

Brian Carr
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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

Proposed
Supplement to Complaint

OPPOSED

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2 The Plaintiff, Brian P. Carr, appearing pro se in this matter, as and for his complaint allege the
3 following:

4 Lack of Due Process in Parking Violations

5 65.Plaintiff repeats and realleges paragraphs 1 through 64, as if fully set forth.

7 66.On April 7, 2008 Mr Carr's vehicle, a 1991 Toyota Camry with Washington plates 668-PXQ,
8 was parked at the Lloyd's Shopping Center in Portland, OR on the 14th Street ramp and was
9 stolen from that location. On that same date Mr. Carr reported the theft to Officer Jack Blazer
10 (#37413) of the Portland Police Bureau in case #08-032989.

12 67.On April 24, 2008, Mr. Carr received a call from the Portland Police Bureau that Mr Carr's
13 car had been recovered and was at Sergeant's Towing Lot in Portland, OR. There was a
14 charge of \$131 to retrieve Mr Carr's vehicle which he paid to recover his vehicle. Mr. Carr
15 had no control of or access to his vehicle during the intervening period.

1 68. On recovering Mr Carr's vehicle, there was a fluorescent green 'Abandoned Vehicle' warning
2 stuck on the driver's window. The warning had apparently been rained on such that the hand
3 written date was illegible. Further, this warning was large (8.5" by 11") and had to be
4 removed to safely drive the vehicle. The warning was destroyed on removal.

6 69. In addition, parking violation citation U019204 by the City of Portland was attached to Mr
7 Carr's vehicle for an abandoned auto violation and listing a fee of \$280. This notice had also
8 apparently been rained on and the written entries were substantially illegible.

10 70. On or about April 25, 2008, Mr. Carr called the number on said notice, 503-988-3776, and
11 learned that the court parking unit had no record of the parking violation but that these notices
12 occasionally take a few days to be processed and that he should call back in a week or so.

14 71. On or about May 9, 2008, Mr. Carr again called the court parking unit and learned that the
15 citation was pending and that if the vehicle was stolen the matter could be dismissed. Mr.
16 Carr also learned the identity of the officer, Kathy Saunders, who wrote the violation though
17 he was not told the department of the City of Portland which she worked for nor any contact
18 information for the City of Portland or that department.

20 72. On May 23, 2008, Mr. Carr filed an Answer, Affirmative Defense, and Complaint with the
21 Multnomah County Circuit Court, Parking Unit as well as a Declaration and Interrogatories
22 seeking copies of the police report of the stolen vehicle as well as any records of the warning
23 notice and parking violation notice (as the copies he had were not legible).

25 73. On June 12, 2008, Mr. Carr served the aforementioned papers of May 23, 2008 on the City of
26 Portland and filed the Acceptance of Service document with the Multnomah County Circuit
27 Court, Parking Unit.

29 74. On July 27, 2008, Mr. Carr received a letter from the Multnomah County Circuit Court,
30 Parking Unit, which stated that the court does not have access to the police records which Mr.
31 Carr had requested be provided to him and asking that Mr. Carr instead provide these

1 documents to the court even though these copies would be less reliable than if they were
2 provided directly by the keeper of the records, the City of Portland in this case. The letter also
3 stated that a copy of the stolen vehicle police report was required to have the matter dismissed
4 which is not stated in the local court rules. Further, the letter insisted that Mr. Carr post the
5 bail amount (\$560) before any hearing could be scheduled and before the court could consider
6 any evidence submitted by Mr. Carr.

8 75. According to the web site for the Portland Police Bureau Records Division, at

9 <http://www.portlandonline.com/Police/index.cfm?c=30557&a=143820>

10 requests for a copy of a police report take three weeks to be processed, can only be processed
11 by mail and require a prepaid fee of \$10 along with stamped self addressed envelop and
12 detailed information concerning the report. In particular, they require an address for the
13 location of the crime, but as the car was stolen from a parking lot with entrances on three
14 different streets, Mr. Carr does not know the location which would be listed on the report.
15 Further, there were warnings that incomplete or inaccurate information could cause further
16 delays and additional expense. Mr. Carr concluded that he would not be able to comply with
17 these requirements within the deadline specified by the court.

19 76. The \$10 fee for a copy of the police report is excessive, at least \$2 per page and up to \$10 per
20 page for a one page report. The cost of making the actual copies is certainly much less and the
21 remainder is clearly used to support other expenses of the records division. This court
22 provides access to most records via the court's CM/ECF system and PACER for a much more
23 reasonable 8 cents a page and commercial operations such as google.com can provide
24 electronic copies of documents for a small fraction of that cost. Further, these electronic
25 search services provide much more convenient access than the inefficient and slow service of
26 the Portland Police Records Division. These excessive fees are particularly egregious as Mr.
27 Carr is required to pay these fees only because of the negligence of the City of Portland,
28 supporting the very entity which knows that the citation is unfounded but it still pursues its
29 prosecution in pursuit of unjustifiable fines while collecting fees all along the way.

31 **Count VIII**

No Due Process Hearing Provided

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- 2 77.Plaintiff repeats and realleges paragraphs 1 through 76, as if fully set forth.
- 4 78.The Oregon circuit courts are created by state legislature under [ORS 1.001](#) and, as such, are
5 represented by Attorney General Myers with respect to federal injunctive relief.
- 7 79.Supplementary Local Rules (SLR) for Multnomah County Circuit Court [17.015 Parking](#)
8 [Citations - Defendant's Appearance](#) states that the defendant must pay the listed amount for
9 the citation, doubled if the bail amount is not paid in thirty (30) days to 'appear' in a matter.
10 Further an Order to impound the vehicle may be issued for failure to 'appear' (pay the cited
11 bail amount).²
- 13 80.[SLR 17.025](#) allows the dismissal of parking citations in the event that the vehicle was listed as
14 stolen with the police when the citation was issued and no appearance by the defendant is
15 necessary in this case. There is no statement of the requirement of a police report.³

2 17.015 Parking Citations - Defendant's Appearance

(1) A person receiving a parking citation has three options to appear:

- (A) Plead guilty by paying in full the bail indicated on the citation, either by mailing or personally delivering the payment, together with the citation, to the Multnomah County Courthouse. All payments in full must be received within 30 days of the date of violation.
- (B) Mail the full amount of the bail applicable at the time of the request, together with the citation and a letter of explanation to the Multnomah County Courthouse, requesting a judge to make a determination. The court may refund the bail or forfeit all or part of it.
- (C) Request a court hearing either by letter or by personally appearing at the Parking Section of the Criminal Division located in the Multnomah County Courthouse. All such requests must be accompanied by a check or money order for the full amount of bail applicable at the time of the request. Bail is forfeited if the person fails to appear at the hearing.
- (2) The bail amount set on a parking citation will double after 30 days from the date of issuance of the citation if the defendant has not appeared in a manner indicated by this rule. A partial payment of the bail does not constitute an appearance under this rule.
- (3) An Order for impoundment of a vehicle may be issued in the manner set forth in SLR 17.035 if the defendant does not appear in a manner indicated in this Rule.

3 17.025 Dismissal of a Parking Citation Before Trial

(1) The Presiding Judge or the Chief Criminal Law Judge may dismiss parking citations without the appearance of the defendant in the following instances:

...

(G) The parking citation was issued to a vehicle that was reported to the police as stolen within 24 hours of the date and time listed on the citation or was issued on a date when the status of the vehicle remained listed as stolen, and a stolen report was on file with the Police Bureau;

...

(I) The Court received a special written report from the issuing officer or Parking Patrol deputy explaining that there was no basis for the parking citation and requesting that it be dismissed; or

1 81. [SLR 16A.196](#) allows agencies to file citations electronically with the court in accordance with
2 [ORS 153.770](#), but does not provide for service of identifying information for the person
3 authorized to issue the citation as required [ORS 153.770](#).⁴

5 82. The administrative procedures provided by the Multnomah County Circuit Court, Parking
6 Unit does not provide '*the opportunity to be heard "at a meaningful time and in a meaningful*
7 *manner."*' [Armstrong v. Manzo, 380 U. S. 545](#), 380 U. S. 552 (1965). [Mathews v. Eldridge,](#)
8 [424 U.S. 319](#) (1976) in that Mr. Carr has not been provided with the evidence against him (in
9 particular the information to determine if the person issuing the citation was authorized to
10 issue the citation) nor any reasonable method to present evidence on his behalf.

12 83. The setting of an arbitrary bail amount without any hearing (as a prelude to any hearing and in
13 order to 'appear' in the matter) absolutely fails the requirement of the opportunity to be heard
14 in a meaningful time and in a meaningful manner as it intrinsically precludes the contesting of
15 the bail amount, both the need and amount for bail.

17 84. A review of the procedures implemented by the Multnomah County Circuit Court, Parking
18 Unit indicates that said court is not an impartial authority capable of fairly reviewing the
19 evidence before it, but instead a collection agency for the state and, in this case, the city. No
20 effort is made to insure the defendants are afforded an opportunity to review the evidence
21 against them, obtain required evidence from the best available source (discovery), and present
22 the evidence before substantial property issues are determined.

24 **Count IX**

25 **Negligence by City of Portland**

26 85. Plaintiff repeats and realleges paragraphs 1 through 84, as if fully set forth.

4 16A.196 Electronic Filing of Citations

(1) Pursuant to ORS 153.770, the Fourth Judicial District establishes this rule to allow electronic filing of complaints for any offenses that are otherwise cited into court by a uniform citation.

(2) Any agency which is authorized by law to issue a uniform citation within the Fourth Judicial District is authorized to file the citation electronically with the circuit court subject to compliance with rules adopted under ORS 1.002 (2) (e).

1 86. A significant percentage of the vehicles which would otherwise be cited as abandoned in the
2 City of Portland are actually stolen vehicles and, as such, recovered rather than abandoned. As
3 such, reasonable person would check if the vehicle is listed as stolen before affixing a warning
4 notice as an abandoned vehicle before issuing an abandoned vehicle parking citation and
5 before requesting that the vehicle be towed.

7 87. The City of Portland did not check Mr. Carr's vehicle against the stolen vehicle listing before
8 affixing a warning notice or issuing an abandoned vehicle parking citation. Further, when the
9 City of Portland recognized that Mr. Carr's vehicle had been recovered (and was not
10 abandoned), the City of Portland continued with the complaint process by filing the complaint
11 which was known to be erroneous with the Multnomah County Circuit Court, Parking Unit.
12 When Mr. Carr notified the city of the error, rather than filing a special written report to the
13 court as described in [SLR 17.025](#) (I) or providing the court and Mr. Carr with the requested
14 documents (stolen vehicle police report) which Mr. Carr requested, the city took no action.

16 88. It was not necessary to have Mr. Carr's vehicle towed at his expense. There were no
17 indications that the vehicle was likely to be moved in the foreseeable future and it appears that
18 the thief(s) had, in fact, abandoned the vehicle.

20 89. While the circuit courts of Oregon are the only courts of general jurisdiction and certainly
21 have jurisdiction to process tort claims against the City of Portland under [ORS 30.265](#), the
22 parking unit is not able to provide for due process as required under the [Fourteenth](#)
23 [Amendment](#) of the U.S. Constitution for the resolution of parking citations, much less tort
24 claims.

26 90. The court may exercise supplemental jurisdiction over the state law claims pursuant [28 U.S.C.](#)
27 [§ 1367](#) (a federal district court “shall have supplemental jurisdiction over all other claims that
28 are so related to claims in the action within such original jurisdiction that they form part of the
29 same case or controversy under Article III of the United States Constitution”) such that if this
30 court finds that the state courts are not able to provide for due process under [ORS 30.265](#), this
31 court could assume jurisdiction for the resolution of that matter.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff asks this Court to enter:

- 3. An Order requiring the Multnomah County Circuit Court, Parking Unit to:
 - a) evaluate all the evidence provided to it before establishing the amount of bail required for further hearings,
 - b) insure that all parties are served with copies of all evidence which is considered by the court,
 - c) make provisions for some form of discovery prior to a contested hearing, and
 - d) provide for simplified processing of [ORS 30.265](#) complaints when raised in the context of parking citation processing, and

- 4. In the event that the Multnomah County Circuit Court, Parking Unit is not able to provide for the requirements of due process, an Order:
 - a) removing parking citation U019204 and the associated tort claim from Multnomah County Circuit Court, Parking Unit,
 - b) dismissing parking citation U019204, and
 - c) granting the plaintiff damages of \$139 as well as the costs of defending that action.

Respectfully submitted, August 7, 2008 (Vancouver, WA).

s/ Brian P Carr
Signature of Plaintiff
Brian Carr
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503-545-8357