

Elizabeth Lemoine, OSB #040811  
Elizabeth@lemoinelawyer.com  
Lemoine Legal Services, P.C.  
515 NW Saltzman Road, #836  
Portland, Oregon 97229  
Phone: (503) 746-7466  
Fax: (503) 746-4825  
Attorney for Plaintiff

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

**JAMES R. WILLIAMS,**

Civil No. \_\_\_\_\_

**Plaintiff,**

**COMPLAINT**

v.

**STATE OF OREGON Department of Justice,  
ELLEN F. ROSENBLUM, in her individual and  
Official capacity as the Attorney General of the  
State of Oregon, and FREDERIC M. BOSS,  
in his individual and official capacity, as the  
Deputy Attorney General of the State of Oregon.**

42 U.S. C. §1983 (Due Process  
Violations); and ORS 659A.203  
(Whistleblowing retaliation)

**Defendants.**

**JURY TRIAL REQUESTED**

---

**I. NATURE OF THE CASE**

1. This is an action pursuant to 42 U.S.C. §1983 and ORS 659A.203 to compensate plaintiff for damages, including mental anguish and distress, humiliation, loss of public esteem,

respect, good will, and confidence for defendants' deprivation of plaintiff's property interest, liberty interest, and loss of reputation in the community.

2. Plaintiff James R. Williams was an employee of the State of Oregon, within the Oregon Department of Justice ("Oregon DOJ"), as an investigator. His claims include, but are not limited to, unlawful employment practices due to whistleblowing activity, constitutional violations claims pursuant to 42 U.S.C. §1983, and other tortious conduct.

3. Among other violations described herein, plaintiff was retaliated against for reporting in good faith violations of federal and state laws, rules and regulations by a co-worker and/or a substantial and specific danger to the public.

4. Plaintiff seeks to be made whole pursuant to his claims under 42 U.S.C. §1983 and ORS 659A. 203 and seeks compensation for damages including mental anguish and distress, humiliation, loss of public esteem, respect, good will and confidence, and loss of past and future wages and benefits. This is also an action to vindicate plaintiff's rights and the rights of other employees to work in environments free from retaliation for whistleblowing.

## **II. JURISDICTION AND VENUE**

5. The relevant facts and employment practices alleged herein were committed in Marion County, Oregon, making venue proper in the District of Oregon, Eugene Division.

6. This court has jurisdiction pursuant to 28 U.S.C. §1331 (federal question) and 28 U.S.C. §1367 (supplemental jurisdiction). Both the federal and state claims alleged herein arose from a common nucleus of operative fact, the state actions are so related to the federal claims that they form part of the same case or controversy, and the actions would ordinarily be expected to be tried in one judicial proceeding.

7. Plaintiff has satisfied all administrative requirements before filing this lawsuit. On November 30, 2016, plaintiff filed a Complaint of Unlawful Employment Practices with the Civil Rights Division of the Oregon Bureau of Labor and Industries, co-filing with the EEOC, alleging whistleblowing retaliation. On January 4, 2017, BOLI issued a letter declining to initiate an investigation due to an existing conflict of interest with a party involved in the alleged discrimination.

8. On November 30, 2016, plaintiff sent the necessary notice of tort claims within 180 days of the tortious conduct described herein.

### **III. PARTIES**

9. Plaintiff James R. Williams is a resident and citizen of the City of Salem, Oregon. At all material times herein, plaintiff was employed by the Oregon DOJ.

10. At all material times herein, the Oregon DOJ was a division of the State of Oregon, organized and operating under Oregon law, and was plaintiff's employer.

11. At all material times herein, defendant Ellen F. Rosenblum was and is the Attorney General of the State of Oregon who was at all times material herein the department head of the Oregon DOJ and was acting under color of state law and within the scope of her employment or duties. As Attorney General, defendant Rosenblum had final authority regarding policies, procedures, practices, customs and personnel decisions, and final authority to make, ratify, approve, or disapprove decision making at Oregon DOJ. She is being sued in her individual and official capacities.

12. Frederick M. Boss is an employee of Oregon Department of Justice, responsible for the daily operations of the Oregon DOJ, and was acting under the color of state law and within the scope of his employment or duties. At all material times herein, defendant Boss had

managerial authority as the Deputy Attorney General of Oregon to act on behalf of Oregon DOJ. As Deputy Attorney General, defendant Boss had final authority regarding policies, procedures, practices, customs and personnel decisions, and final authority to make, ratify, approve, or disapprove decision making at Oregon DOJ. He is being sued in his individual and official capacities.

13. Plaintiff was an investigator with the Oregon DOJ from February 2010, until his termination on August 16, 2016. He was a police officer with the Klamath Falls Police Department from 2001 to 2010, working patrol, motorcycle, detectives and narcotics. His duties as a detective, for four years of his employment with Klamath Falls included participation in the major crimes and swat teams, investigation of homicides, rapes, robbery, burglary and child abuse.

#### **IV. FACTUAL ALLEGATIONS**

14. Plaintiff was hired by the Oregon DOJ in February 2010 and was originally assigned as an investigator in the mortgage fraud division of the Oregon DOJ. During this time, he investigated state and federal violations of mortgage related crimes under a federal grant.

15. Plaintiff was transferred to the Internet Crimes Against Children (“ICAC”) Unit in mid 2011, due to the expiration of the mortgage fraud grant.

16. Plaintiff was transferred from ICAC to the Oregon TITAN Fusion Center Unit (“OTFC”) in September of 2014. The OTFC is a collaborative certified project of the U.S. Department of Justice and the U.S. Department of Homeland Security, designated as an information and intelligence gathering and sharing agency that was mandated by Congress after the attacks on 9/11. Fusion Centers throughout the United States operate as state and major urban

area focal points for the receipt, analysis, gathering and sharing of threat-related information between federal, state, local, tribal, territorial and private sector partners.

17. At the Fusion Center, plaintiff's job tasks included rebuilding relationships with outside agencies by building up the Fusion Center liaison program. The Fusion Center Liaison Office is "law enforcement and homeland security partners at all levels of government--state, local, tribal, territorial (SLTT) and federal—[to] observe suspicious behaviors or receive reports of suspicious activity, either from concerned citizens or businesses. Although action or an activity reported may not seem significant, when reviewed and/or combined with other similar actions or activities, it may become an essential element in preventing criminal or even terrorist activity." National Suspicious Activity Reporting Initiative, 2017.

18. As part of the Fusion Center, plaintiff was tasked with gathering information and intelligence of all types which were reported by law enforcement, civilian agencies or civilians, as well as gathering information from outside sources, including but not limited to open source media searches and shared information with other agencies, citizen complaints submitted through the Oregon DOJ website, and through telephone calls from all sources.

19. Plaintiff's job tasks also included open source media searches and investigation of backgrounds of anti-government individuals and their activities to identify threats. For example, Plaintiff was tasked with investigation of backgrounds of individuals who had sent the Attorney General "hate mail," for possible threat and threat assessments. Plaintiff had received numerous requests for background and social media investigations through Special Agent in Charge David Kirby, to be performed by various persons on behalf of Attorney General Ellen Rosenblum. One particular search involved the investigation of persons and businesses in a location where the Attorney General and her staff were relocating.

20. Plaintiff had received commendation for his investigative work, specifically regarding the monitoring and reporting of social media postings by a patriot group called “III%’ers” which were guarding the Sugar Pine Mine in Southern Oregon.

21. In approximately September, 2015, the Director of the Fusion Center requested that plaintiff attend a meeting on Motorola’s Digital Stakeout software for evaluation for use at the Center. The software monitored all open source social media across several different platforms. During the hour-long training, plaintiff specifically asked if the software was in compliance with federal statutes and specifically with 28 CFR. He was informed by the training personnel that all of the information obtained with the software was “open source” and in compliance.

22. After the hour long training, plaintiff was instructed to “test out” the software and he did so, using various traditionally anti-government organizations. These organizations included, but were not limited to, KKK, Skinheads, ELF, ALF, Hells Angels and Gypsy Jokers, etc.

23. During this time, plaintiff was contacted by the Bonneville Dam Administration to investigate any possible planned protests regarding the release of the movie “Straight out of Compton” based on concerning events throughout the United States that had been occurring based on the release of the film. Also at that time there was illegal activity centered around the movement “blacklivesmatter”, including violence and civil disobedience during protests. Portland had also experienced such protests.

24. Based on this background, plaintiff used the software for a search in Salem for “#blacklivesmatter” and “#fuckthepolice” as well as other known organizations involved or associated with criminal activity either in whole or in part. Plaintiff also used other hashtags as

well. Plaintiff intended to use the terms to locate hostile threats against law enforcement or persons, as well as to locate any possible protests in the area so that he could advise local law enforcement, according to his job duties.

25. During the search, plaintiff noticed several perceived racist and anti-police postings. Several of these postings showed violence toward police officers and small children with guns held to their heads by police officers. Researching one of the images led plaintiff to the open source twitter profile of a person he later learned to be Erious Johnson, Jr., the ethics and civil rights attorney for the Department of Justice. In researching the image, plaintiff reviewed other potentially racist and anti-police postings on Mr. Johnson's open source twitter site.

26. Upon finding the images, plaintiff requested the opinion of the Watch Center Supervisor as to whether the images were not only offensive in nature, but appropriate for an Oregon DOJ employee to post, and whether it presented a concern to law enforcement or the general public. After she agreed, and called in Assistant Special Agent in Charge Mike Loughary, the supervisor informed plaintiff that he needed to inform Special Agent in Charge, David Kirby.

27. Special Agent in Charge Dave Kirby instructed plaintiff to write a memo to the Attorney General about the images and perceived threats and offensiveness of the content.

28. During this same time frame, plaintiff attended a mandatory meeting of Oregon DOJ human resources that discussed offensive postings on social media. Plaintiff and his colleagues were instructed that if they found offensive postings by other employees, that they should notify a supervisor.

29. On or about October 1, 2015, plaintiff placed his memo and complaint regarding the activities of Erious Johnson, Jr. in Special Agent in Charge Dave Kirby's inbox, as Kirby had instructed, and as instructed in the Oregon DOJ human resources meeting.

30. On November 10, 2015, at approximately 5:00 pm, plaintiff was placed on administrative leave. He had ended his shift that day at 2:00 pm and was called back into the office to be placed on leave.

31. Later, plaintiff learned that the Willamette Week newspaper had posted a news article at approximately noon on November 10, 2015, stating that he had been suspended. Defendant Rosenblum's husband is or was at the time, a co-owner of the Willamette Week newspaper.

32. After an investigation, which recommended no discipline for Plaintiff but only additional training, Plaintiff was terminated on August 16, 2016.

**FIRST CLAIM FOR RELIEF  
Against Oregon Department of Justice and  
Frederick M. Boss, in his official and individual capacity  
(Violations of 42 U.S.C §1983-Substantive Due Process Clause-Property Interest)**

33. Plaintiff incorporates by reference the allegations in paragraphs 1-32.

34. Plaintiff has a property interest in his contractual employment relationship and right to due process of the law guaranteed by the Fourteenth Amendment in his position as a public employee.

35. Plaintiff suffered deprivation of his property interest under the color of law due to his termination because Defendants who violated plaintiff's due process rights did so as officials with final decision-making authority.



36. As a direct and proximate result of defendants' violations of plaintiff's constitutionally guaranteed rights and their actions alleged herein, plaintiff has suffered economic loss in the form of back pay, front pay, lost benefits and out of pocket expenses, in an amount to be proven at trial, plus interest.

37. As a direct and proximate result of defendants' actions as alleged herein, plaintiff has suffered non-economic damages in the form of loss of reputation, emotional and mental distress, degradation, embarrassment and humiliation for which plaintiff seeks compensation in an amount to be determined at a trial by a jury.

38. Defendants' actions herein were intentional, willful and with reckless disregard to plaintiff's statutory rights. Such conduct exceeds the bounds of social toleration and is of the type that punitive damages deter. Plaintiff thereby requests an award of punitive damages to be determined at trial by a jury.

39. Plaintiff is entitled to equitable relief, including the expungement of all negative references to his termination and to negative retaliatory investigative findings that are in his personnel file and any working files.

40. Plaintiff seeks prospective relief for defendant to reinstate plaintiff to his former position or to an equivalent position that is virtually identical to his former position in terms of pay, benefits and working conditions, including privileges perks and status.

41. Plaintiff is entitled to reasonable attorneys fees and costs incurred, including expert witness fees, pursuant to 42 U.S.C. §1988.

**SECOND CLAIM FOR RELIEF**  
**Against Oregon Department of Justice and**  
**Frederick M. Boss, in his official and individual capacity**  
**(Violations of 42 U.S.C §1983-Substantive Due Process Clause-Liberty Interest)**

42. Plaintiff incorporates by reference the allegations of paragraphs 1-41.

43. Under the Fourteenth Amendment, a public employee has a constitutionally protected right to engage in his chosen occupation. Plaintiff was deprived of substantive due process by an arbitrary and capricious government action that was not rationally related to a legitimate government interest and/or was by government action in fact motivated by Defendants' bias, bad faith or improper purpose. Plaintiff's liberty rights include: deprivation of his reputation, his occupation, and right to be free from a government official tortuously interfering with his existing contractual relationship.

44. Defendants have deprived plaintiff of his rights under the Fourteenth Amendment to the Constitution by investigating him, terminating him and publishing of facts relating to his termination without giving him a meaningful opportunity to correct such statements.

45. Plaintiff suffered deprivation of his liberty interest under color of the law because Defendants who violated plaintiffs' rights were officials with final decision-making authority.

46. Defendants interfered with plaintiff's employment through an abuse of power and actions that shock the conscience that seriously damaged plaintiff. Such injuries include damage to his standing in the community and/or an imposed stigma that forecloses his freedom to take advantage of other employment opportunities.

47. The statements made and publicized by Defendants against plaintiff impaired his reputation of professionalism in the law enforcement and investigative communities.

48. As a public employer required to provide due process, defendants deprived plaintiff, a public employee, of his liberty interest to engage in his chosen occupation without due process of the law. Defendants deprived plaintiff of his liberty interest as follows:

a. The stigmatizing statements were made by defendants in the course of plaintiff's employment and throughout the investigatory and termination process;

- b. The stigmatizing statements were substantially false;
- c. Plaintiff contested the accuracy of the stigmatizing statements; and
- d. Defendant denied plaintiff a meaningful opportunity to rebut the charges against him and clear his name.

49. As a direct and proximate result of defendants' actions herein, plaintiff has suffered economic loss in the form of back pay, front pay, lost benefits and out of pocket expenses, in an amount to be proven at trial, plus interest.

50. As a direct and proximate result of defendants' actions as alleged herein, plaintiff has suffered non-economic damages in the form of loss of reputation, emotion and mental distress, degradation, embarrassment, and humiliation for which plaintiff seeks compensation in an amount to be determined at a trial by a jury.

51. Defendants' actions herein were intentional, willful and with reckless disregard to plaintiff's statutory rights. Such conduct exceeds the bounds of social toleration and is of the type that punitive damages deter. Plaintiff thereby requests an award of punitive damages in an amount to be determined at a trial by a jury.

52. Plaintiff is entitled to equitable relief, including the expungement of all negative references to his termination and to negative retaliatory investigative findings that are in his personnel file and any working files.

53. Plaintiff seeks prospective relief for defendants to reinstate him to his former position or to an equivalent position that is virtually identical to plaintiff's former position in terms of pay, benefits and working conditions, including privileges, perks and status.

54. Plaintiff is entitled to reasonable attorneys fees and costs incurred, including expert witness fees, pursuant to 42 U.S.C. §1988.

**THIRD CLAIM FOR RELIEF**  
**Against Oregon Department of Justice**  
**(Violations of ORS 659A.203 – Public Employee Retaliation)**

55. Plaintiff incorporates by reference the allegations of paragraphs 1-54.

56. Plaintiff's disclosure to his colleagues and superiors of misconduct involving public officials were disclosures that plaintiff reasonably believed were evidence of violations of law and/or mismanagement, and/or abuse of authority, and/or a substantial and specific danger to public health and safety pursuant to ORS 659A.203 resulting from public action. As such, his disclosures and speaking out on such matters as a whistleblower were protected activities.

57. Defendant Oregon DOJ retaliated and treated plaintiff as insubordinate, as racist, as the problem, publicly disparaged and defamed him and illegally terminated him.

58. The actions of defendant Oregon DOJ, its agents and employees acting within the course and scope of their duties as set forth above and incorporated into this paragraph violated plaintiff's rights under ORS 659A.203.

59. Plaintiff's protected activity was a substantial and motivating factor for the above described retaliatory actions and decisions made by defendants.

60. As a direct and proximate result of defendant's wrongful conduct plaintiff has suffered economic damages and is entitled to an award of lost wages and benefits in an amount to be determined, plus prejudgment interest.

61. Plaintiff is entitled to recover his reasonable attorney fees and costs pursuant to ORS 659A.885(a).

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff requests the Court to:

1. Assume jurisdiction over each of the causes set forth herein;

2. Grant plaintiff equitable relief, including but not limited to expungement of all negative inferences in his personnel and other files.
3. Order defendants to reinstate plaintiff to his former position or to an equivalent position that is virtually identical to plaintiff's former position in terms of pay, benefits and working conditions, including privileges, perks and status; or an alternative order requiring defendants to pay plaintiff an award of economic damages compensating him for front pay in the form of lost future wages and benefits of employment in an amount to be determined at trial.
4. Order defendants to make plaintiff whole by compensating him for past and future pecuniary losses, including expenses, impairment of earning capacity, lost past and future earnings and benefits of employment, and such other losses as are awarded by a jury or otherwise established at trial.
5. Order defendants to pay plaintiff awards of compensatory damages for non-pecuniary losses, including physical and emotional injury, pain and suffering, mental anguish, humiliation and embarrassment, and loss of enjoyment in life, in an amount to be determined by a jury;
6. Award punitive damages in an amount to be determined by a jury;
7. Award plaintiff his costs of this suit and reasonable attorneys fees, costs and expert witness fees on his federal law claims pursuant to 42 U.S.C. §1988.
8. Award plaintiff his costs of this suit and reasonable attorneys fees, costs and expert witness fees on his state law claims pursuant to ORS 659A.885.
9. Order defendants to pay prejudgment and post judgment interest, as appropriate, on all amounts due to plaintiff as a result of this action; and

10. Order such further or alternate relief in favor of plaintiff, as the court deems appropriate

**JURY TRIAL DEMAND**

Plaintiff demands a trial by jury on all questions of fact or combined questions of law or fact raised by this complaint.

DATED this 28th day of March, 2017

Respectfully submitted:

*/s/ Elizabeth Lemoine*  
Elizabeth Lemoine, OSB #040811  
[elizabeth@lemoinelawyer.com](mailto:elizabeth@lemoinelawyer.com)  
Of Attorneys for Plaintiff  
Lemoine Legal Services, PC  
515 NW Saltzman Road #836  
Portland, OR 97229