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CIRCUIT COURT OF OREGON
COUNTY OF MULTNOMAH

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

For her Complaint against Defendant City of Portland ("City"), Plaintiff

Patricia Barger ("Barger") alleges as follows:

INTRODUCTION

1.

On October 12, 2016, Barger came across an ongoing protest outside of City Hall. Demonstrators were protesting the closed-door City Council vote approving the new police union contract that occurred earlier that day. Barger did not know of the protest beforehand, but came upon it as she was heading to catch a MAX train. While watching the protest, Portland Police Officer Timothy Paolini—without warning or announcement—struck Barger twice with his baton. Under the Oregon Tort Claims Act, the City of Portland is liable for Officer Paolini's tortious battery.

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THE PARTIES

2.

Barger is a citizen and resident of Portland, Oregon. At the time of the incident, Barger was 54 years old.

3.

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

4.

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

5.

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

FACTUAL BACKGROUND

6.

The City of Portland, Oregon, has a long history of an engaged citizenry and is a hub for First Amendment activity, with numerous public marches and large public gatherings each year. Public assemblies enrich the fabric of Portland by providing a means of expression when people feel unheard through other methods, a beacon of solidarity and connection for people impacted by the issues subject to protest, a vehicle to spark conversations and debate about important issues, and an opportunity to form community and connections, leading to constructive engagement, organizing, and action.

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1 7.

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

11 8.

12 On October 12, 2016, demonstrators gathered at City Hall to voice their
13 protest over the City Council vote on the police union contract. Just after noon, City Hall
14 officials ordered the demonstrators to leave City Hall.

15 9.

16 After officers forced demonstrators out of City Hall, demonstrators gathered
17 on Southwest Fifth Avenue outside of City Hall. The demonstrators were peacefully
18 blocking traffic and chanting slogans.

19 10.

20 Barger, who was heading to catch the MAX train, came upon the protest.
21 Because the MAX trains were not running, Barger decided to stay and observe the protest.
22 At all material times, Barger remained on the sidewalk and followed all police orders.

23 11.

24 During the protest, a large group of PPB Officers in full riot gear (“Riot
25 Officers”) descended on Southwest Fifth Avenue. The Riot Officers ordered everyone to the
26

1 sidewalk, on the West side of the street, opposite from City Hall. Barger was already on the
2 West sidewalk, so she remained where she was.

3 12.

4 Riot Officers then marched in a line across Southwest Fifth Avenue, from east
5 to west, clearing people from the street. As Riot Officers approached the west side of the
6 street, Barger was on the sidewalk, 2-3 feet from the curb, and looking the opposite direction.

7 13.

8 Suddenly, without any warning or announcement, PPB Officer Timothy
9 Paolini broke from the police line, continued walking toward Barger, and struck her with the
10 baton twice. Immediately, a hematoma formed on Barger's forearm. Officer Paolini knocked
11 Barger off balance, and she instinctively grabbed his baton to steady herself. Once she
12 realized what had happened, she let go. When asked, Officer Paolini offered no explanation
13 for his actions. Stunned, Barger left the area.

14 **FIRST CLAIM FOR RELIEF**

15 **BATTERY**

16 14.

17 Barger incorporates by reference the allegations above.

18 15.

19 When Officer Paolini struck Barger twice with his baton, he intentionally used
20 excessive force. As such, the City is liable for battery. Because Officer Paolini's force was
21 excessive and because he was not effectuating an arrest, his actions were not privileged under
22 ORS 161.235.

23 16.

24 Officer Paolini's excessive use of force caused Barger injuries, including pain
25 and suffering. As a result of these injuries, Barger has suffered damages in an amount to be
26 determined by a jury not to exceed \$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/ Colin Geiger
Steven M. Wilker, OSB No. 911882
Direct Telephone: 503.802.2040
Direct Fax: 503.972.3740
E-mail: steven.wilker@tonkon.com
Colin Geiger, OSB No. 094253
Direct Telephone: 503.802.2091
Direct Facsimile: 503.972.3791
E-mail: colin.geiger@tonkon.com
1600 Pioneer Tower
888 SW Fifth Avenue
Portland, OR 97204

*Cooperating Attorneys of the ACLU
Foundation of Oregon*

Mathew W. dos Santos, OSB No. 155766
Telephone: 503.552.2105
Email: mdossantos@aclu-or.org
ACLU of Oregon
P.O. Box 40585
Portland, OR 97240

Attorneys for Plaintiff

Trial Attorney:
Colin Geiger, OSB No. 094253

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