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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

ERIOUS JOHNSON,

Plaintiff,

Case No. 6:16-cv-02052-JR

AMENDED COMPLAINT

vs.

(Civil Rights - 42 USC § 1983 - First
Amendment, Fourth Amendment,
Fourteenth Amendment, 42 USC § 1981, 42
USC § 1985 and 28 USC § 2201, et seq, 42
USC § 2000e-2 and ORS 659A.030,
Declaratory Relief)

**ELLEN ROSENBLUM, FREDERICK
BOSS, DARIN TWEEDT, DAVID KIRBY,
JAMES WILLIAMS, JANE DOES and
JOHN DOES, all in their individual
capacities and official capacities,**

Defendants.

JURY TRIAL REQUESTED

I.

INTRODUCTION

1. Pursuant to 42 USC § 1983, Plaintiff alleges the deprivation of rights guaranteed to him by the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution, and the right not to be discriminated against because of his race pursuant to ORS 659A.030, 42 USC §§1981 and 1985. He seeks declaratory relief, equitable relief, damages, attorneys’ fees and

litigation expenses/costs, including expert witness fees and expenses.

II.

JURISDICTION

2. This court has jurisdiction by virtue of 28 USC § 1343, 28 USC § 1331, and 28 USC § 1367. Venue is proper in this district pursuant to 28 USC §§ 1391 (b) and 1391 (e). Defendants are located in Marion County, Oregon, and the events underlying this Complaint took place there, making venue proper in the District of Oregon, Eugene Division.

III.

PARTIES

3. At all times material herein, Plaintiff Erious Johnson (hereafter “plaintiff”), is one of the few African-American employees of the State of Oregon’s Department of Justice (herein “the State”) with the title of Director of Civil Rights for the Office of the Attorney General. His roles are to assist the Attorney General on civil rights issues, including outreach to diverse communities in Oregon to educate individuals about their rights and the resources the Department of Justice has to offer, and to investigate complaints emanating from business practices that target suspect classes such as racial minorities, elderly, veterans, and disabled. At all times material herein, he resided and worked in Marion County, State of Oregon.

4. Ellen Rosenblum is a resident of the State of Oregon. At all times material herein, she was Attorney General of the State of Oregon, heading the “largest law firm in Oregon” and was acting under color of state law and within the scope of her employment or duties. She is responsible for the acts of her subordinates and authorized, approved or knowingly acquiesced in their conduct. She is also the chief policy maker for the Department of Justice. Under Article

XV, Section 3 of the Oregon Constitution, Defendant Rosenblum is an elected official who, before entering on the duties thereof, took the following oath of office: “I, Ellen Rosenblum, do solemnly swear that I will uphold the Constitution of the United States and the Constitution of the State of Oregon and fulfill the responsibilities of the Attorney General of the State of Oregon to the best of my abilities.” <https://www.youtube.com/watch?v=KjobmuyAywg&app=desktop> at 13:42. She is sued in her individual capacity and official capacity.

5. Frederick Boss is a resident of the State of Oregon. At all times material herein, he was Deputy Attorney General of the State of Oregon, responsible for the daily operations of the entire Department of Justice. He served as key advisor to Defendant Rosenblum and was acting under color of state law and within the scope of his employment or duties. He is sued in his individual capacity and official capacity.

6. Darin Tweedt is a resident of the State of Oregon. At all times material herein, he was the Chief Counsel of the DOJ Criminal Justice Division of the State of Oregon (“CJD”) and was acting under color of state law and within the scope of his employment or duties. He is sued in his individual capacity and official capacity.

7. David Kirby is a resident of the State of Oregon. At all times material herein, he was a Special Agent in Charge at the DOJ Criminal Justice Division of the State of Oregon and was acting under color of state law and within the scope of his employment or duties. He is sued in his individual capacity and official capacity.

8. Agent James Williams was at all relevant times herein an investigator with the Intelligence Unit of the DOJ Criminal Justice Division, under the supervision of Defendant Kirby. He was acting under color of state law and within the scope of his employment or duties.

He is sued in his individual capacity and official capacity.

9. Erious Johnson graduated in May 2002 with Honors from Howard University School of Law, where he received the Thurgood Marshall Merit Scholarship and served as an editor on the law review. His professional career includes Principal Law Clerk to a New York State Supreme Court Judge, Senior Counsel at the New York City Law Department, Trial Attorney at a respected New York City firm, and a principal attorney in the civil rights firm of Harmon Johnson, LLC.

10. The Oregon Department of Justice's mission is to serve state government and to support safe and healthy communities throughout Oregon by providing essential justice services. The Attorney General and her nine divisions hold themselves out to be "dedicated to providing ethical, independent and high quality legal service to state government; ...[d]efending the civil rights of all Oregonians; pursuing justice and upholding the rule of law."¹ The Oregon Department of Justice is funded in part by funds made available under the Justice System Improvement Program, 42 USC Chapter 46.

11. The Oregon Department of Justice purports to "respect the diverse perspectives, knowledge, and experiences of our coworkers and those seeking to join the organization," "strive to build an inclusive and performance-oriented workplace," and claims to be a place where "all individuals are welcomed and appreciated, leading to increasingly higher levels of fulfillment and success."²

12. On March 18, 2014, Defendant Rosenblum swore in Erious Johnson as the Civil

¹ <http://www.doj.state.or.us/about/Pages/index.aspx> (Last accessed 6/12/16).

² <http://www.doj.state.or.us/pages/diversity.aspx> (Last accessed 6/12/16).

Rights Director for the Oregon Attorney General. Attorney General Ellen Rosenblum chose him for this position “because of his extensive background in civil rights law and an already impressive record of community service and outreach in his brief time in Oregon.” Among his many responsibilities as the Civil Rights Director, he was charged with providing support to the Law Enforcement Profiling Work Group, “created to propose ways to detect patterns of improper profiling and to help eliminate the practice” of profiling.

13. The Oregon TITAN Fusion Center (OTFC) is a certified U.S. Department of Homeland Security-Oregon Governor designated local Fusion Center. It is a collaborative project of federal, state and local law enforcement agencies and other public safety disciplines for the purpose of information sharing. OTFC’s goal is to maximize the ability to detect, prevent, investigate, and respond to criminal and terrorist activity. OTFC adheres to the policies and procedures of federal, state, and local regulations. Defendants were at all relevant times a part of the OTFC and subject to all of its rules and policies.

14. Under Section 4.1 of the OTFC Privacy Policy, personnel providing services to the Fusion Center are permitted to seek or retain information only if “the information was collected in a fair and lawful manner, with the knowledge of consent of the individual, if appropriate, and the information is based on a possible threat to public safety or the enforcement of the criminal law; or where there is reasonable suspicion that a specific individual ... has committed a criminal offense or is involved in or is planning criminal (including terrorist) conduct or activity that present a threat to any individual, the community, or the nation, and the information is relevant to the criminal (including terrorist) conduct or activity; or the information is relevant to the investigation and prosecution of suspected criminal (including terrorist)

incidents; the resulting justice system response, the enforcement of sanction, orders or sentences or the prevention of crime or the information is useful in crime analysis or in the administration of criminal justice and public safety (including topical searches).”

15. Section 4.1 (2) of the OTFC Privacy Policy mandates “[c]ollection, retention and storage of criminal intelligence will comply with applicable state and federal law.”

16. Defendants are legally required to comply with ORS 181.575, which states “[n]o law enforcement agency, as defined in ORS 181.010 (Definitions for ORS 181.010 to 181.560 and 181.715 to 181.730), may collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.”

17. Under 28 CFR §23.20(b), The Federal Criminal Intelligence Systems Operating Policies prohibits “collecting or maintaining criminal intelligence information about the political, religious or social views, associations, or activities of any individual or group [...] unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.”³

18. Section 4.1 (3) of the OTFC Privacy Policy prohibits the Fusion Center from seeking or retaining information about an individual or organization solely on the basis of their

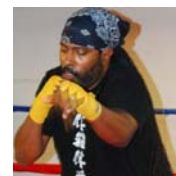
³ Reasonable Suspicion or criminal predicate is established when information exists which establishes sufficient facts to give a trained law enforcement or criminal investigative agency officer, investigator, or employee a basis to believe that there is a reasonable possibility that an individual or organization is involved in *a definable criminal activity or enterprise*. 28 CFR §23.20(c) (emphasis added).

religious, political, racial or social views or activities; their participation in a particular non-criminal organization or lawful event; or their race, ethnicity, citizenship, place of origin, age, disability, gender, or sexual orientation

19. Unbeknownst to Johnson at the time, on September 30, 2015, Defendant Williams claims to have used a software program called Digital Stakeout to search the terms “#blacklivesmatter”⁴ combined with “#fuckthepolice” in the Salem, Oregon, area, which resulted in many images, names and Twitter and Facebook accounts. He did not discuss his search terms with the legal advisor to the CJD.

20. Defendant Williams saw this image of Erious Johnson in the search results:

and looked further into Johnson’s Twitter account,⁵ despite the fact that



none of

⁴ #BlackLivesMatter was created in 2012 after George Zimmerman killed 17-year-old Trayvon Martin, and was acquitted for his crime. According to its founders, Patrisse Cullors, Opal Tometi, and Alicia Garza, the #BlackLivesMatter movement is “rooted in the experiences of Black people in this country who actively resist our dehumanization, #BlackLivesMatter is a call to action and a response to the virulent anti-Black racism that permeates our society. Black Lives Matter is a unique contribution that goes beyond extrajudicial killings of Black people by police and vigilantes.” As such, “Black Lives Matter is an ideological and political intervention in a world where Black lives are systematically and intentionally targeted for demise. It is an affirmation of Black folks’ contributions to this society, our humanity, and our resilience in the face of deadly oppression.” In the wake of several nationally high profile deaths of Black people by police officers or within the criminal legal system, the use of #BlackLivesMatter has been emblematic in social media of quintessentially political speech or acts in opposition to the pervasive strain of racism against African-Americans that still maintains its pernicious stronghold in Oregon and throughout the nation.

⁵ <https://twitter.com/eriousesq>

Johnson’s Tweets included the term “#fuckthepolice” at all, and would not have been identified if Williams’ search had actually combined the search terms he claims. Johnson’s posts included tweets on #Blacklivesmatters and other political speech.

21. The terms searched by Defendant Williams targeted the political social movement of Black Lives Matters and political speech criticizing the police for the taking of innocent lives.⁶

22. Matt McCauley, the attorney that advises the Criminal Intelligence Center, had “serious concerns” when he learned of the search because Williams was basing his search on a political movement.

23. Despite the search terms he used, Defendant Williams believed that a tweet posted *ten months previously*, on Martin Luther King Day (January 19, 2015)⁷ – which contained the logo for the political rap group Public Enemy⁸ and the lyric “consider yourselves warned”⁹ – was

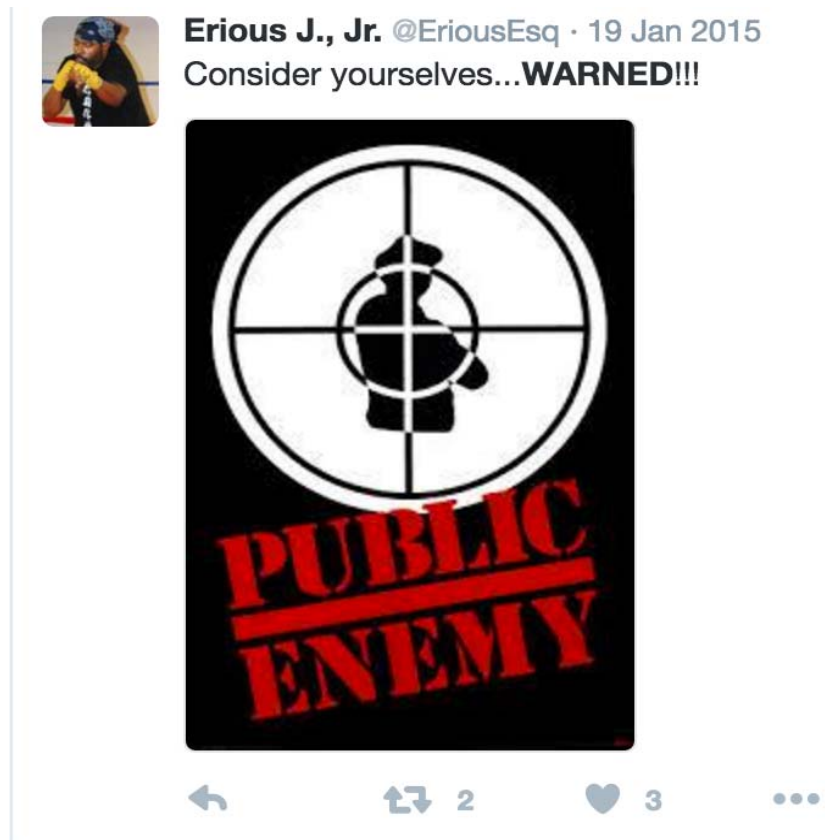
⁶ Williams also searched the following terms relating to political movements or groups, including “1%, blackblo, kkk, neonazi, whitesupremecy, whitepride, sickofschool, free souls, freesoulsmc, Hells Angels.”

⁷ The tweet immediately before the one that allegedly caused Defendant Williams concern was “Here’s to change, hope and evolution. HAPPY NEW YEAR!!! #blacklivesmatter #ALIVEWHILE BLACK #racisminamerica.” The one immediately after is “Some things will never change #blacklivesmatter #MartinLutherKingDay #alivewhileblack” with a political cartoon of a police officer shooting at a statue of Martin Luther King Jr.

⁸ Public Enemy is actually a hip-hop group, known for its strong, pro-Black, politically-charged resistance music and for such epic hits as “Fight the Power.” They were inducted into the Rock and Roll Hall of Fame in December 2012.

⁹ “Consider yourself warned” is a lyric in the song “Countdown to Armageddon” on an album entitled *It Takes a Nation of Millions to Hold Us Back*: “Peace. Armageddon Had Been in Effect, Go Get a Late Pass. Step! This Time Around, the Revolution Will Not Be Televised. Step! London, England... Consider Yourselves... Warned! Alright, let’s make some fuckin’

“threatening to the police” and shared his belief with his supervisor, Defendant David Kirby.



24. Defendant

Kirby described the tweets to Defendant Darin Tweedt, who recommended to Defendant Frederick Boss that Defendant Williams prepare a report on his search and findings. Defendant Boss approved the recommendation for Williams to provide a threat assessment about Johnson, the only Black man in the front office at the DOJ.

25. The OTFC Privacy Policy 5.0 on Information Quality states: “Inaccurate personal information can have a damaging impact on the person concerned and on the integrity and

noise! C’mon, let’s break this shit out and get busy!”
<http://genius.com/Public-enemy-countdown-to-armageddon-lyrics>

functional value of the Center. In order to maintain the integrity of the OTFC, any agency that obtains information through the Center must independently verify the information with the agency that originally provided it before taking any official action (*e.g.* warrant or arrest) based on the information. User agencies and individual users are responsible for complying with applicable laws governing the use, further dissemination, purging and updating of information obtained from the Center.”

26. At no point during this covert operation, did anyone speak to Johnson to ask him about any potentially concerning tweets.

27. On or about October 1, 2015, Defendant Williams prepared and presented the threat assessment entitled “Possible threats towards law enforcement by ODOJ employee” to Defendant Kirby. The report contained no facts which could provide the basis for reasonable suspicion or probable cause that a crime was being committed. *See* attached report.

28. On or about October 7, 2015, Defendant Kirby delivered the report to Deputy Chief Counsel Stephanie Tuttle.

29. On or about October 7, 2015, Defendant Kirby expressed concerns about the image of an individual in crosshairs on Johnson’s Twitter feed and described it in detail to Defendant Tweedt, who informed him that the image was actually the logo of Public Enemy, whom he described as “a rap group.”

30. On or about October 12, 2015, Defendant Tweedt reviewed the report.

31. Upon reviewing the report, Defendant Tweedt knew or should have known that terms searched were politically based and in violation of state and federal law and the Oregon TITAN Fusion Privacy Policy.

32. Upon reviewing the report with knowledge that the logo that concerned Kirby and Williams was a benign logo of a political music group, Defendant Tweedt knew or should have known that Johnson was not “a possible threat” to law enforcement and that the conclusions drawn from Johnson’s tweets were erroneous or deficient.

33. Section 5.4 of the OTFC Policy mandates that the center “will investigate, in a timely manner, alleged errors and deficiencies ... and correct, delete or refrain from using protected information found to be erroneous or deficient.”

34. Section 5.5 of the OTFC Policy mandates that the center “ensure that the information is corrected, deleted from the system, or not used when the Center identifies information that is erroneous, misleading, obsolete or otherwise unreliable...”

35. Instead of investigating the errors or ensuring that the erroneous and misleading information was not used, on or about October 13, 2015, Defendant Tweedt circulated the assessment further to Defendant Boss, who thereafter gave the report to Defendant Rosenblum.

36. A week later, Defendant Rosenblum called Defendant Tweedt into a meeting with herself and Defendant Boss and told Defendant Tweedt that she believed he had engaged in racial profiling.

37. Based on information and belief, between the time Defendant Rosenblum saw the memo and October 27, 2015, she had one or more closed-door sessions with high level officials where she disseminated the assessment and discussed it at length.

38. On or about October 27, 2015, over two weeks after becoming aware of the racial and political profiling, Defendant Rosenblum, along with Defendant Boss, informed Johnson that an investigator (James Williams) conducted a “threat assessment” for the Salem, Oregon,

area with a software program called Digital Stakeout and searched terms “Black Lives Matter” and “Fuck the Police.” They claimed Defendant Williams’ search resulted in the identification of Erious Johnson’s Twitter account “[@EriousEsq.](#)”¹⁰ Defendants Rosenblum and Boss explained that Defendant Williams identified Johnson as a “threat” to public safety based on his use of the Twitter hashtag “#blacklivesmatters.” They told Johnson that Defendant Williams had downloaded Johnson’s entire Twitter history, and collected, compiled and maintained a file, bringing this to the attention of his supervisor, Defendant David Kirby. They further explained that Defendant Kirby then brought the file to Defendant Darin Tweedt, who brought the file to Defendant Frederick Boss, who made Defendant Rosenblum aware of the investigation.

39. Defendants Williams, Kirby, Tweedt, and Boss were not conducting an investigation of criminal activities when searching Johnson’s twitter account.

40. Based on Johnson’s tweets, defendants had no information or reasonable suspicion that Johnson had committed a criminal offense or was involved in or planning a criminal offense.

41. Defendants Williams, Kirby, Tweedt and Boss had no reasonable articulable suspicion of criminality when Williams conducted the surveillance and downloaded and maintained information about Johnson’s social media activities, and conducted a “threat assessment” based on those political activities.

42. Defendant Williams had no information of any threat to public safety or that of the police that would authorize him to search the term “#blacklivesmatter.”

¹⁰ Defendant Rosenblum made this claim despite the fact that none of Johnson’s tweets ever contained the phrase “Fuck the Police.”

43. A search of “#blacklivesmatter” was not “relevant to any investigation or prosecution of suspected criminal incidents in Oregon, the resulting justice system response, the enforcement of sanction, order or sentences or the prevention of crimes.”

44. Defendant Williams would sometimes conduct searches without being requested to by his supervisor based on “what’s hot in the news.” No supervisor told him he was prohibited from engaging in this practice. Based upon information and belief, Defendant Williams unlawfully searched and collected information on other Oregonians who used the politically based hashtags he searched.

45. After learning Defendants Williams, Tweedt, and Kirby engaged in and/or condoned racial and political profiling, Defendant Rosenblum and Defendant Boss failed to take timely corrective or disciplinary action, thereby condoning and ratifying the conduct of Williams, Tweedt, and Kirby that violated state and federal law.

46. Defendants Rosenblum and Boss failed to timely investigate Defendant Williams’ unlawful gathering of protected information, error, and/or deficiency and correct, delete or refrain from using protected information, and failed to make every reasonable effort to ensure that the information was corrected and deleted from the system, in violation of the OTFC Privacy Policy.

47. Based on information and belief, Defendants Rosenblum and Boss violated the OTFC Privacy Policy by failing to perform periodic audits of the systems protocol to ensure that the laws protecting individual privacy, civil rights and civil liberties in the collection, use, analysis, retention, destruction, sharing and disclosure of information were upheld, that the law enforcement officers who used the TITAN Fusion Center abided by its policies and were

properly trained.

48. On or about November 10, 2015, the Urban League of Portland, the AFL-CIO, the Asian Pacific American Network of Oregon, the Center for Intercultural Organizing, the NAACP of Portland and Eugene/Springfield, AFSCME and the ACLU sent a letter to Defendant Rosenblum requesting that the State cease and desist in conducting surveillance and investigations on Oregonians for expressing viewpoints and being part of social movements. They expressed concern that these unwarranted investigations are racially and politically motivated and create a chilling effect on advocates, political activists and others who wish to engage in discourse about the issues of our time. This letter received widespread media attention.

49. It was only after the negative media attention that Defendant Rosenblum decided to place Defendant Williams on administrative leave pending an investigation. Prior to being placed on paid administrative leave, none of the defendants indicated to Defendant Williams that his conduct was improper.

50. On or about January 22, 2016, without notice to Johnson, the defendants moved Defendant Tweedt's office three doors down from Johnson's office.

51. The State paid an attorney (who primarily defends employers in employment claims)¹¹ to conduct an investigation into the State's conduct regarding the "use of digital monitoring software," specifically "into any improper conduct and performance of employees with regard to their compilation, analysis, monitoring and use of digital information (such as content posted on websites, social media or Twitter feeds) in the course of any work performed as an employee of the DOJ," and "advise DOJ regarding the scope of an audit of the CJD's

¹¹ <http://www.stoel.com/cwalker>

compilation, analysis, monitoring and use of digital information in connection with the divisions work.”

52. On or about April 6, 2016, the investigation found Defendant Williams’ search “was not tied to a criminal investigation and there were no reasonable grounds to believe that there was an existing threat in the Salem area at the time he conducted his search.” It also concluded that the information targeted was “protected by Mr. Johnson’s First Amendment rights to free speech. Thus there should have been no continued viewing, documentation, sharing with others or any other action based on the tweets.”

53. The investigation found a “lack of training on anti-racial profiling and/or anti-bias in the workplace as applied to law enforcement/support activities” and a “lack of racial diversity and cultural competency within the CJD that may have contributed to the situation that promoted this investigation.” The investigator further recommended that the CJD should “provide anti-racial profiling to the Intelligence Union, and should implement mandatory training in the related and often overlapping areas of diversity, cultural competency and anti-bias training” and “focus on increasing the racial and ethnic diversity within the Intelligence Unit.” As of the date this complaint was filed, none of these recommendations have been put into place.

STATE’S PATTERN AND PRACTICE OF CIVIL RIGHTS VIOLATIONS

54. The chilling effect of these unwarranted investigations is part of defendants’ pattern and/or practice of retaliating against and otherwise attempting to deter those who exercise their First Amendment rights, thus violating the civil rights of its citizens, political activists and, in particular its employees.

55. As part of that pattern and/or practice, Defendants Rosenblum and Boss have

authorized or permitted the use of State resources to harass, embarrass, annoy and intimidate individuals who dare to exercise their First Amendment right to redress grievances by filing suits against the State of Oregon.

56. As part of that pattern and/or practice, Defendants Rosenblum and Boss have maintained a policy and an atmosphere that encourages the State's attorneys to chill the exercise of the First Amendment rights of individuals whose civil rights have been violated by the State, as well as the attorneys who may take their cases, by producing avalanches of pointless litigation designed to punish and deter plaintiffs and their attorneys who dare to litigate against the State. Defendants Rosenblum and Boss are aware or should be aware of these practices and have failed to stop them. Their lack of action to correct these violations effectively endorses, condones and/or ratifies the conduct.

FIRST CLAIM FOR RELIEF
42 U.S.C. § 1983
First Amendment Violation

Against Defendants Williams, Kirby, Tweedt, Boss and Rosenblum
in Their Individual Capacities

57. Plaintiff incorporates paragraphs 1 through 56 as if fully set forth herein.

58. Under the Oregon Constitution, Article I, Section 8, every person shall be responsible for the abuse of the right to free speech. Johnson was exercising his constitutional right to freedom of speech by tweeting about Black Lives Matters, a matter of public concern and national debate.

59. Under the Oregon Constitution, Article I, Section 26, prevents restraint of inhabitants from the State from assembling together in a peaceable matter to consult for their common good. Johnson was exercising his constitutional right of assembly by tweeting about

Black Lives Matters, a matter of public concern and national debate, on the Internet, which constitutes a place of assembly in the modern world of social media.

60. The acts of defendants described herein were taken under color of state law.

61. By searching, monitoring and surveillance of the term “#blacklivesmatters,” Defendants violated Johnson’s right to speak about matters of public concern. By issuing a report on Johnson’s Twitter activity and assessing him as “a threat” based on his use of the hashtag “blacklivesmatters,” Defendants abridged his right to freedom of speech and association. Defendants’ acts violated Johnson’s rights under the First Amendment of the United States Constitution, made applicable to the State of Oregon through the 14th Amendment.

62. Defendants’ constitutional abuses and violations were and are directly caused by policies, practices and/or customs devised, implemented, enforced, encouraged and sanctioned by Defendants Rosenblum, Boss, Tweedt, and Kirby, including: (a) the failure to adequately and properly train and supervise State employees; (b) the failure to properly and adequately monitor and discipline State employees; (c) the overt and tacit encouragement and sanctioning of, and failure to rectify, the practices that led to the First Amendment violations here.

63. Defendants Rosenblum, Boss, Tweedt, Kirby, and Williams acted with deliberate indifference to the rights secured by Article I, Section 8 of the Oregon Constitution, and the First Amendment rights of Johnson and others whose tweets were monitored based upon protected speech and association.

64. As a direct and proximate result of defendants’ unlawful acts, Johnson has suffered harm to his reputation.

65. As a direct and proximate result of defendants’ unlawful acts, Johnson has

suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult in amounts to be determined by the jury at trial.

66. Johnson seeks equitable relief in the form of having his records expunged and notices sent to all other entities who received any information about Johnson's "threat assessment." Johnson also seeks training for defendants, their agents and employees to prevent the invasion of the civil liberties of Oregonians and to provide accountability for violation thereof.

67. Johnson seeks recovery of all other equitable relief and punitive damages as provided by law, in addition to reimbursement of his reasonable attorneys' fees and costs pursuant to 42 USC § 1988 and 28 USC §1927, if appropriate.

68. Defendants' conduct toward Johnson demonstrated a wanton, reckless or callous indifference to the constitutional rights of Johnson, which warrants an imposition of punitive damages in such amounts as the jury may deem appropriate to deter future violations.

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983
Illegal Search and Seizure - Fourth Amendment Violations
Against Defendants Williams, Kirby, Tweedt, Boss and Rosenblum
in Their Individual Capacities

69. Plaintiff incorporates paragraphs 1 through 56 as if fully set forth herein.

70. The acts of defendants described herein were taken under color of state law.

71. By searching, monitoring and surveillance of the term "#blacklivesmatters," without probable cause and without a reasonable, articulable suspicion of criminality, Defendant Williams violated Johnson's right to be free from unreasonable searches and seizures and to be

secure in his person, house, papers, and effects in violation of Article I, Section 9 of the Oregon Constitution, as well as in violation of the Fourth Amendment of the United States Constitution, made applicable to the State of Oregon through the 14th Amendment and made actionable under 42 USC §1983.

72. Defendants Kirby, Tweedt, Boss and Rosenblum encouraged, sanctioned and ratified a practice of searching, monitoring and surveillance of the term “#blacklivesmatters,” without probable cause and without a reasonable, articulable suspicion of criminality, thereby violating Johnson’s right to be free from unreasonable searches and seizures and to be secure in his person, house, papers, and effects in violation of the Fourth Amendment of the United States Constitution, made applicable to the State of Oregon through the 14th Amendment and made actionable by 42 USC §1983.

73. Defendants’ constitutional abuses and violations were and are directly caused by policies, practices and/or customs devised, implemented, enforced, encouraged and sanctioned by Defendants Rosenblum, Boss, Tweedt, and Kirby, including: (a) the failure to adequately and properly train and supervise State employees; (b) the failure to properly and adequately monitor and discipline State employees; (c) the overt and tacit encouragement and sanctioning of, and failure to rectify, the practices that led to the Fourth Amendment violations here.

74. Defendants Rosenblum, Boss, Tweedt, Kirby and Williams acted with deliberate indifference to the Fourth Amendment rights of Johnson and others whose tweets were monitored without probable cause and without a reasonable, articulable suspicion of criminality, in violation of the Fourth Amendment of the United States Constitution, made applicable to the State of Oregon through the 14th Amendment and made actionable by 42 USC §1983.

75. As a direct and proximate result of defendants' unlawful acts, Johnson has suffered harm to his reputation.

76. As a direct and proximate result of defendants' unlawful acts, Johnson has suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult in amounts to be determined by the jury at trial.

77. Johnson seeks equitable relief in the form of having his records expunged and notices sent to all other entities who received any information about Johnson's "threat assessment."

78. Johnson seeks recovery of all equitable relief and punitive damages as provided by law, in addition to reimbursement of his reasonable attorneys' fees and costs pursuant to 42 USC § 1988 and 28 USC §1927, if appropriate.

79. Defendants' conduct toward Johnson demonstrated a wanton, reckless or callous indifference to the constitutional rights of Johnson, which warrants an imposition of punitive damages in such amounts as the jury may deem appropriate to deter future violations.

THIRD CLAIM FOR RELIEF
42 U.S.C. § 1983

Due Process Violation - Fourteenth Amendment Violations

**Against Defendants Williams, Kirby, Tweedt, Boss and Rosenblum
in Their Individual Capacities**

80. Plaintiff incorporates paragraphs 1 through 56 as if fully set forth herein.

81. The acts of defendants described herein were taken under color of state law.

82. Defendants are legally required to comply with ORS 181.575, which states "No law enforcement agency, as defined in ORS 181.010 (Definitions for ORS 181.010 to 181.560 and 181.715 to 181.730), may collect or maintain information about the political, religious or

social views, associations or activities of any individual, group, association, organization, corporation, business or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.”

83. Pursuant to 28 CFR §23.20(e), an authorized recipient is only permitted to disseminate criminal intelligence information where there is a need to know and a right to know the information in the performance of law-enforcement activity.

84. Defendants had an obligation to ensure that administrative, technical and physical safeguards (including audit trails) were adopted to insure against unauthorized access and against intentional or unintentional damage. 28 CFR §23.20(g).

85. Defendants had an obligation to ensure that there would be no harassment or interference with lawful political activities as a part of the intelligence operation. 28 CFR §23.20(i).

86. Defendants had an obligation to adopt sanctions for unauthorized access, utilization or disclosure of information contained in the system. 28 CFR §23.20(m).

87. Defendants created a policy and a mission statement that creates a standard by which they were obligated to comport their actions.

88. Johnson had a right to expect that defendants would comply with the law and their stated policies. Johnson also has a property interest in his contractual employment relationship and the right to due process in his position as a public employee. Johnson, as a public employee, also has a constitutionally protected right to engage in his chosen profession.

89. Johnson had a right not to have information collected about him in the absence of

evidence of criminal wrongdoing as a part of his right to privacy and right to be left alone and the liberty interests created by state and federal law, the Oregon TITAN Fusion Center Policies and the State's own policies.

90. Defendants failed to follow their obligations under State law, Federal law and their own policies and procedures, thereby violating Johnson's right to due process under the Fourteenth Amendment of the United States Constitution.

91. Defendants also deprived Johnson of substantive due process by arbitrary and capricious government action which was not rationally related to a legitimate government interest and/or was by government action in fact motivated by bias, bad faith or improper purpose. Johnson's liberty rights include deprivation of his reputation and his right to be free from a government official interfering with his contractual relationship, thereby violating Johnson's right to due process under the Fourteenth Amendment of the United States Constitution.

92. Defendants damaged Johnson's standing within the community and/or imposed a stigma on him as a potential "safety threat" that affects his employment with the State and forecloses his freedom to take advantage of other employment opportunities.

93. As a direct and proximate result of defendants' unlawful acts, Johnson has suffered harm to his reputation.

94. As a direct and proximate result of defendants' unlawful acts, Johnson has suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult in amounts to be determined by the jury at trial.

95. Johnson seeks equitable relief in the form of having his records expunged and

notices sent to all other entities who received any information about Johnson’s “threat assessment.”

96. Johnson seeks recovery of all equitable relief and punitive damages as provided by law, in addition to reimbursement of his reasonable attorneys’ fees and costs pursuant to 42 USC § 1988 and 28 USC §1927, if appropriate.

97. Defendants’ conduct toward Johnson demonstrated a wanton, reckless or callous indifference to the constitutional rights of Johnson, which warrants an imposition of punitive damages in such amounts as the jury may deem appropriate to deter future violations.

FOURTH CLAIM FOR RELIEF
42 U.S.C. § 1983
Racial Profiling - Fourteenth Amendment Violations

Against Defendants Williams, Kirby, Tweedt, Boss and Rosenblum
in Their Individual Capacities

98. Plaintiff incorporates paragraphs 1 through 56 as if fully set forth herein.

99. The acts of Defendants described herein were taken under color of state law.

100. Article I, Section 20, protects the equality of privileges and immunities for all citizens of the State of Oregon. Article I, Section 8 of the Oregon Constitution protects the free expression of opinion on any subject whatever.

101. By searching, monitoring and surveillance of the term “#blacklivesmatters” without probable cause, defendants selectively and discriminatorily targeted Johnson and other citizens for surveillance based on their race or race-based affiliation, in violation of the Fourteenth Amendment of the United States Constitution, protected by 42 USC §1983.

102. Defendants Kirby, Tweedt, Boss and Rosenblum encouraged, sanctioned and ratified a practice of searching, monitoring and surveillance of persons using the term

“#blacklivesmatters” based upon race or race-based affiliation, and without probable cause or a reasonable, articulable suspicion of criminality, thereby violating Johnson’s right to be free from discrimination based on his race, in violation of the Fourteenth Amendment of the United States Constitution and made actionable by 42 USC §1983.

103. Defendants’ constitutional abuses and violations were and are directly caused by policies, practices and/or customs devised, implemented, enforced, encouraged and sanctioned by Defendants Rosenblum, Boss, Tweedt and Kirby, including: (a) the failure to adequately and properly train and supervise State employees; (b) the failure to properly and adequately monitor and discipline State employees; (c) the overt and tacit encouragement and sanctioning of, and failure to rectify, the practices that led to the Fourteenth Amendment violations here.

104. Defendants Rosenblum, Boss, Tweedt, Kirby and Williams acted with deliberate indifference to the Fourteenth Amendment rights of Johnson and others whose tweets were monitored based upon race, and without probable cause or a reasonable, articulable suspicion of criminality, in violation of the Fourteenth Amendment and made actionable by 42 USC §1983.

105. As a direct and proximate result of defendants’ unlawful acts, Johnson has suffered harm to his reputation.

106. As a direct and proximate result of defendants’ unlawful acts, Johnson has suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult in amounts to be determined by the jury at trial.

107. Johnson seeks equitable relief in the form of having his records expunged and notices sent to all other entities who received any information about Johnson’s “threat assessment.”

108. Johnson seeks equitable relief in the form of providing training against racial profiling to the Intelligence Unit, implementation of mandatory yearly training in the areas of diversity, cultural competency and anti-bias training and increased racial and ethnic diversity within the Intelligence Unit.

109. Johnson seeks recovery of all other equitable relief and punitive damages as provided by law, in addition to reimbursement of his reasonable attorneys' fees and costs pursuant to 42 USC § 1988 and 28 USC §1927, if appropriate.

110. Defendants' conduct toward Johnson demonstrated a wanton, reckless or callous indifference to the constitutional rights of Johnson, which warrants an imposition of punitive damages in such amounts as the jury may deem appropriate to deter future violations.

FIFTH CLAIM FOR RELIEF
42 U.S.C. § 1981

Against Defendants Williams, Kirby, Tweedt, Boss and Rosenblum
in Their Individual Capacities

111. Plaintiff incorporates paragraphs 1 through 56 as if fully set forth herein.

112. As alleged herein, Johnson has an employment contract with the State.

113. Johnson has the right to make and enforce contracts and enjoy all benefits, privileges, terms and conditions of the contractual relationship, pursuant to 42 USC §1981.

114. As described herein, defendants impaired Johnson's rights protected by 42 USC §1981 on the basis of race, ethnicity or national origin, in violation of 42 USC §1981.

115. As a direct and proximate result of defendants' unlawful acts, Johnson has suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult in amounts to be determined by the jury at trial.

116. Johnson seeks equitable relief in the form of having his records expunged and notices sent to all other entities who received any information about Johnson’s “threat assessment.”

117. Johnson seeks equitable relief in the form of providing training against racial profiling to the Intelligence Unit, implementation of mandatory yearly training in the areas of diversity, cultural competency and anti-bias training and increased racial and ethnic diversity within the Intelligence Unit.

118. Johnson is entitled to reimbursement of his reasonable attorneys’ fees and costs pursuant to 42 USC § 1988 and 28 USC §1927, if appropriate.

SIXTH CLAIM FOR RELIEF
42 U.S.C. § 1985

Against Defendants Williams, Kirby, Tweedt, Boss and Rosenblum
in Their Individual Capacities

119. Plaintiff incorporates paragraphs 1 through 56 as if fully set forth herein.

120. Defendants Williams, Kirby, Tweedt and Boss engaged in a conspiracy to deprive Johnson of his right to equal protection under the law and equal privileges and immunities under the laws based on his race, which was condoned by Defendant Rosenblum when she failed to take prompt remedial action.

121. Defendants Williams’ act targeting the social and political movement “black lives matters” in his unlawful search and threat assessment was an act in furtherance of the conspiracy to deprive Johnson of his equal protection rights.

122. Defendants Kirby, Tweedt and Boss’ actions in authorizing Defendant Willams to write the report and elevating the report up the chain of command were acts in furtherance of the

conspiracy to deprive Johnson of his equal protection rights.

123. As a direct and proximate result of defendants' unlawful acts, Johnson has suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult in amounts to be determined by the jury at trial.

124. Johnson seeks equitable relief in the form of having his records expunged and notices sent to all other entities who received any information about Johnson's "threat assessment."

125. Johnson seeks equitable relief in the form of providing training against racial profiling to the Intelligence Unit, implementation of mandatory yearly training in the areas of diversity, cultural competency and anti-bias training and increased racial and ethnic diversity within the Intelligence Unit.

126. Johnson is entitled to reimbursement of his reasonable attorneys' fees and costs pursuant to 42 USC § 1988 and 28 USC §1927, if appropriate.

**SEVENTH CLAIM FOR RELIEF
ORS 659A.030; 42 U.S.C. § 2000e-2**

**Against Defendants State, Williams, Kirby, Tweedt, Boss and Rosenblum
in Their Individual Capacities**

127. Plaintiff incorporates paragraphs 1 through 56 as if fully set forth herein.

128. As described above, Defendants discriminated against Plaintiff in the terms and conditions of his employment.

129. A substantial factor in Defendants' conduct described above was Plaintiff's race.

130. Defendants Rosenblum, Boss, Tweedt, Kirby, and Williams aided and/or abetted in the discrimination as described above in violation of ORS 659A.030(g).

131. As a direct and proximate result of defendants' unlawful acts, Johnson has suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult in amounts to be determined by the jury at trial.

132. Johnson seeks equitable relief in the form of having his records expunged and notices sent to all other entities who received any information about Johnson's "threat assessment."

133. Johnson seeks equitable relief in the form of providing training against racial profiling to the Intelligence Unit, implementation of mandatory yearly training in the areas of diversity, cultural competency and anti-bias training and increased racial and ethnic diversity within the Intelligence Unit.

134. Johnson is entitled to reimbursement of his reasonable attorneys' fees and costs pursuant to ORS 659A.885, ORS 20.107, and 42 U.S.C. § 2000e-5(k), if appropriate.

EIGHTH CLAIM FOR RELIEF
Declaratory Judgment 28 USC § 2201, et seq

Against Defendants Williams, Kirby, Tweedt, Boss and Rosenblum
in Their Individual Capacities

135. Plaintiff incorporates paragraphs 1 through 56 as if fully set forth herein.

136. Defendant violated ORS 181.575 when its agents collected and/or maintained information about Johnson's political views without such information directly relating to an investigation or criminal activity and without reasonable grounds to suspect the subject of the information was or may have been involved in criminal conduct.

137. Johnson is entitled to an order from the court declaring that the State violated ORS 181.575.

138. Johnson seeks equitable relief in the form of having his records expunged and notices sent to all other entities who received any information about Johnson’s “threat assessment.”

139. Johnson also seeks training and accountability for the invasion of the civil liberties of Oregonians.

140. Johnson seeks equitable relief in the form of providing training against racial profiling to the Intelligence Unit, implementation of mandatory yearly training in the areas of diversity, cultural competency and anti-bias training and increased racial and ethnic diversity within the Intelligence Unit.

141. Johnson is entitled to reimbursement of his reasonable attorneys’ fees and costs pursuant to 42 USC § 1988 and 28 USC §1927, if appropriate.

NINTH CLAIM FOR RELIEF
28 USC § 2201, et seq – Declaratory and Equitable Relief
Against Defendants Williams, Kirby, Tweedt, Boss and Rosenblum
in Their Individual Capacities

142. Paragraphs 1 through 56 are incorporated herein by reference as though fully set forth.

143. As described herein, Johnson has established a violation of his First, Fourth and Fourteenth Amendment rights and requests a declaration thereof.

144. Johnson hereby requests that the State of Oregon and its respective employees and officials take immediate, voluntary steps to adhere to the requirements of the First, Fourth, and Fourteenth Amendment to the United States Constitution by effectuating the following:

a) The State and its officials shall change and/or supplement any written policy, official practice, or training it gives to its employee, to ensure that those engaging in political speech are

treated fairly and with respect and are not discriminated against or retaliated against because of their protected speech.

b) comport policies of the State of Oregon with Oregon TITAN Fusion Center policies, 28 CFR §23.20 and ORS 181.575.

c) training all DOJ employees in policies of the State of Oregon with Oregon TITAN Fusion Center policies, 28 CFR §23.20 and ORS 181.575 at the time of their employment and yearly thereafter.

d) auditing all State employees on a regular basis (at least yearly) to ensure they are comporting their conduct and practices to the policies above.

145. Johnson also seeks equitable relief in the form of providing training against racial profiling to the Intelligence Unit, implementation of mandatory yearly training in the areas of diversity, cultural competency and anti-bias training and increased racial and ethnic diversity within the Intelligence Unit.

146. Depending upon the response to Johnson's requests, described in ¶¶ 136-137 above, and other information that is learned during the course of the litigation, he will seek injunctive relief and ask the federal court to order Defendant State of Oregon and its employees and officials to make the necessary changes to their policies and official practices, to prevent further egregious violations of the constitutional rights. To the extent it may be necessary, Johnson also will request the federal court to retain continuing jurisdiction and oversight over the operation of the State of Oregon in the respects described in ¶¶ 136-137 above, to ensure that the changes are implemented in a timely and effective manner.

147. Johnson also requests an award his attorney fees and litigation expenses/costs

against defendants pursuant to 42 USC § 1988.

WHEREFORE, Plaintiff Johnson prays for judgment against defendants as follows:

1. Economic damages in the form of lost wages and benefits, consequential damages and prejudgment interest in an amount to be determined at trial;
2. Compensatory damages in an amount to be determined at trial;
3. All available equitable relief and damages in amounts to be determined at trial, consistent with the claims above against defendants;
4. Punitive damages consistent with the claims above against defendants in amounts to be determined at trial;
5. Reasonable attorneys' fees and litigation expenses/costs herein, including expert witness fees and expenses, consistent with the claims above against defendants; and
6. Grant such other relief as is just and proper.

PLAINTIFF HEREBY DEMANDS A JURY TRIAL.

DATED this 28th day of March, 2017

CREIGHTON & ROSE, PC.

s/ Beth Creighton

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