

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

MICHAEL FESSER,

Plaintiff,

v.

WEST LINN POLICE DEPARTMENT;
TERRY TIMEUS, an individual; TONY
REEVES, fka TONY POITRAS, an
individual; and MIKE BOYD, an
individual.

Defendants.

Case No. _____

COMPLAINT

(42 U.S.C. § 1981 – Deprivation of Right to
Make and Enforce Contracts and Deprivation of
Full and Equal Benefit of the Law; 42 U.S.C. §
1983 – Violations of the Fourth and Fourteenth
Amendments; False Arrest; False
Imprisonment; Malicious Prosecution;
Intentional Infliction of Emotional Distress;
Defamation; 18 U.S.C. § 2511 – Wiretapping;
ORS 133.721, *et seq.* – Unlawful Interception
and Disclosure; Invasion of Privacy)

DEMAND FOR A JURY TRIAL

NOT SUBJECT TO MANDATORY
ARBITRATION

Prayer Amount: \$2,511,000

Filing Authority under ORS 21.160(1)(d): \$834

INTRODUCTION

1. This is an action for monetary, declaratory and injunctive relief, including attorneys' fees, costs and punitive damages upon motion, to redress violations of plaintiff's rights under 42 U.S.C. § 1981, 42. U.S.C. § 1983 in the nature of violations of the Fourth and Fourteenth Amendments of the United States Constitution and Oregon Constitution, and to assert state common law claims for false arrest, false imprisonment, malicious prosecution, intentional infliction of emotional distress, defamation, and invasion of privacy, as well as unlawful surveillance activity in violation of 18 U.S.C. § 2511 *et seq.*

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1 **JURISDICTION**

2 2. This court has jurisdiction over plaintiff’s claims for monetary and other relief
3 under Article VII, Section 9 of the original Oregon Constitution, as well as Article VII, Section 2
4 of the Oregon Constitution, as amended.

5 **VENUE**

6 3. Venue is proper in Multnomah County under ORS 14.080 because the underlying
7 acts, omissions, injuries and related facts and circumstances giving rise to the present action
8 primarily occurred in Multnomah County.

9 **PARTIES**

10 4. Plaintiff Michael Fesser (“Mr. Fesser” or “plaintiff”), an individual, is and was at
11 all times material a resident of Portland, Oregon. Plaintiff was employed full-time in Portland.
12 Plaintiff is African American.

13 5. Defendant West Linn Police Department (“WLPD”), is a governmental entity that
14 provides law enforcement for the City of West Linn, Oregon.

15 6. Defendant Terry Timeus (“Chief Timeus”), an individual, was the chief of police
16 of the West Linn Police Department from in or around 2005 to on or around October 31, 2017.

17 7. Defendant Tony Reeves (“Sgt. Reeves”) (fka Tony Poitras), an individual, was a
18 detective with the West Linn Police Department until on or around March 1, 2018, when he was
19 promoted to sergeant.

20 8. Defendant Mike Boyd (“Sgt. Boyd”), an individual, was a detective with the West
21 Linn Police Department at all relevant times, who has since been promoted to sergeant.

22 9. The West Linn Police Department, Chief Timeus, Sgt. Reeves, and Sgt. Boyd are
23 referred to collectively herein as “the West Linn Defendants.”

24 **GENERAL ALLEGATIONS**

25 10. Chief Timeus has for many years had a close personal friendship with the owner
26 of a Portland business where plaintiff was employed during the period at issue in this Complaint.

1 Chief Timeus' friend's business was located entirely within the city of Portland, well outside the
2 boundaries of West Linn. On information and belief, Chief Timeus' friend informed Chief
3 Timeus of his growing concern that his employee, Mr. Fesser, might sue him as Mr. Fesser had
4 raised complaints of race discrimination.

5 11. Acting on the basis of his personal friendship and not any concern about criminal
6 activity in West Linn, in late 2016 and/or early 2017, Chief Timeus instructed Sgt. Reeves and
7 Sgt. Boyd to investigate Mr. Fesser and to build a case that Mr. Fesser was involved in employee
8 theft from Chief Timeus' friend's Portland business. The investigation culminated in an
9 unlawful, extra-jurisdictional and unwarranted surveillance operation in Portland at the business
10 of Chief Timeus' friend where Mr. Fesser was employed.

11 12. As alleged herein, the West Linn Defendants betrayed the trust placed in them by
12 the citizens of West Linn and expended substantial official time and money acting as Chief
13 Timeus' personal posse to effectuate an unwarranted, illegal, racially-motivated surveillance,
14 arrest and detention of an African-American Portland resident who was employed in the city of
15 Portland and had no relationship to the city of West Linn.

16 13. At the direction of Chief Timeus, Sgt. Reeves and Sgt. Boyd attempted to secure
17 statements from individuals who were expressly acknowledged in text messages to be "dirty."
18 These text messages can be found on both Chief Timeus' and Sgt. Reeves' phones. In one such
19 message on Sgt. Reeves' phone, these individuals upon whom the West Linn Defendants sought
20 to build their case against Mr. Fesser are characterized as "dirty, shady fucks." Sgt. Reeves and
21 Sgt. Boyd hoped they could get these individuals to provide statements or testimony to support
22 the false claim that Mr. Fesser was stealing from Chief Timeus' friend's Portland business.

23 14. In attempting to secure these statements, the West Linn Defendants, upon
24 information and belief, made multiple false assertions and suggestions to these individuals to
25 cause them to believe that Mr. Fesser was engaged in employee theft from Chief Timeus'
26 friend's business.

1 15. Acting at the behest of Chief Timeus, Sgt. Reeves also undertook an audio and
2 visual surveillance operation at the Portland business with the assistance of Sgt. Boyd and
3 several civilians, which included unlawful audio surveillance of Mr. Fesser.

4 16. Sgt. Reeves and Sgt. Boyd conducted the surveillance operation without a warrant
5 or probable cause and in violation of Oregon and federal law during an auction that Mr. Fesser
6 conducted as part of his regular duties at the Portland business on February 25, 2017. The
7 surveillance operation did not result in any evidence of wrongdoing as Mr. Fesser was not
8 engaging in any improper conduct.

9 17. Nevertheless, immediately following the auction, on the afternoon of February 25,
10 2017, Sgt. Reeves and Sgt. Boyd, with the participation of Portland Police officers, arrested Mr.
11 Fesser in Portland, based on Sgt. Reeves' and Sgt. Boyd's false representation to the Portland
12 Police that they had "probable cause" for an arrest.

13 18. Sgt. Reeves and Sgt. Boyd unlawfully arrested, detained and interrogated Mr.
14 Fesser in Portland, outside their jurisdiction, without probable cause. Sgt. Reeves and Sgt. Boyd
15 also seized Mr. Fesser's belongings, including but not limited to his smartphone, personal
16 papers, and attorney-client privileged communications between Mr. Fesser and his employment
17 attorney regarding his concerns of racial discrimination in the workplace. The officers told Mr.
18 Fesser that they would hack into his smartphone and access the data and communications
19 without his consent.

20 19. Sgt. Reeves and Sgt. Boyd subjected Mr. Fesser to further interrogation and
21 threats at the Stark Street police station in Portland. Following the interrogation, the officers
22 took Mr. Fesser to the Justice Center in Downtown Portland and had him incarcerated in a jail
23 cell.

24 20. Around midnight, Mr. Fesser was released on his own recognizance with no
25 smartphone, only his wallet and information regarding a court arraignment the following
26 Monday. The ordeal lasted approximately eight hours.

1 21. Although any purported concern about alleged employee theft at a Portland
2 business should have been the sole province of the Portland Police, the West Linn Defendants
3 acted outside their jurisdiction based on Chief Timeus’ personal friendship and a shared racially
4 discriminatory animus to attempt to build a pretextual, false and unfounded case against
5 Mr. Fesser.

6 22. The racist and unlawful nature of the West Linn Defendants’ conduct was first
7 revealed to Mr. Fesser in January 2018, when, in the course of civil litigation, information was
8 produced and testimony provided that revealed the nature of the West Linn Defendants’
9 activities related to Mr. Fesser.

10 23. The evidence Mr. Fesser received in January 2018 revealed that the motivation
11 behind the West Linn Defendants’ investigation of Mr. Fesser was racial prejudice and a
12 personal friendship with Chief Timeus.

13 24. The newly discovered evidence included text messages showing Sgt. Reeves
14 jovially engaging in explicitly racist, sexual, homophobic and highly unprofessional banter
15 throughout the course of his unlawful surveillance and investigation of Mr. Fesser. In addition,
16 the text messages revealed that the West Linn Defendants played an active part in seeking the
17 termination of Mr. Fesser’s employment.

18 25. The racial animus underlying the investigation and arrest is made plain in these
19 documented exchanges that took place during the unwarranted surveillance effort.

20 26. In one text exchange, Sgt. Reeves expressly advised that the arrest should happen
21 swiftly so that it would occur before Mr. Fesser could further pursue his complaint of racial
22 discrimination. Sgt. Reeves asserted, “It’s better that we arrest him before he makes the
23 complaint [of race discrimination]. Then it can’t be retaliation.”

24 27. Sgt. Reeves further opined, without any knowledge of the basis for Mr. Fesser’s
25 concerns about racial discrimination, that what he called Mr. Fesser’s effort to “play the race
26 card” would not work. Sgt. Reeves then sought to provide reassurance that any legal claim of

1 race discrimination Mr. Fesser might make regarding the termination of his employment would
2 most likely be covered by insurance. When a civilian involved in the operation expressed
3 misgivings about their surveillance and planned arrest, Sgt. Reeves stated: “I’m about to sue you
4 for being a pussy.” Sgt. Reeves further assured the civilian that we are “doing the right thing.”

5 28. At another point near the beginning of the surveillance operation Sgt. Reeves
6 stated, “fuck this I’m scared” and indicated he was calling off the operation, before proceeding
7 anyway. Underscoring the fact that the surveillance operation was being performed due to Chief
8 Timeus’ relationship with the business owner, Sgt. Reeves joked that the Portland business-
9 owner was “t-bagging the chief,” an apparent reference to oral sex.

10 29. The evidence Mr. Fesser received in January 2018 also shows that the West Linn
11 Defendants knowingly acted outside of their jurisdiction in conducting their investigation and
12 arrest. Specifically, the text messages indicate that Sgt. Reeves planned to arrest, detain and
13 interrogate Mr. Fesser in Portland – well outside the West Linn Defendants’ jurisdiction, unless
14 Mr. Fesser “lawyered up.” In another text message Sgt. Reeves lamented that he was acting
15 outside his jurisdiction.

16 30. Text messages also demonstrate that Sgt. Reeves made multiple defamatory
17 statements about plaintiff. For example, Sgt. Reeves made false statements about Mr. Fesser in
18 writing to Mr. Fesser’s employer, including, “He is robbing you blind;” “Today his reign of
19 terror ends;” and “Like he hasn’t been in your pocket for years.”

20 31. While the business where the surveillance took place included warning notices
21 that video surveillance cameras were in use, there were no notices posted indicating that audio
22 surveillance was conducted on those premises.

23 32. Nevertheless, Sgt. Reeves ensured that conversations occurring at the Portland
24 business involving Mr. Fesser and others were surreptitiously monitored and recorded. Using an
25 app known as “Swann View,” and relying on the assistance of civilian personnel, Sgt. Reeves
26 received real-time updates regarding the unlawful audio surveillance as it took place.

1 33. Immediately after the surveillance effort at the Portland auction where plaintiff
2 was employed, Sgt. Reeves’ texted “my game my rules!” Moments later, Sgt. Reeves and Sgt.
3 Boyd with the assistance of the Portland Police secured the arrest of Mr. Fesser in public on a
4 city street in Portland as Mr. Fesser was leaving work for the day.

5 34. Portland police records show that Portland Police officers some of whom, on
6 information and belief, knew Sgt. Reeves from his prior service as a Portland Police Officer,
7 accepted without question the West Linn Defendants’ assertions that there was probable cause to
8 arrest Mr. Fesser.

9 35. As he was being handcuffed, one of the Portland Police officers who knows
10 Mr. Fesser from Mr. Fesser’s years of doing ministry work in local prisons expressed his
11 discomfort with the situation, stating, “Mike, this is not my call. I don’t want to be here. We’re
12 just assisting West Linn.”

13 36. On the following Monday, February 27, 2017, Sgt. Reeves called Mr. Fesser and
14 instructed him to come to the West Linn Police Department to retrieve his belongings.
15 Mr. Fesser had to travel to West Linn – a town to which he has no connection – to retrieve his
16 personal possessions that the West Linn Defendants wrongfully seized, including the smartphone
17 that they said they would hack.

18 37. At the West Linn Police Department, Sgt. Reeves and Sgt. Boyd informed
19 Mr. Fesser that his employment at the Portland company where he had worked for approximately
20 twelve years was terminated. Mr. Fesser thought it was bizarre that West Linn police officers
21 were empowered to summon him to West Linn and fire him from his job.

22 38. The West Linn officers further instructed Mr. Fesser that he was not permitted to
23 have any contact with his employer and was not permitted to return to his former place of work
24 in Portland at any time. Sgt. Boyd made further harassing commentary to Mr. Fesser and gave
25 him back his smartphone along with some, but not all, of his personal items. The officers did not
26 return Mr. Fesser’s attorney-client privileged correspondence and, on information and belief,

1 proceeded instead to provide that confidential privileged correspondence to Chief Timeus'
2 friend.

3 39. On that same Monday, February 27, 2017, Mr. Fesser went to Multnomah County
4 Circuit Court at the time designated in the papers he had received upon discharge from the jail.

5 40. When Mr. Fesser checked in, a court clerk informed him that no charges were
6 being pursued against him. The clerk gave Mr. Fesser instructions on how to handle what the
7 clerk referred to as a "no complaint" case, along with a number to call to determine if any
8 complaint was being pursued by any alleged "victim."

9 41. For several months Mr. Fesser regularly called in to the Multnomah County
10 Circuit Court to see if the baseless criminal case against him was being pursued. Each time he
11 called in, the clerk informed him that the matter still was considered a "no complaint" case. In
12 the months following Mr. Fesser's arrest, upon information and belief, the West Linn Defendants
13 conducted no further investigation into any alleged criminal activity regarding Mr. Fesser. The
14 investigation and arrest had apparently served their intended purpose.

15 42. Approximately seven months after his arrest, Mr. Fesser filed a lawsuit in
16 Multnomah County Circuit Court against his former employer based on the termination of his
17 employment and on the issues and concerns that were referenced in the attorney-client privileged
18 communications that the West Linn Defendants had seized from him.

19 43. Upon information and belief, immediately after Mr. Fesser filed his lawsuit, the
20 West Linn Defendants reopened their file and reactivated their case against Mr. Fesser.

21 44. Upon information and belief, shortly after the filing of the civil litigation
22 referenced above, the West Linn Defendants sought to prevail upon the Multnomah County
23 District Attorney to bring criminal charges against Mr. Fesser. This effort finally bore fruit in
24 November 2017 when criminal charges were initiated.

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1 45. Just a few months later, however, on March 23, 2018, the District Attorney
2 dismissed the criminal charges against Mr. Fesser without taking any sustained action on the
3 case and without any plea or conviction.

4 46. The apparent lack of activity by the West Linn Defendants and all other law
5 enforcement personnel in the months immediately following Mr. Fesser's arrest, coupled with
6 the apparent sudden renewed interest in the case following Mr. Fesser's filing of a lawsuit
7 regarding racial discrimination and retaliation, underscores that the West Linn Defendants were
8 acting on the basis of personal motivations in their efforts against Mr. Fesser, rather than any
9 legitimate law enforcement concern.

10 47. The West Linn Defendants' surveillance, arrest, incarceration and interrogation of
11 Mr. Fesser without a warrant or probable cause and their pursuit of baseless criminal charges
12 against Mr. Fesser were racially motivated, extra-jurisdictional and an egregious abuse of the
13 power with which the police are entrusted.

14 48. As a result of the West Linn Defendants' violation of Mr. Fesser's civil rights,
15 Mr. Fesser has suffered reputational injury, emotional distress and economic damages.

16 49. Mr. Fesser lost his job as a direct result of the West Linn Defendants' actions. In
17 addition, as a result of his arrest and threatened criminal prosecution, Mr. Fesser was prevented
18 for months from performing his volunteer ministry work in the local prisons, where he has for
19 years provided spiritual and personal support to inmates of all faiths and backgrounds who are
20 attempting to become productive citizens.

21 50. The West Linn Defendants' false and baseless criminal charges had a serious
22 impact on Mr. Fesser's reputation within the communities in which he is known, including
23 among the prison officials and Portland Police officers with whom he works in his ministry
24 work, and in the retail business in which he continues to earn a living.

25 51. Mr. Fesser provided formal written notice of his claims pursuant to the Oregon
26 Torts Claims Act, ORS 30.275, on June 4, 2018.

FIRST CLAIM FOR RELIEF
Violation of 42 U.S.C. § 1981
Against all Defendants

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3 52. Plaintiff incorporates by reference the allegations set forth in paragraphs 1
4 through 51.

5 53. The West Linn Defendants were acting under color of law when they committed
6 the actions described herein. Chief Timeus, Sgt. Reeves, and Sgt. Boyd were acting in the
7 course and scope of their duties in the actions alleged herein.

8 54. In the alternative, Chief Timeus, Sgt. Reeves, and Sgt. Boyd were acting outside
9 the course and scope of their duties based on a personal motives in undertaking the acts alleged
10 herein.

11 55. The West Linn Defendants violated plaintiff's right to make an enforce contracts
12 and acted on the basis of plaintiff's race to deprive him of the full and equal benefit of the law in
13 violation of 42 U.S.C. § 1981.

14 56. The West Linn Defendants knew or in the reasonable exercise of reasonable care
15 should have known that their actions as alleged herein were unlawful, extra-jurisdictional, and
16 unwarranted.

17 57. The West Linn Defendants engaged in an unlawful surveillance effort, in part, to
18 prevent plaintiff from asserting claims of racial discrimination and retaliation in his workplace.

19 58. The West Linn Defendants advocated for plaintiff's unlawful termination, despite
20 concerns about the likelihood of a race discrimination lawsuit. The West Linn Defendants took
21 it upon themselves to personally fire plaintiff from his job of twelve years and to forbid him from
22 going onto the property of his former place of employment.

23 59. The West Linn Defendants further violated 42 U.S.C. § 1981 by transgressing
24 Mr. Fesser's Fourth Amendment rights in wrongfully surveilling, interrogating, and arresting
25 him, and discriminating against him based on his race without a warrant or probable cause.

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1 60. Through their actions, defendants intended to discriminate against plaintiff on the
2 basis of plaintiff's race.

3 61. The racial discrimination practiced by the West Linn Defendants as alleged herein
4 deprived plaintiff of the equal benefit of the law and interfered with plaintiff's employment
5 contract.

6 62. Plaintiff is entitled to a declaration that the West Linn Defendants violated 42
7 U.S.C. § 1981 by depriving plaintiff of his right to make an enforce contracts and acted on the
8 basis of Mr. Fesser's race to deprive him of the full and equal benefit of the law.

9 63. As a direct and proximate cause of the West Linn Defendants' conduct, plaintiff
10 has suffered and will continue to suffer economic losses including, but not limited to, lost
11 income from future employment and impairment of future earning capacity, plus prejudgment
12 interest, for which plaintiff seeks compensation in an amount to be proven at trial, but not less
13 than \$500,000.

14 64. As a direct and proximate cause of the West Linn Defendants' conduct, plaintiff
15 has suffered and will continue to suffer noneconomic damages in the form of injury to his
16 reputation, emotional distress, anxiety, humiliation and embarrassment, and is entitled to an
17 award of compensatory damages in the amount of \$2,000,000.

18 65. Because the West Linn Defendants engaged in egregious and malicious conduct
19 and, in so doing, acted willfully, knowingly, intentionally, or with reckless disregard for
20 plaintiff's constitutional and statutory rights, plaintiff reserves the right to move the court to
21 amend the complaint to seek an award of punitive damages against the West Linn Defendants for
22 the purpose of punishing these defendants and to deter them and others from such conduct in the
23 future.

24 66. Plaintiff is also entitled to recover his reasonable attorneys' fees, expert fees and
25 costs pursuant to ORS 20.107 and 42 U.S.C. § 1988.

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SECOND CLAIM FOR RELIEF
Violation of 42 U.S.C. § 1983
Against all Defendants

67. Plaintiff incorporates by reference the allegations set forth in paragraphs 1 through 66.

68. The West Linn Defendants were acting under color of law when they committed the actions described herein. Chief Timeus, Sgt. Reeves, and Sgt. Boyd were acting in the course and scope of their duties in the actions alleged herein.

69. In the alternative, Chief Timeus, Sgt. Reeves, and Sgt. Boyd were acting outside the course and scope of their duties based on a personal motives in undertaking the acts alleged herein.

70. The West Linn Defendants asserted false claims against plaintiff based on fabricated, incomplete, exaggerated, and/or mischaracterized information.

71. The West Linn Defendants did not have a warrant or probable cause when they surveilled, investigated, arrested, interrogated, searched plaintiff, seized his personal belongings, and incarcerated him based on fabricated allegations of criminal conduct.

72. The conduct of the West Linn Defendants violated Mr. Fesser's rights under the Fourth and Fourteenth Amendments of the United States Constitution and those under Oregon law and the Oregon Constitution.

Including without limitation in the following particulars:

- a. The West Linn Defendants subjected plaintiff to illegal search and seizure without a warrant or probable cause in violation of the Fourth Amendment of the United States Constitution, as well as the Oregon Constitution and Oregon statutory law.
- b. The West Linn Defendants unlawfully arrested plaintiff without a warrant or probable cause in violation of the Fourth Amendment of the United

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1 States Constitution, as well as the Oregon Constitution and Oregon
2 statutory law.

3 c. The West Linn Defendants unlawfully imprisoned plaintiff in violation of
4 the Fourth Amendment of the United States Constitution, as well as the
5 Oregon Constitution and Oregon statutory law.

6 d. The West Linn Defendants discriminated against plaintiff because of his
7 race in violation of the Fourteenth Amendment to the United States
8 Constitution, as well as the Oregon Constitution and Oregon statutory law.

9 73. Plaintiff is entitled to a declaration that the West Linn Defendants violated 42
10 U.S.C. § 1983 by depriving plaintiff of the rights guaranteed by the Fourth and Fourteenth
11 Amendments of the United States Constitution and those under Oregon law and the Oregon
12 Constitution.

13 74. As a direct and proximate cause of the West Linn Defendants' conduct, plaintiff
14 has suffered and will continue to suffer economic losses including, but not limited to, lost
15 income from future employment and impairment of future earning capacity, plus prejudgment
16 interest, for which plaintiff seeks compensation in an amount to be proven at trial, but not less
17 than \$500,000.

18 75. As a direct and proximate cause of the West Linn Defendants' conduct, plaintiff
19 has suffered and will continue to suffer noneconomic damages in the form of injury to his
20 reputation, emotional distress, anxiety, humiliation and embarrassment, and is entitled to an
21 award of compensatory damages in the amount of \$2,000,000.

22 76. Because the West Linn Defendants engaged in egregious and malicious conduct
23 and, in so doing, acted willfully, knowingly, intentionally, or with reckless disregard for
24 plaintiff's constitutional and statutory rights, plaintiff reserves the right to move the Court to
25 amend the complaint to seek an award of punitive damages against the West Linn Defendants for

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1 the purpose of punishing these defendants and to deter them and others from such conduct in the
2 future.

3 77. Plaintiff is also entitled to recover his reasonable attorneys' fees, expert fees and
4 costs pursuant to ORS 20.107 and 42 U.S.C. § 1988.

5 **THIRD CLAIM FOR RELIEF**
6 **False Arrest**
7 **Against all Defendants**

8 78. Plaintiff incorporates by reference the allegations set forth in paragraphs 1
9 through 77.

10 79. On February 25, 2017, the West Linn Defendants caused plaintiff to be arrested in
11 Portland Oregon without a warrant or any other legal process and without probable cause or any
12 objectively reasonable basis.

13 80. The West Linn Defendants intended to cause plaintiff to be arrested based on
14 false allegations and pretext.

15 81. After plaintiff was arrested, he was unlawfully detained and incarcerated against
16 his will, without a warrant or probable cause.

17 82. Plaintiff did not engage in any unlawful conduct and the West Linn Defendants
18 did not have reasonable suspicion or probable cause to believe that plaintiff had engaged in any
19 illegal activity.

20 83. Within the time allowed by ORS 30.275, on or about June 4, 2018, plaintiff
21 presented a formal written notice of his claims to the West Linn Defendants for damages arising
22 out of the facts and circumstances detailed above.

23 84. As a direct and proximate cause of the West Linn Defendants' conduct, plaintiff
24 was deprived of his liberty and has suffered and will continue to suffer noneconomic damages in
25 the form of injury to his reputation, emotional distress, anxiety, humiliation and embarrassment,
26 and is entitled to an award of compensatory damages in the amount of \$2,000,000.

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FOURTH CLAIM FOR RELIEF
False Imprisonment
Against all Defendants

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3 85. Plaintiff incorporates by reference the allegations set forth in paragraphs 1
4 through 84.

5 86. Plaintiff did not engage in any unlawful conduct and the West Linn Defendants
6 did not have reasonable suspicion or probable cause to believe/ that plaintiff had engaged in any
7 illegal activity.

8 87. On February 25, 2017, Sgt. Reeves and Sgt. Boyd searched Mr. Fesser, his
9 vehicle and his personal belongings and found no evidence of wrongdoing.

10 88. Despite the absence of probable cause and despite the absence of jurisdiction, the
11 West Linn Defendants caused plaintiff to be handcuffed taken into custody, detained,
12 interrogated and imprisoned in a jail cell in Portland.

13 89. Plaintiff was unlawfully arrested, detained, and interrogated by Sgt. Reeves and
14 Sgt. Boyd, and imprisoned in a jail cell in Portland for a total of approximately eight hours.

15 90. Neither Sgt. Reeves nor Sgt. Boyd, nor any other member of the West Linn or
16 Portland Police Departments made any reasonable attempt to undertake their investigation,
17 detention or interrogation in a lawful manner.

18 91. Within the time allowed by ORS 30.275, on or about June 4, 2018, plaintiff
19 presented a formal written notice of his claims to the West Linn Defendants for damages arising
20 out of the facts and circumstances detailed above.

21 92. As a direct and proximate cause of the West Linn Defendants' conduct, plaintiff
22 was deprived of his liberty and has suffered and will continue to suffer noneconomic damages in
23 the form of injury to his reputation, emotional distress, anxiety, humiliation and embarrassment,
24 and is entitled to an award of compensatory damages in the amount of \$2,000,000.

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FIFTH CLAIM FOR RELIEF
Malicious Prosecution
Against all Defendants

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3 93. Plaintiff incorporates by reference the allegations set forth in paragraphs 1
4 through 92.

5 94. At the direction of Chief Timeus, who was motivated to assist Mr. Fesser's
6 former employer based on a personal relationship and by racial animus, the West Linn
7 Defendants commenced an ongoing investigation and initiated criminal proceedings against
8 Mr. Fesser based on false allegations of misconduct. The West Linn Defendants had no
9 reasonable belief or suspicion that Mr. Fesser was engaged in any unlawful conduct in West Linn
10 and acted for no legitimate or lawful purpose.

11 95. The West Linn Defendants engaged in the investigation of plaintiff and initiation
12 of criminal proceedings against him in a conscious effort to prevent plaintiff from asserting his
13 claims of racial discrimination and retaliation in the workplace.

14 96. After Mr. Fesser filed a lawsuit against his former employer, who was also Chief
15 Timeus' personal friend, the West Linn Defendants reopened plaintiff's case and, based on false
16 representations and misleading evidence and witnesses acknowledged to be "dirty" sought to
17 influence the Multnomah County District Attorney's Office to assert criminal charges against
18 Mr. Fesser.

19 97. The West Linn Defendants investigated and subjected plaintiff to criminal charges
20 and proceedings, even though none of the alleged conduct took place in or near the city of West
21 Linn. The West Linn Defendants actions were motivated by Chief Timeus' personal interests
22 and not any legitimate law enforcement interest, as well as by documented racially
23 discriminatory animus.

24 98. The West Linn Defendants maliciously and intentionally subjected Mr. Fesser to
25 criminal charges based on evidence that was deliberately manipulated and fabricated, despite

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1 their apparent knowledge that their conduct was unlawful. The West Linn Defendants also
2 intentionally withheld evidence in their attempt to justify their unlawful conduct.

3 99. The West Linn Defendants did not have probable cause nor objectively
4 reasonable suspicion when they orchestrated the investigation, arrest, interrogation, search, and
5 incarceration of Mr. Fesser.

6 100. The criminal case against plaintiff was never pursued in earnest and was baseless.
7 On March 23, 2018, the Multnomah County district attorney dismissed all criminal charges
8 against Mr. Fesser without taking any sustained action on the case and without any plea or
9 conviction.

10 101. Within the time allowed by ORS 30.275, on or about June 4, 2018, plaintiff
11 presented a formal written notice of his claims to the West Linn Defendants for damages arising
12 out of the facts and circumstances detailed above.

13 102. As a direct and proximate cause of the West Linn Defendants' conduct, plaintiff
14 has suffered and will continue to suffer noneconomic damages in the form of injury to his
15 reputation, emotional distress, anxiety, humiliation and embarrassment, and is entitled to an
16 award of compensatory damages in the amount of \$2,000,000.

17 **SIXTH CLAIM FOR RELIEF**
18 **Intentional Infliction of Emotional Distress**
19 **Against all Defendants**

20 103. Plaintiff realleges and incorporates by reference the allegations of paragraphs 1
21 through 102.

22 104. As detailed above, the West Linn Defendants engaged in outrageous, egregious,
23 and unprivileged conduct, including but not limited to knowingly and intentionally causing
24 plaintiff to be unlawfully detained, arrested, interrogated, and incarcerated by maliciously
25 conspiring to assert a pretextual, false, and unfounded case against plaintiff outside their
26 jurisdiction.

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1 105. The West Linn Defendants knowingly relied on witnesses that they acknowledged
2 were “dirty” to make false statements concerning plaintiff. Sgt. Reeves and Sgt. Boyd caused
3 plaintiff to be arrested and detailed in Multnomah County where they questioned him, threatened
4 him, and seized his personal belongings including his attorney-client privileged correspondence
5 and his smartphone.

6 106. Sgt. Reeves and Sgt. Boyd told Mr. Fesser that they would break into his
7 smartphone which they seized it from him without any legal basis.

8 107. The West Linn Defendants expressly advocated for Mr. Fesser’s employer to fire
9 him and to do so soon, before plaintiff might more formally complain about race discrimination
10 asserting, as Sgt. Reeves did, “that way it can’t be retaliation.”

11 108. Sgt. Reeves and Sgt. Boyd acted for beyond their authority and abused their
12 authority as West Linn Police Officers by summoning plaintiff, a resident of Portland, to West
13 Linn the following Monday and informing him that he was fired from his job in Portland which
14 he had held for approximately twelve years, and by instructing him that he was not permitted to
15 go on or near his employer’s property. The officers also made further harassing commentary,
16 referencing an Officer Michael Stradley, formerly of the Portland Police and now with the West
17 Linn Police.

18 109. Sgt. Reeves also communicated falsely with several of plaintiff’s former
19 colleagues and customers indicating that plaintiff stole thousands of dollars from Chief Timeus’
20 friend, intentionally defaming plaintiff and besmirching his reputation.

21 110. The West Linn Defendants’ conduct was racially motivated and discriminatory.

22 111. The West Linn Defendants’ betrayed the trust placed in them by the citizenry of
23 West Linn to expend official time and money acting as Chief Timeus’ personal posse outside
24 their jurisdiction. The West Linn Defendants’ conduct as alleged herein was extreme,
25 outrageous, and constituted an extraordinary transgression of the bounds of socially tolerable
26 conduct.

1 third parties to whom plaintiff spoke, for the purpose of committing criminal and/or tortious act
2 in violation of federal and state law.

3 135. The West Linn Defendants disclosed and used the conversations and recordings in
4 their efforts to support a trumped-up criminal investigation of plaintiff, in violation of ORS
5 133.737(4).

6 136. Within the time allowed by ORS 30.275, on or about June 4, 2018, plaintiff
7 presented a formal written notice of his claims to the West Linn Defendants for damages arising
8 out of the facts and circumstances detailed above.

9 137. Plaintiff is entitled to a declaration that the West Linn Defendants violated
10 ORS 133.724 and 133.737 by unlawfully intercepting, disclosing, and using his private
11 conversations.

12 138. Under ORS 133.739(1)(a), plaintiff is entitled to actual damages incurred as a
13 result of the West Linn Defendants' unlawful interception and disclosure of his conversations,
14 but not less than damages computed at the rate of \$100 per day for each day of violation or
15 \$1,000, whichever is greater.

16 139. Because the West Linn Defendants engaged in egregious and malicious conduct
17 and, in so doing, acted willfully, knowingly, intentionally, or with reckless disregard for
18 plaintiff's constitutional and statutory rights, plaintiff reserves the right to move the Court to
19 amend the complaint to seek an award of punitive damages against the West Linn Defendants for
20 the purpose of punishing these defendants and to deter them and others from such conduct in the
21 future, as authorized by ORS 133.739(1)(b).

22 140. Plaintiff is entitled to recover his reasonable attorneys' fees and costs as
23 authorized by ORS 133.739(5).

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TENTH CLAIM FOR RELIEF
Invasion of Privacy
Against all Defendants

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3 141. Plaintiff incorporates by reference the allegations set forth in paragraphs 1
4 through 140.

5 142. The West Linn Defendants participated in an unlawful surveillance operation
6 without a warrant or probable cause outside of their jurisdiction, wherein plaintiff's
7 conversations with third parties were intercepted and recorded without his knowledge or consent.

8 143. The West Linn Defendants also seized plaintiff's smartphone and told him they
9 would hack into it.

10 144. The West Linn Defendants also took plaintiff's attorney-client privileged
11 communications and, on information and belief, gave them to a third party.

12 145. In conducting their surveillance and investigation of plaintiff, the West Linn
13 Defendants publicly placed plaintiff in a false light, including by claiming that he was stealing
14 from his employer.

15 146. The West Linn Defendants' conduct was objectionable to plaintiff and would
16 have been objectionable to any reasonable person of ordinary sensibilities, in that the West Linn
17 Defendants' actions were done without plaintiff's consent and in an offensive manner.

18 147. The West Linn Defendants intruded into plaintiff's conversations and personal
19 belongings, which were private and entitled to be private, which constitutes an invasion into
20 plaintiff's solitude, seclusion, and right to privacy that he did not consent to.

21 148. The conduct of the West Linn Defendants described herein was done for the
22 purpose of causing plaintiff to suffer humiliation, mental anguish, and emotional and physical
23 distress.

24 149. Within the time allowed by ORS 30.275, on or about June 4, 2018, plaintiff
25 presented a formal written notice of his claims to the West Linn Defendants for damages arising
26 out of the facts and circumstances detailed above.

1 150. As a direct and proximate result of the West Linn Defendants' conduct, plaintiff
2 was caused to incur severe emotional distress, mental anguish, degradation, and embarrassment
3 and is entitled to an award of compensatory damages in the amount of \$2,000,000.

4 WHEREFORE, plaintiff prays for judgment against defendants as follows:

5 1. On Plaintiff's Second Claim for Relief:

- 6 a. A declaration that the West Linn Defendants violated 42 U.S.C. § 1981 by
7 depriving plaintiff of his right to make and enforce contracts and acted on
8 the basis of plaintiff's race to deprive him of the full and equal benefit of
9 the law;
- 10 b. An award of economic damages for past and future lost wages and
11 benefits and out-of-pocket expenses, plus prejudgment interest, in an
12 amount to be determined at trial, but not less than \$500,000;
- 13 c. An award of noneconomic damages to compensate plaintiff for injury to
14 his reputation, emotional distress, anxiety, humiliation, and
15 embarrassment in the amount of \$2,000,000;
- 16 d. An award of punitive damages upon motion; and
- 17 e. Plaintiff's attorneys' fees, expert fees and costs incurred herein.

18 2. On Plaintiff's Second Claim for Relief:

- 19 a. A declaration that the West Linn Defendants violated 42 U.S.C. § 1983 by
20 violating plaintiff's rights under the Fourth and Fourteenth Amendments;
- 21 b. An award of economic damages for past and future lost wages and
22 benefits and out-of-pocket expenses, plus prejudgment interest, in an
23 amount to be determined at trial, but not less than \$500,000;
- 24 c. An award of noneconomic damages to compensate plaintiff for injury to
25 his reputation, emotional distress, anxiety, humiliation, and
26 embarrassment in the amount of \$2,000,000;

- 1 c. An award of punitive damages against defendants upon motion; and
2 d. Plaintiff's attorneys' fees, expert fees and costs incurred herein.

3 3. On Plaintiff's Third Claim for Relief:

- 4 a. A declaration that the West Linn Defendants unlawfully arrested plaintiff
5 without a warrant or probable cause; and
6 b. An award of noneconomic damages to compensate plaintiff for injury to
7 his reputation, emotional distress, anxiety, humiliation, and
8 embarrassment in the amount of \$2,000,000.

9 4. On Plaintiff's Fourth Claim for Relief:

- 10 a. A declaration that the West Linn Defendants unlawfully detained and
11 incarcerated plaintiff without a warrant or probable cause; and
12 b. An award of noneconomic damages to compensate plaintiff for injury to
13 his reputation, emotional distress, anxiety, humiliation, and
14 embarrassment in the amount of \$2,000,000.

15 5. On Plaintiff's Fifth Claim for Relief:

- 16 a. An award of noneconomic damages to compensate plaintiff for injury to
17 his reputation, emotional distress, anxiety, humiliation, and
18 embarrassment in the amount of \$2,000,000.

19 6. On Plaintiff's Sixth Claim for Relief:

- 20 a. An award of noneconomic damages to compensate plaintiff for injury to
21 his reputation, emotional distress, anxiety, humiliation, and
22 embarrassment in the amount of \$2,000,000.

23 7. On Plaintiff's Seventh Claim for Relief:

- 24 a. An award of economic damages for past and future lost wages and
25 benefits and out-of-pocket expenses, plus prejudgment interest, in an
26 amount to be determined at trial; and

1 c. An award of noneconomic damages to compensate plaintiff for injury to
2 his reputation, emotional distress, anxiety, humiliation, and
3 embarrassment in the amount of \$2,000,000.

4 8. On Plaintiff's Eighth Claim for Relief:

- 5 a. An award of damages in the amount of the greater of the sum of actual
6 damages suffered by plaintiff, in an amount to be determined at trial, or
7 statutory damages of whichever is the greater of \$100 per day for each day
8 of violation or \$10,000.00;
- 9 b. An award of punitive damages against defendants upon motion; and
- 10 c. Plaintiff's attorneys' fees and costs incurred herein.

11 9. On Plaintiff's Ninth Claim for Relief:

- 12 a. An award of damages incurred as a result of the West Linn Defendants'
13 unlawful interception and disclosure of his conversations, but not less than
14 damages computed at the rate of \$100 per day for each day of violation or
15 \$1,000, whichever is greater; and
- 16 c. Plaintiff's attorneys' fees and costs incurred herein.

17 10. On Plaintiff's Tenth Claim for Relief:

- 18 a. An award of noneconomic damages to compensate plaintiff for injury to
19 his reputation, emotional distress, anxiety, humiliation, and
20 embarrassment in the amount of \$2,000,000.

21 11. Any further or alternative relief in favor of plaintiff that the Court deems
22 appropriate.

23 12. Plaintiff demands a jury trial.

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Dated this 16th day of July, 2018.

BUCHANAN ANGELI ALTSCHUL
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