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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

Brian P. Carr
Plaintiff

versus

The State of Oregon through Hardy Myers in his official
capacity as Attorney General of the State of Oregon and
the City of Portland through Linda Meng in her official
capacity as City Attorney of the City of Portland
Defendants

Civil No. 3:08-CV-398-HA

Plaintiff's Declaration
In Support Of
Combined Reply
to Defendants'
Motions to Dismiss

I, Brian P. Carr, am the Plaintiff in this matter, have knowledge of the facts of this matter, and make the following statements under oath and penalty of perjury.

- 1 1. I was arrested by the Portland Police Bureau on November 5, 2004 at the Mandarin House
2 Restaurant. A copy of the arrest record is attached as Exhibit 1. This copy is as received from
3 the Portland Police Bureau on February 21, 2006 except that personal identifying information
4 was redacted as required in [LR 5.5](#). The arrest record lists offenses of trespass, domestic
5 violence and 'CIVIL CMLPNT-VIOL OF R/O'. As the circumstances of the arrest are of great
6 relevance, I am including a time line of events that led up to the arrest.

- 7 2. In October of 2002 I met the woman who I was later to marry and then divorce (hereafter
8 referred to as Karyn) at a social function at the Mandarin House Restaurant as I was visiting in
9 the Portland, OR area. We each continued going to that social function both separately and
10 together and were married on August 16, 2003.

- 1 3. As the technical job market was quite difficult at the time, I found work as mover and driver
2 for Active Moving while applying for work of a more technical nature. In July of 2004 I
3 applied to @once.com for a position as a database programmer.
- 4 4. There were problems in the marriage and Karyn presented me with divorce papers on August
5 16, 2004. I was also turned down for the position at @once.com on that same day. I did not
6 get my copy of the filed divorce papers until August 26th and began preparing to move back to
7 New York as I had no ties in the Portland area.
- 8 5. On September 3rd, I was offered the position as a database programmer with @once.com and
9 accepted the position. I began looking for an apartment in the area with easy commuter access
10 as @once.com was located in downtown Portland and parking was limited (and expensive).
11 On September 20, I started working with @once.com and moved to an apartment in the area
12 with easy access to a commuter bus on September 30th. My apartment was 2.1 miles from the
13 jointly maintained marital residence according to maps.google.com.
- 14 6. As I was now working downtown, I resumed attending the social function at the Mandarin
15 House Restaurant on a more regular basis, though Karyn and I always went separately. We sat
16 apart and other than brief but polite greetings had no contact at these functions.
- 17 7. To my surprise the separation turned adversarial even though there were no serious issues of
18 contention. On October 15, 2004, Karyn got a Temporary Order for Protection (doc 21-3). On
19 October 27, 2004, District Court Judge Melnick granted a Superior Court Order for Protection
20 (doc 21-4) which I contested as unfounded as there were not, in my opinion, the required
21 elements of violence or threats of violence. Copies of these orders are attached as Exhibits 2
22 and 3 with personal identifying information redacted as required in [LR 5.5](#). The city
23 previously submitted these orders as doc 21-3 and 21-4 but they were not properly redacted
24 and have been sealed (Doc 24).
- 25 8. While I opposed the order for protection, I also conscientiously obeyed the terms of the order.
26 Karyn often arrived late to the social functions and I would leave promptly (without making

1 eye contact, but instead keeping my eyes to the floor) whenever I was aware of her presence as
2 the order prohibited me from knowingly remaining in Karyn's vicinity or having any form of
3 contact with her¹.

4 9. On the evening of November 5, 2004, I was at the social function at the Mandarin House
5 Restaurant. The restaurant was open for business and the proprietors of the restaurant
6 welcomed me as a regular customer at the establishment.

7 10. I was friends with several of the people at the social function, but I had not had 'domestic
8 relations' with any of them; there were no altercations or disruptions in the restaurant. I had
9 paid my check and gotten the remainder of my meal in a box and was waiting until it was time
10 to catch the bus to the yoga meditation group that I went to later on those evenings. I was also
11 prepared that I could leave promptly in the event that Karyn arrived.

12 11. At one point during the meal, one of Karyn's friends left the function in order to make a phone
13 call, but I thought nothing of it at the time. Later Officer Lindsay and three other officers of
14 the Portland Police Bureau entered the restaurant and asked to speak with me.

15 12. I explained to Officer Lindsay that I was familiar with the 'restraining order' but that I was
16 permitted to be at that function and was not in violation of the order. Officer Lindsay informed
17 me that I should have known better and escorted me outside the restaurant. On leaving the
18 restaurant I saw Karyn for the first time that evening and she was just outside the restaurant.
19 Shortly thereafter, Officer Lindsay arrested me and I was incarcerated before 8PM on Friday,
20 November 5, 2004. I was not released until after 9PM on November 8 and no charges were
21 made. I missed one day of work, Monday, November 8, as a result of my incarceration.

22 13. As I was inquiring at the Superior Court Chief Administrator's Office how District Court
23 Judge Melnick could sign the Superior Court Order for Protection (Exhibit 3), I received four
24 orders appointing District Court Judges [Anders](#), [Eiesland](#), [Melnick](#) and [Schreiber](#) as Clark
25 County Superior Court Commissioners. Copies of these four orders are attached as Exhibit 4.

1 There were the exceptions of court papers and letters concerning the divorce, but these do not apply in this case.

1 14. On November 28, 2005, I applied to the Multnomah County Circuit Court to have my arrest
2 record sealed. This motion was opposed by the state as represented by Mr. Travis Sewell,
3 OSB #95169, Deputy District Attorney, and Exhibit 5 is a copy of these opposing papers
4 dated February 21, 2006.

5 15. There was a hearing on the motion April 13, 2006 with a written decision on April 17, 2006
6 which denied my motion without any trial. Exhibit 6 is a copy of the decision in that matter as
7 I received it from the court.

8 16. On April 20, 2006 I submitted a Notice of Appeal to that decision to the Oregon Court of
9 Appeals and on April 24, 2006 I submitted a Narrative of the Hearing a copy of which is
10 attached as Exhibit 7. On June 15, 2006, the Oregon Court of Appeals deemed the Narrative
11 of the Hearing to actually be a transcript of the hearing which was filed and settled. A copy of
12 that order is attached as Exhibit 8.

13 17. The summary decision of April 17, 2006 was upheld by the Oregon Court of Appeals in case
14 A132012 on November 7, 2007 with 'AFFIRMED WITHOUT OPINION' which is the
15 entirety of their decision (doc [21-5](#)). My Petition for Review by the Oregon Supreme Court in
16 case S055534 was denied on March 5, 2008 (doc [21-6](#)).

17 18. The Oregon criminal record has restricted my ability to seek alternative employment. In
18 1975, I graduated with honors with a B.E. from U.S.M.A., West Point, NY. In 1977, I
19 received a M.A. in Computer Science (Applied Mathematics) from M.I.T., Cambridge, MA. I
20 served in the Signal Corps with a Top Secret security clearance until 1982 when I left the U.S.
21 Army as a Captain. I have an otherwise spotless record and the Oregon criminal record has
22 had a significant detriment in my ability to seek employment.

23 19. On all job applications for permanent positions which I have completed in the last decade I
24 have been asked if I have ever been arrested. The job market is quite competitive in the areas
25 where I work and when a job application is declined there are only general justifications such

1 as 'another candidate was found to be more qualified for the position'; no specific reason for
2 the negative response is ever provided. In face of the highly competitive nature of each
3 position, the requirement that I explain my criminal history of an arrest for trespass and
4 domestic violence makes me virtually unemployable in most of the positions to which I would
5 otherwise be eligible.

6 20. Portland Police Bureau has shown a definite sexual bias in arrests made for violations of
7 'domestic violence' restraining orders (annotated as 'CIVIL CMPLNT-VIOL OF R/O' in their
8 computer records) with the following total arrests:

9 2004: 583 total- 90 females (15%) and 493 males (85%)

10 2005: 617 total- 84 females (14%) and 533 males (86%)

11 2006: 614 total- 91 females (15%) and 523 males (85%)

12 as determined by the Portland Police Bureau Records Division, Captain Killinger.

13 21. These rates are what one would expect if men were about five times more likely to commit
14 domestic violence than women. However, peer reviewed studies have repeatedly shown that
15 men and women are about equally likely to commit acts of violence in domestic relations in
16 this country at this time. See [Change In Spouse Assault Rates From 1975 to 1992: A
17 Comparison of Three National Surveys in the United States, Murray A. Strauss and Glenda
18 Kaufman Kantor](#). Numerous other studies have found similar results. When U.S. Census
19 Bureau [figures](#) are used to compute the estimated number of eligible victims and assuming a
20 normalized distribution of applicants and violators, the discrepancy between the rates of
21 eligible victims and arrests made clearly demonstrates deeply rooted sexual bias in the entire
22 domestic violence process in Oregon.

23 22. Over the last several decades there have been numerous portrayals in the media of the
24 scenario where 'Man says something which Woman finds offensive, Woman slaps Man, Man
25 is silenced by this justified response to his offensive behavior, and, later, through the typical
26 sort of karmic retribution, terrible things happen to Man for his prior offensive behavior'. The
27 problem with this scenario is that it has the effect of condoning and even encouraging criminal
28 physical abuse of men in domestic relations (with the inherent emotional abuse of such

1 physical abuse) while at the same time convincing men that any abuse they receive must be
2 justified and that they have no real alternative to accepting their abuse in silence. The reverse
3 scenario when a man strikes a woman is uniformly portrayed as a heinous act. This abhorrence
4 of abuse by men is consistent with the values of our society and the law itself. However, the
5 sexually discriminatory acceptance of the physical abuse of men is an example of the
6 inconsistencies in our society's values, but the law does not and should not reflect these
7 inconsistencies.

8 23. Over the last forty years there has been an almost hysterical concern with domestic violence
9 against women, presumably being fed by the inconsistent values of society as described above,
10 but also feeding these same inconsistencies. There are numerous serious publications where it
11 is stated that the primary cause of injury and death to adult women is domestic violence to
12 include the Bell Atlantic HR News before the merger to form Verizon. The claim is patently
13 absurd. A trivial check of the figures from the U.S. Center for Disease Control demonstrates
14 that the actual causes have been automobile accidents and cancer respectively. However, even
15 an otherwise scholarly work such as [A Process Evaluation of the Clark County Domestic](#)
16 [Violence Court](#) by Kleinhesselink and Mosher claims that domestic violence '*is the leading*
17 *cause of injury to women ages 15 to 44*'. Instead of listing the original source, though, it is just
18 a quote from Mills, L. (1998). *Mandatory arrest and prosecution policies for domestic*
19 *violence*. Criminal Justice and Behavior 25:306-318.

20 24. Ms. Mills made what appears to be an intentionally inaccurate quote from the Surgeon
21 General, Ms. Novello, U.S. Public Health Service, JAMA, 267(23), 3132 which states 'One
22 study found violence to be ... the leading cause of injuries to women ages 15 through 44 years
23 ([Am J Epidemiol. 1991;134:59-68](#)). That study, conducted for a 1-year period by the
24 Philadelphia Injury Prevention Program, examined injuries to women resulting in emergency
25 department visits or death.' While that study has numerous flaws, not the least of which is the
26 very limited and skewed sample (ghetto demographics and no correction for the endemic non
27 domestic violence in such areas), at no point did Ms. Novello imply that this very limited
28 result could be generalized to a much larger population as Ms. Mills did or that non domestic
29 violence could be ignored in these results. It appears that the truth was not extreme enough

1 for Ms. Mills and she found it necessary to knowingly publish false claims. Now those
2 attempting to generate additional hysteria concerning domestic violence against women
3 simply cite this and similar false sources ad nauseum.

4 25. While these academic fabrications may be of little interest outside of academic circles, their
5 repercussions extend far beyond the academic environment. For example, the very title of the
6 U.S. ['Violence Against Women Act of 1994'](#) encourages sexual bias by ignoring the plight of
7 men. By 1992 it was well established that men were victims of domestic violence as often as
8 women. However, in the hysterical environment created by these false claims there can be
9 little hope of equal protection under the law.

10 26. In particular, everyone involved with prosecuting domestic violence matters from police to
11 clerks and adjudicators is often given 'training' which has the effect of developing and
12 increasing this sexual bias. They are often taught that even if the woman and man both deny
13 that there is any abuse of any kind they should assume that the man is beating the woman and
14 look for evidence to support that conclusion. Until this needless sexual bias is removed from
15 the process, any findings which result are suspect.

16 27. I am deeply concerned about the seriousness of domestic violence and do not in any way
17 condone or encourage this criminal behavior. However, an extremely biased police and
18 judicial process can not effectively address this very complex and multi-faceted problem.
19 While there are no simple solutions to correct these biases which may well be innate to
20 humans, there is no need to extend the reach of these biases into the realm of property and, in
21 particular, employment decisions.

22 28. Upon consideration of the above facts and results from peer reviewed studies I have
23 concluded that about four out of every five arrests of men for violations of domestic violence
24 restraining orders by the Portland Police Bureau would not have been made were the sexes of
25 the parties reversed, i.e. the police would not have arrested a woman under identical
26 circumstances. Further, as there are numerous cases where there is actual violence with direct
27 physical evidence and clear and apparent violations of the terms of the restraining order, I do

1 not believe that I would have been arrested in this case if I had been a woman.

2 29. In December of 2004, I inquired how I could have the record of my arrest corrected as the
3 arrest was not proper. The clerk referred him to <http://www.co.multnomah.or.us/da/> and the
4 'Articles' and then 'Expungement' links which referenced [ORS 137.225](#) procedures.

5 30. For the tax year 2000, I received wages of \$108,322 from Verizon as a database analyst. I left
6 that position in 2001 to pursue other interests. From May 2003, I worked as a driver / mover
7 with Active Moving (an affiliate of United Van Lines) for 15 months with an hourly rate of
8 \$14 an hour and annual wages of about \$31,000 due to variable hours. I returned to work as a
9 database specialist with @Once.com on September 20, 2004 at an annual salary of \$45,000
10 per year. After 15 months my annual salary was \$48,595 and I would have liked to seek
11 another position comparable with my previous position with Verizon as my technical skills
12 were then current and the economy had improved to the point that there were available
13 positions for which I was well qualified. However, directly applying for such positions was not
14 warranted with my criminal record which would preclude my being offered such a position
15 and failed applications could establish myself with a reputation as a violent criminal and
16 unemployable.

17 31. Since early 2006 I have made inquiries into four employment positions which were of interest
18 to me. In each case my employment was declined, but two of these positions were sensitive
19 positions with the government and a security clearance would be required for each of them.
20 For the two positions which would require a security clearance, it is unclear whether a
21 preliminary criminal background check was made and whether the arrest record from
22 November 5, 2004 was determinative in my being rejected for the position. In each case the
23 declining individual had requested and received sufficient information to pull my military
24 record, but that is also sufficient to pull my criminal record. Of course, the records which are
25 accessed to determine eligibility for a position which requires a security clearance is itself
26 classified and not normally available.

27 32. In the early part of 2007 I reviewed over 200 orders and decisions of Clark County Superior

1 Court with respect to domestic violence ([RCW 26.50](#)). In every case the matter was filed with
2 the Clark County District Court and in no case was the deciding individual clearly identified.
3 While there were signatures on almost all of the orders, most of the signatures were illegible
4 such that the signature could not be read to identify the signer. Further, for all of the
5 electronic database records which I reviewed, in every case the field with the deciding
6 individual was left blank making searches for deciding individuals impossible as well. After
7 numerous discussions with District Court clerks I came to be able to recognize the signatures
8 of the different deciding individuals and in every case they were District Court Judges or the
9 District Court Commissioner even though all the papers were titled as being of the Clark
10 County Superior Court.

11 33. Over the last decade I have on occasion taught yoga meditation classes in prisons, initially in
12 New York, the state of my residence at the time, as well as Oregon more recently. In the last
13 year I have taught yoga meditation classes in Oregon State Penitentiary (O.S.P.) in Salem, OR
14 as well as Sheridan Federal Correctional Institute (F.C.I.). In each case, prior to teaching
15 these classes my criminal record was checked and it is my belief that the record of my arrest
16 published by the City of Portland and distributed by the State of Oregon have made both the
17 administrative and personal processes more difficult.

18 I certify under penalty of perjury under the laws of the state of Oregon and the United States that
19 the foregoing is true and correct.

Dated June 25, 2008 at Portland, Oregon.

s/ Brian P Carr
Signature of Plaintiff
Brian Carr
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Vancouver, WA 98684
503-545-8357

CERTIFICATION

I hereby certify that when this declaration is filed with the court, notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system as all parties have elected electronic filing as indicated on the Notice of electronic Filing. Parties access this filing through the court's CM/ECF System.

s/ Brian P Carr
Signature of Plaintiff
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