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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

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| BRIAN P. CARR,<br><br>Plaintiff,<br><br>v.<br><br>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,<br><br>Defendants. | Case No. 3:08-cv-0398-HA<br><br>MEMORANDUM IN SUPPORT OF MOTION TO DISMISS |

## INTRODUCTION

Plaintiff has sued Hardy Myers, Attorney General for the State of Oregon, Linda Meng, City Attorney for the City of Portland, the State of Oregon, and the City of Portland on several civil rights theories under 42 U.S.C. § 1983. In essence, he complains that a state court proceeding improperly concluded that the record of plaintiff's arrest could not be sealed under a state statute. (*Complaint* ¶¶ 4, 15, 16, 17, 26, 28, 35, 39, 41, *Prayer for Relief* ¶ 1). He contends

that the state court violated his constitutional rights in concluding that the record of his arrest for violating a restraining order could not be sealed pursuant to ORS 137.225. [1]

Defendant Myers and the State of Oregon move to dismiss plaintiff's complaint pursuant to FRCP 12(b) on the following bases:

1. Plaintiff's suit is barred by the Rooker-Feldman Doctrine;
2. Plaintiff's suit is precluded by a prior state proceeding;
3. The State and State Officials in their official capacities are not "persons" for purposes of plaintiff's § 1983 claims for damages;
4. The State—including State Departments, Agencies, and officials acting in their official capacity—enjoys sovereign immunity from suit on plaintiff's claim for damages;
5. Plaintiff has failed to state a valid *Ex Parte Young* action against defendant Myers;
6. § 1983 cannot be used to force a state to modify its interpretation of state law;
7. Plaintiff has failed to state a valid equal protection or due process claim.

## ARGUMENT

### I. The Rooker-Feldman Doctrine bars plaintiff's suit

The Rooker-Feldman doctrine, in general terms, prevents "a party losing in state court . . . from seeking what in substance would be appellate review of the state judgment in a United States district court." *Johnson v. De Grandy*, 512 U.S. 997, 1005-06, 114 S. Ct. 2647, 129 L. Ed. 2d 775 (1994) (citing *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983), *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416, 44 S. Ct. 149, 68 L. Ed. 362 (1923)).

As the Ninth Circuit recently explained:

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[1] Notably, counts II and V of plaintiff's complaint appear to be against the City of Portland, and not the State. The State's memorandum is generally directed to the claims that appear to be against it. The State's memorandum also addresses counts II and V, and explains why those claims should be dismissed.



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> The Rooker-Feldman doctrine provides that federal district courts lack jurisdiction to exercise appellate review over final state court judgments. *Rooker*, 263 U.S. at 415-16; *Feldman*, 460 U.S. at 482-86; *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283-84, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005). Essentially, the doctrine bars "state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced" from asking district courts to review and reject those judgments. *Id.* at 284. Absent express statutory authorization, only the Supreme Court has jurisdiction to reverse or modify a state court judgment. The clearest case for dismissal based on the Rooker-Feldman doctrine occurs when a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision . . . ." *Noel v. Hall*, 341 F.3d 1148, 1164 (9th Cir. 2003).
>
> Rooker-Feldman does not override or supplant issue and claim preclusion doctrines. *Exxon Mobil*, 544 U.S. at 284. The doctrine applies when the federal plaintiff's claim arises from the state court judgment, not simply when a party fails to obtain relief in state court. *Noel*, 341 F.3d at 1164-65 (citing *GASH Assocs. v. Village of Rosemont*, 995 F.2d 726, 729 (7th Cir. 1993)). Preclusion, not Rooker-Feldman, applies when "'a federal plaintiff complains of an injury that was not caused by the state court, but which the state court has previously failed to rectify.'" *Noel*, 341 F.3d at 1165 (quoting *Jensen v. Foley*, 295 F.3d 745, 747-48 (7th Cir. 2002)).

*Henrichs v. Valley View Dev.*, 474 F.3d 609, 613-614 (9th Cir. Cal. 2007). As to the State defendants, plaintiff alleges that he was injured by the state court judgment he identifies in his complaint. As such, he is in the same situation as the plaintiff in *Noel* and his claim is barred by Rooker-Feldman.

## II. To the extent that plaintiff's claims are not barred by Rooker-Feldman, his claims are precluded by a prior state proceeding.

Plaintiff's claims against the State are barred by Rooker-Feldman. To the extent the court disagrees, plaintiff's claims are nonetheless barred by issue preclusion. Plaintiff's complaint establishes that he has already had an opportunity to litigate whether his arrest record should properly be sealed under ORS 137.225. He had the opportunity to appeal that matter to the Court of Appeals and Supreme Court of Oregon, and did so. Under Oregon law, issue and claim preclusion now bar his claims. Pursuant to the full faith and credit clause, 28 U.S.C. § 1738, federal courts give the same preclusive effect to state court judgments that would be



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afforded by the state. Therefore, plaintiff's claims are now barred by issue preclusion to the extent they are not barred by Rooker-Feldman.

In Oregon, "If a claim is litigated to final judgment, the decision on a particular issue or determinative fact is conclusive in a later or different action between the same parties if the determination was essential to the judgment." *North Clackamas School Dist. v. White*, 305 Or 48, 53 (1988) (citation omitted).

> Issue preclusion is a jurisprudential rule that promotes judicial efficiency. [*Nelson v. Emerald People's Utility Dist.*, 318 Or 99, 103, 862 P2d 1293 (1993)]. (citing *State v. Ratliff*, 304 Or 254, 257, 744 P2d 247 (1987)). In *Nelson*, the court identified five requirements essential to the application of issue preclusion: (1) "the issue in the two proceedings is identical"; (2) the issue actually was "litigated and was essential to a final decision on the merits in the prior proceeding"; (3) "the party sought to be precluded has had a full and fair opportunity to be heard on that issue"; (4) "the party sought to be precluded was a party or was in privity with a party to the prior proceeding"; and (5) "the prior proceeding was the type of proceeding to which this court will give preclusive effect." *Id.* at 104.

*Barackman v. Anderson*, 338 Or 365, 368 (2005). The application of those five factors indicates that the doctrine of issue preclusion bars plaintiff's section 1983 and unlawful imprisonment claims. The issue is the same, in that the issue is whether plaintiff's arrest record is properly sealed under ORS 137.225. That issue was decided in the prior proceeding. *E.g.* Complaint at ¶ 4. Plaintiff was heard on the issue and had the opportunity to appeal. *Id.* He was a party in the prior proceeding, and the judicial proceeding is of the type given preclusive effect. *State v. Stanford*, 111 Or. App. 509 (1992). Accordingly, as the issue of whether he was entitled to relief in the state proceeding was conclusively decided against him, his claims are now barred by issue preclusion.

### III. The State—including State Departments and Agencies—and State officials in their official capacities are not "persons" for purposes of plaintiff's § 1983 claim for damages

Under 42 U.S.C. § 1983, only "persons" may be found liable on § 1983 suits seeking money damages. The seminal case defining "persons" for purposes of the statute is *Will v. Mich.*



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*Dep't of State Police,* 491 U.S. 58, 109 S. Ct. 2304, 105 L. Ed. 2d 45 (1989). *Will* and subsequent cases have held that states, state agencies, and state officials in their official capacities are not "persons" within the meaning of § 1983 for damages suits. For example, in *Howlett v. Rose*, 496 U.S. 356, 110 S. Ct. 2430, 110 L. Ed. 2d 332 (1990), the Court affirmed *Will* and its holding that "an entity with Eleventh Amendment Immunity is not a 'person' within the meaning of § 1983." 496 U.S. at 365. The Court also reiterated that "the State and arms of the State, which have traditionally enjoyed Eleventh Amendment immunity, are not subject to suit under § 1983 in either federal court or state court." *Id.*

In a case from the Ninth Circuit that followed *Howlett*, the court considered whether the district court had properly dismissed a § 1983 claim for injunctive relief against the State of Arizona and the Arizona Department of Corrections. The Ninth Circuit affirmed the lower court decision, holding that state agencies are not "persons" under § 1983 for purposes of injunctive relief:

> The district court correctly dismissed the section 1983 action against the state of Arizona because a state is not a "person" for purposes of section 1983. [*citing Will*, 491 U.S. at 71]. Likewise "arms of the State" such as the Arizona Department of Corrections are not "persons" under section 1983. *Id.* at 70.
>
> We also affirm the district court's decision that it had jurisdiction to award prospective relief under section 1983 against the state officials in their official capacities.

*Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320, 1327-1328 (9th Cir. 1991) (additional citations omitted). *Will*, *Howlett*, and *Gilbreath* clearly establish that neither the State nor Hardy Myers in his official capacity is a "person" for the purposes of plaintiff's damages claim.[2] Accordingly, the State of Oregon and Hardy Myers is entitled to summary judgment on plaintiff's 42 U.S.C. § 1983 claim seeking damages for violation of his civil rights.

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[2] *See also Santiago v. NYS Dep't of Correctional Services*, 945 F.2d 25, 32 (2d Cir. 1991); *Kentucky v. Graham*, 473 U.S. 159, 167 n. 14 (1985) ("Unless a State has waived its Eleventh Amendment immunity or Congress has overridden it, however, a State cannot be sued directly in its own name regardless of the relief sought. *See also Alabama v. Pugh*, 438 U.S. 781 (1978) (*per curiam).*



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## IV. The State—including State Departments, Agencies, and officials acting in their official capacity—enjoys sovereign immunity from suit on plaintiff's claim for damages.

Under the Eleventh Amendment, a state is immune from private suits for damages in federal court unless it has consented to suit or unless Congress has abrogated state immunity through its power to enforce the Fourteenth Amendment. *College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 114 L. Ed. 2d 605 (1999); *Cory v. White*, 457 U.S. 85, 90-91, 102 S. Ct. 2485, 73 L.Ed.2d 74 (1982), citing *Edelman v. Jordan*, 415 U.S. 651, 662-63 94 S. Ct. 1347, 39 L.Ed.2d 662 (1974).

The Eleventh Amendment bars the federal court from hearing claims by a citizen against dependent instrumentalities of a state, and agents of states acting within the course and scope of their official duties. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100, 104 S. Ct. 900, 907, 79 L.Ed.2d 67 (1984); *Cerrato v. San Francisco Community College District*, 26 F.3d 968, 972 (9th Cir. 1994).

Plaintiff cannot evade the Eleventh Amendment, because the State of Oregon's sovereign immunity has not been waived or been abrogated by Congress as to plaintiff's state law claims. The State of Oregon, including Hardy Myers in his official capacity, is immune from suit on plaintiff's claims. Therefore, the Court lacks subject matter jurisdiction on plaintiff's claims against the State, and those claims are properly dismissed as a matter of law.

## V. Plaintiff has failed to state a valid *Ex Parte Young* action against defendant Myers and cannot pursue his claim for equitable relief against the State directly.

Liberally read, plaintiff's complaint asserts a § 1983 claim for injunctive relief against defendant Myers in defendant Myers' official capacity. Accordingly, the complaint seeks to utilize the *Ex Parte Young*, 209 U.S. 123, 28 S. Ct. 441, 52 L. Ed. 714 (1908), exception to sovereign immunity. As the Ninth Circuit recently explained, *Ex Parte Young* can be used to require state officers to conform their future behavior to federal law:



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> The Supreme Court in *Ex parte Young* held that a federal court could enjoin a state officer to conform his future behavior to federal law. 209 U.S. at 159-60. *Ex parte Young* created an exception to the Eleventh Amendment by holding that a state official who acts unconstitutionally is "stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct" because the State could not grant immunity for such an act. *Id.* at 160. Decades later, in *Edelman v. Jordan*, 415 U.S. 651, 94 S. Ct. 1347, 39 L. Ed. 2d 662 (1974), the Court limited the scope of *Ex Parte Young*'s exception to prospective equitable relief and state funds "ancillary" to such relief; the Eleventh Amendment bars retroactive compensation to plaintiffs from State funds. *Id.* at 663-69.

*Suever v. Connell*, 439 F.3d 1142, 1148 (9th Cir. Cal. 2006). *Ex Parte Young* cannot be used to force a state official to comply with state law. *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 105-06, 104 S. Ct. 900, 79 L. Ed. 2d 67 (1984). In sum, *Ex Parte Young* allows a plaintiff to obtain prospective relief from action by a state official that violates one or more of plaintiff's federal rights. *See also Pennhurst State Sch. & Hosp.* 465 U.S. at 103.

Plaintiff does not allege that defendant Myers has engaged in any action that violates one of plaintiff's federal rights. Accordingly, plaintiff has failed to state a valid claim for relief under an *Ex Parte Young* theory as to Defendant Myers.

**VI. Plaintiff cannot use § 1983 to force the State to comply with State Law**

To the extent plaintiff's complaint can be read as seeking relief under § 1983 for the state's alleged failure to comply with state law, including ORS 137.225, plaintiff's complaint fails to state a claim for relief. *Pennhurst State Sch. & Hosp.* 465 U.S. at 106 ("A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with the principles of federalism that underlie the Eleventh Amendment.").



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## VII. Plaintiff has failed to allege an equal protection or due process claim against Defendant Myers

Plaintiff has failed to allege any facts that, if true, demonstrate that Defendant Myers was somehow involved in violating plaintiff's right to equal protection or due process. Plaintiff's allegations regarding selective enforcement of laws by the City of Portland, the impropriety of a Washington State restraining order, and the actions of the State Court in the underlying proceeding under ORS 137.225 do not involve Defendant Myers. Moreover, plaintiff has not identified any source of authority that would allow Defendant Myers to provide plaintiff with any redress for plaintiff's alleged injuries.

## CONCLUSION

Plaintiff's complaint as to the State Defendants is barred by the Rooker-Feldman doctrine. To the extent any claims are not barred by Rooker-Feldman, they are barred because plaintiff has failed to state valid claims for relief against State Defendants, as set forth above.

DATED this 3 day of June, 2008.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I certify that on June 9, 2008, I served the foregoing MEMORANDUM IN SUPPORT OF MOTION TO DISMISS upon the parties hereto by the method indicated below, and addressed to the following:

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