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CIRCUIT COURT OF OREGON  
COUNTY OF MULTNOMAH

KELLY SIMON, an individual,	)	Case No.
	)	
Plaintiff,	)	<b>COMPLAINT</b>
	)	
v.	)	<b>CLAIM SUBJECT TO MANDATORY</b>
	)	<b>ARBITRATION</b>
CITY OF PORTLAND, a municipal	)	
corporation,	)	<b>PRAYER AMOUNT: \$10,000</b>
	)	
Defendant.	)	<b>FEE AUTHORITY: ORS 21.160(1)(a)</b>

For her Complaint against Defendant City of Portland (“City”), Plaintiff Kelly Simon (“Simon”) alleges as follows:

**INTRODUCTION**

1.

On June 4, 2017, a pro-President Trump rally was held in Terry Shrunken Plaza in downtown Portland, Oregon (“Trump Rally”). The group that organized the Trump Rally, Patriot Prayer, typically attracts a coalition of white supremacists, anti-government militia groups, and online agitators known as the “alt-right” or Neo-Nazis. In response to the Trump Rally, three counter-protests were organized. Simon attended the protests as a legal observer for the ACLU of Oregon. During the protests, Portland Police Bureau Officers (“PPB Officers”) ordered everyone to move to vacate the south end of Chapman Park. As Simon followed police orders and moved to exit the park, PPB Officers opened fire on the crowd with pepper spray and impact munitions, including pepper spray bullets. Simon was hit in

1 the back of the leg by an impact munition and was injured. Under the Oregon Torts Claim  
2 Act, the City of Portland is liable for the PPB Officers' tortious battery.

3 **THE PARTIES**

4 2.

5 Simon is a citizen and resident of Portland, Oregon. Simon is a staff attorney  
6 at the ACLU of Oregon. On June 4, 2017, Simon was acting as a legal observer for the  
7 ACLU of Oregon.

8 3.

9 Defendant City of Portland is a municipal corporation and public body within  
10 the State of Oregon, located in Multnomah County.

11 4.

12 The Portland Police Bureau is an agency of the City. The acts that give rise to  
13 Simon's claims were committed by PPB Officers in the course and scope of their duties on  
14 the public body's behalf. Under ORS 30.285(1), the City must indemnify its officers and is  
15 therefore liable for the Portland Police Officers' torts against Simon.

16 5.

17 Notice of this claim was properly given to the City within 180 days of the  
18 incident.

19 **FACTUAL BACKGROUND**

20 6.

21 The City of Portland, Oregon, has a long history of an engaged citizenry and  
22 is a hub for First Amendment activity, with numerous public marches and large public  
23 gatherings each year. Public assemblies enrich the fabric of Portland by providing a means  
24 of expression when people feel unheard through other methods, a beacon of solidarity and  
25 connection for people impacted by the issues subject to protest, a vehicle to spark  
26

1 | conversations and debate about important issues, and an opportunity to form community and  
2 | connections, leading to constructive engagement, organizing, and action.

3 | 7.

4 | Portland also has a history of its law enforcement agency—the Portland Police  
5 | Bureau (“PPB”)—clashing, often violently, with protesters. The PPB has become  
6 | increasingly militarized in its tactics, deploying droves of officers wearing tactical dress,  
7 | including helmets, carrying batons, and full-body riot shields (“riot gear”), and using  
8 | chemical agents as crowd-control weapons. These crowd-control weapons include tear gas,  
9 | pepper-spray bullets, and flash-bangs (which create a loud explosion and a very bright flash  
10 | of light). On multiple occasions, PPB Officers have, without warning, deployed chemical  
11 | agents against protesters, as well as non-protesting bystanders, members of the press, and  
12 | patrons of nearby businesses.

13 | 8.

14 | On June 4, 2017, a pro-President Trump rally was held in Terry Shrunken Plaza  
15 | in downtown Portland, Oregon. The Trump Rally was organized by Joey Gibson, founder of  
16 | an organization called Patriot Prayer. Patriot Prayer events typically attract a coalition of  
17 | white supremacists, anti-government militia groups, and online agitators known as the “alt-  
18 | right” or Neo-Nazis. Patriot Prayer received a permit from the federal government to hold  
19 | the rally at Terry Shrunken Plaza.

20 | 9.

21 | In response to the Trump Rally, three counter-protests were organized: labor  
22 | unions organized in front of the Edith Green-Wendell Wyatt Federal Building, a group called  
23 | Rose City Antifa organized a protest in Chapman Square, and a coalition called Portland  
24 | Stands United Against Hate organized a protest at City Hall (collectively “Counter  
25 | Protests”). Tensions between the Trump Rally and the Counter Protests were particularly  
26 | high because the Trump Rally came only days after a self-proclaimed white-supremacist

1 stabbed three men, killing two, after the men stood up to him when he was insulting a group  
2 of Muslim women.

3 10.

4 Simon attended the June 4th protests as a legal observer for the ACLU of  
5 Oregon. As a legal observer, Simon attended the protests as a neutral observer, as a witness  
6 for protester and police interactions. Throughout her attendance at the protest, Simon wore a  
7 bright-blue ACLU Legal Observer vest over a bright yellow jacket that clearly identified her  
8 as a legal observer.

9 11.

10 The Trump Rally was scheduled to start at noon and end at 4:00 p.m. From  
11 the beginning of the rally, there was a large law enforcement presence. Officers from PPB,  
12 the Multnomah County Sherriff's Office, and the United States Marshals Service were  
13 patrolling and present at the protests. A majority of the officers were in full riot gear and  
14 created a perimeter, surrounding Terry Shrunken Plaza and the Trump Rally. The officers had  
15 their backs to the Trump Rally, facing the Counter Protests. Officers kept the two groups  
16 separated from each other, and would not let protesters from either side cross the police line.

17 12.

18 Just before the Trump Rally was scheduled to end, law enforcement officers  
19 ordered the counter-protesters, including Simon, to vacate the south end of Chapman Park.  
20 Because of the large number of people in the park, it took time for the protesters to move.  
21 Police continued to order that people needed to move. Then, without warning, as Simon and  
22 other counter-protesters were leaving the park and had their backs to the PPB Officers, police  
23 began shooting tear gas and impact munitions, including pepper spray bullets, into the crowd,  
24 intending to cause harmful and offensive contact. The police tactics created a scene of  
25 confusion and fear.

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13.

Simon’s back was to the PPB Officers because she was following police orders and leaving Chapman Park. While her back was to the PPB Officers, Simon was shot in the back of the leg with an impact munition, believed to be a pepper spray bullet. A hematoma immediately formed. Simon also experienced sustained coughing and burning eyes from pepper spray deployed by PPB Officers in the area.

**FIRST CLAIM FOR RELIEF**

**BATTERY**

14.

Simon incorporates by reference the allegations above.

15.

When PPB Officers opened fire on the protesters leaving Chapman Park, striking Simon with an impact munition and deploying pepper spray, they used excessive and unnecessary force. As such, the City is liable for battery.

16.

The PPB Officers’ excessive use of force caused Simon physical injuries, pain, and suffering. As a result of these injuries, Simon has suffered damages in an amount to be determined by a jury not to exceed \$10,000.

**SECOND CLAIM FOR RELIEF**

**ATTORNEY FEES**

17.

Simon incorporates by reference the allegations above.

18.

More than thirty (30) days before filing this complaint, Simon made demand upon the City for payment of \$10,000 in damages. Because Simon did not seek medical treatment for her injuries, there were no medical records to provide pursuant to ORS

1 20.080(3)(a). The City has failed and refused to pay the amount demanded. Simon is  
2 entitled to her reasonable attorney fees in the prosecution of this claim under ORS 20.080.

3 WHEREFORE, Plaintiff Simon prays for judgment from this Court on her  
4 claims as follows:

5 1. For Plaintiff's first claim for relief, a judgment against the City in a  
6 sum not more than \$10,000;

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2. For Plaintiff’s second claim for relief, a judgment against the City for

Plaintiff’s reasonable attorney fees, costs, and disbursements; and

3. For such other and further relief as the Court deems just and equitable.

DATED this 8th day of March, 2018.

TONKON TORP LLP

By s/ William T. Gent

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