C. § 2201 and ORS 28.010; Plaintiff against Defendants

Officer Letsis, Portland, Gresham and TriMet)

Count 1

(Article I, § 9 of the Oregon Constitution)

116.

Plaintiff incorporates and re-alleges the facts set forth in Paragraphs 1 - 115 above.

117.

The search and seizure of Ms. Medina's phone violated Ms. Medina's rights under Article I, section 9 of the Oregon Constitution.

118.

Article I, section 9 of the Oregon Constitution created a duty that Officer Letsis violated by searching and seizing her smartphone, resulting in the interruption of her live broadcast and physical injury to Ms. Medina.

119.

Ms. Medina is entitled to declaratory relief, including a declaration stating that her rights

were violated, and an injunction requiring defendants to revise policy and training requirements to be consistent with Article I, section 9 of the Oregon Constitution, with respect to persons recording police officers in the public discharge of their duties, search and seizure of non-suspect bystanders, and use of force.

Count 2

(Article I, § 8 of the Oregon Constitution)

120.

Plaintiff incorporates and re-alleges the facts set forth in Paragraphs 1 - 119 above.

121.

The forcible interruption of Ms. Medina's live report violated Ms. Medina's rights under Article I, section 9 of the Oregon Constitution

122.

Article I, section 8 of the Oregon Constitution created a duty that Officer Letsis violated by searching and seizing her smartphone, resulting in the interruption of her live broadcast and creating a risk of destruction of her video footage.

123.

Ms. Medina is entitled to declaratory relief, including a declaration stating that her rights were violated, and an injunction requiring defendants to revise policy and training requirements to be consistent with Article I, section 8 of the Oregon Constitution, with respect to persons recording police officers in the public discharge of their duties, the ability to broadcast such footage by to the public, and the right to be free from forcible termination of such broadcasts.

Count 3

(False Arrest)

124.

Plaintiff incorporates repeats and re-alleges the facts in paragraphs 1-123 above.

125.

Officer Letsis intended to confine Ms. Medina when he grabbed her arm, seized her phone, and searched it.

126.

Ms. Medina was aware of her confinement by Officer Letsis.

127.

Ms. Medina did not consent to the confinement.

128.

Officer Letsis' detention of Ms. Medina amounted to an arrest, without probable cause, or indeed, any reason, to believe that Ms. Medina had committed a crime.

129.

Officer Letsis lacked probable cause, or indeed, any reason, to believe that Ms. Medina had evidence of a crime.

130.

Officer Letsis' actions were not otherwise privileged.

131.

Officer Letsis' conduct complained of in Counts 1, 2, and 3 herein was committed within the scope of his employment by Defendant Gresham and his assignment to the Transit Police of

Defendant TriMet, as administered, coordinated and directed by Defendant Portland, and, on information and belief, was ratified by superior officers of the Gresham Police Department acting within the scope of their employment.

132.

As a direct and proximate result of Officer Letsis' actions, Ms. Medina suffered injuries, including without limitation physical and psychological injuries, the interruption of her live broadcast and corresponding loss of footage she would have otherwise captured, and invasion of her privacy.

PRAYER FOR RELIEF

WHEREFORE, Medina prays for judgment as follows:

1. On Plaintiff's FIRST CLAIM FOR RELIEF,
 - (a) declaratory relief that the conduct of Officer Letsis violated Ms. Medina's rights under the First and Fourteenth Amendment to the U.S. Constitution with respect to persons recording and broadcasting live audiovisual footage of police officers in the public discharge of their duties, and with respect to the use of excessive force;
 - (b) compensatory damages in the amount of twenty-one dollars,
 - (c) an award of all relevant attorney fees, expert fees and costs pursuant to 42 U.S.C. § 1988, and
 - (d) any other relief the Court deems just and proper.
2. On Plaintiff's SECOND CLAIM FOR RELIEF,
 - (a) declaratory relief that the conduct of Officer Letsis violated Ms. Medina's rights under the Fourth and Fourteenth Amendments to the U.S. Constitution with respect

to search and seizure of non-suspects, and the use of excessive force;

(b) compensatory damages in the amount of twenty-one dollars,

(c) an award of all relevant attorney fees, expert fees and costs pursuant to

42 U.S.C. § 1988, and

(d) any other relief the Court deems just and proper.

3. On Plaintiff's THIRD CLAIM FOR RELIEF,

(a) declaratory relief that the acts and omissions of Unknown Officers Nos. 1, 2, and 3 violated Ms. Medina's rights under the First, Fourth and Fourteenth Amendments to the U.S. Constitution with respect to persons recording police officers in the public discharge of their duties, search and seizure of non-suspects, and excessive use of force;

(b) compensatory damages in the amount of \$twenty-one dollars,

(c) an award of all relevant attorney fees, expert fees and costs pursuant to

42 U.S.C. § 1988, and

(d) any other relief the Court deems just and proper.

4. On Plaintiff's FOURTH CLAIM FOR RELIEF,

(a) declaratory relief that the acts and omissions of Defendants Portland, Gresham, and TriMet with respect to customs and practices, policies, training, and supervision violated Ms. Medina's rights under the First, Fourth and Fourteenth Amendments to the U.S. Constitution with respect to persons recording police officers in the public discharge of their duties, search and seizure of non-suspects, and the use of excessive force;

(b) a permanent injunction requiring Defendants Portland, Gresham, and

TriMet to revise policy and training requirements to be consistent with the First and Fourth Amendments with respect to persons recording police officers in the public discharge of their duties, search and seizure of non-suspects, and the use of force, and to supervise officers to ensure that customs and practices are consistent with those rights, including judicial supervision of Portland, Gresham, and TriMet's compliance with the injunction for not less than five years;

(c) compensatory damages in the amount of twenty-one dollars;

(d) an award of all relevant attorney fees, expert fees and costs pursuant to 42 U.S.C. § 1988, and

(e) any other relief the Court deems just and proper.

5. On Plaintiff's FIFTH CLAIM FOR RELIEF,

(a) an award of liquidated damages arising from defendants' conduct in the amount of one-thousand dollars pursuant to 42 U.S.C. § 2000aa-6(f);

(b) an award of all relevant attorney fees, expert fees and costs pursuant to 42 U.S.C. § 2000aa-6(f); and

(c) any other relief the Court deems just and proper.

6. On Plaintiff's SIXTH CLAIM FOR RELIEF,

(a) declaratory relief that the conduct of Officer Letsis violated Ms. Medina's rights under article I, section 8 of the Oregon Constitution with respect to persons recording police officers in the public discharge of their duties, search and seizure of non-suspects, and the use of force;

(b) declaratory relief that the conduct of Officer Letsis violated Ms. Medina's

rights under article I, section 9 of the Oregon Constitution with respect to persons recording police officers in the public discharge of their duties, search and seizure of non-suspects, and the use of force;

(c) declaratory relief that the conduct of Officer Letsis resulted in false arrest of Ms. Medina;

(d) a permanent injunction requiring defendants to revise policy and training requirements to be consistent with article I, section 8 and 9 of the Oregon Constitution with respect to persons recording police officers in the public discharge of their duties, search and seizure of non-suspects, and the use of force;

(e) an award of all relevant attorney fees, expert fees and costs; and

(f) any other relief the Court deems just and proper.

DATED this 10th day of February, 2014.

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Attorneys for Plaintiff Carrie Medina
On behalf of the ACLU Foundation of Oregon, Inc.

Exhibit 1

Video to be submitted on CD

Danner, Rebecca

From: Junginger, Craig
Sent: Monday, September 08, 2014 1:32 PM
To: Police Sworn Officers
Subject: FW: Recording of police officers and the seizure of the device

Although our most recent incident is not about the subject recording the officer's actions but, about him interfering in a dangerous incident, it is always a good reminder to reread the parameters around the seizing of recording devices.

Craig Junginger
Chief of Police
Gresham Police Department
1333 N.W. Eastman Parkway
Gresham, OR 97030
503-618-2313
"In the Company of Heroes"

From: Junginger, Craig
Sent: Tuesday, March 05, 2013 2:19 PM
To: Police Sworn Officers
Subject: Recording of police officers and the seizure of the device

To all sworn members:

Almost daily, technology is changing the way we do business. An important technology that has changed all of our lives is the use of cell phones to capture incidents coupled with the ability to immediately post the video for world viewing. More and more people are using them for a variety of things to include the filming of police actions. Although our laws are slowly being redefined by case law in this area, the variables of each case can make it difficult to decide when to take action against violations of the law. When should we make an arrest or seize property? We must balance our decisions to enforce the law with not only the letter of the law but the spirit for which it was intended. We must be reasonable in our actions.

With this in mind, I want to outline my expectations on this topic. I support the reasonable actions of officers to seize cell phones when there is probable cause to believe the recording contains evidence of a crime and there are exigent circumstances to seize the cell phone to prevent the destruction or loss of the evidence. Once seized, if no exigent circumstances that place the property at risk of destruction, you must obtain a search warrant to download the video.

However, the nature of the crime and the significance of the evidence must also be amongst the criteria used when determining the importance of seizing recording equipment from someone not consenting to the seizure. We should always strive to gain cooperation when a witness has possibly recorded elements of a crime. Although we have the right to seize under these conditions, citizens are uncomfortable with our seizing of their personal electronic devices. The officers involved should make every effort to gain compliance. Remember these individuals are electronic "witnesses" to a crime. We want to gain their cooperation with your investigation. All of you were issued recorders a few years back, you should consider

recording those who are non-compliant. This can assist you in building a case that the seizure was your last resort to save the evidence.

However, I highly discourage the seizing of property, or the arresting of persons, for simply recording your official actions without your knowledge. With few exceptions, officers should recognize that they are probably constantly being recorded when on duty. Since I truly believe that you are polite and professional in your contacts, and are doing nothing wrong, you should not concern yourself with a citizen who decides to record your actions on a call. The practice of video/audio recording officers is prevalent throughout the world and I believe the courts will take a very liberal view of a citizen's right to record an officer while on duty. It is common footage on television shows and internet videos, and we must recognize that it is part of doing business.

As always, if you have any questions, please don't hesitate to contact me.

*Craig Junginger
Chief of Police
Gresham Police Department
1333 N.W. Eastman Parkway
Gresham, OR 97030
503-618-2313*

"In the Company of Heroes"