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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

BRIAN P. CARR,

Civil No. 08-398-HA

PLAINTIFF,

v.

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 for the City of Portland,

**DEFENDANT CITY OF PORTLAND'S
RESPONSE IN OPPOSITION TO
PLAINTIFF'S MOTION TO AMEND
COMPLAINT**

DEFENDANTS.

Defendant City of Portland through Linda Meng in her official capacity as City Attorney (“the City”) files this Memorandum in Opposition to Plaintiff’s Motion to Amend Complaint. Plaintiff filed this action on March 31, 2008, alleging a variety of claims. All of the claims in plaintiff’s complaint stemmed from his arrest in Portland on November 5, 2004, for violation of a civil restraining order issued in the State of Washington. Complaint, ¶¶ 1-3.

On June 3, 2008, the City filed a dispositive motion to dismiss pursuant to Fed R Civ Pro 12(b)(6), as did co-defendant State of Oregon. Those motions are currently under submission

before the Court.

Plaintiff's "Proposed Supplement to Complaint" seeks to state additional claims arising out of an incident occurring *after* plaintiff filed his initial complaint and completely unrelated to his arrest in 2004 for violation of the restraining order. Specifically, plaintiff seeks to assert claims arising from his vehicle having been towed and impounded in April 2008. Proposed Supplement to Complaint at ¶¶ 66-67.

Plaintiff's claims stemming from the towing of his vehicle in 2008 are completely unrelated to the claims stemming from his arrest in 2004. As demonstrated below, the motion for leave to amend would result in undue delay and prejudice to the City (and the State), and leave to amend should be denied. Plaintiff may file a new action for the 2008 towing of his vehicle, should he wish to pursue those claims.

Rule 15(a) of the Federal Rules of Civil Procedure provides that permission to amend a complaint "shall be freely given when justice so requires." As one federal district court recently observed, "Underlying this rule is an assumption that the amended complaint will clarify or amplify the original cause of action." *Nelson v. Lantz*, 2006 WL 1171963 (D Conn 2006). It is appropriate to deny leave to amend where the new claim sought to be added "does not clarify or amplify the claims in the operative complaint. . . ." *Id.*; accord *Wishon v. Gammon*, 978 F 2d 446, 448 (8th Cir 1992)(no abuse of discretion to deny leave to amend to add unrelated claim where plaintiff could raise that claim in separate action); *Garrison v. Davis*, 2008 WL 1990786 (ED Mich 2008)(denying leave to amend to add claim based on occurrences not related to original claims).

Allowing plaintiff's "Proposed Supplement to Complaint" would result in undue delay in the resolution of this action and prejudice to defendants, particularly in light of the pending dispositive motions. Plaintiff will not be prejudiced by denial of leave to amend because he can bring his proposed additional claims in another action. *Nelson v. Lantz*, 2006 WL 1171963 (D Conn 2006).

This Court should accordingly exercise its discretion to deny the motion.

Dated this 13th day of August, 2008.

Respectfully submitted,

/s/ Tracy Pool Reeve

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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANT CITY OF PORTLAND'S
RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT on:

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on August 13, 2008, by causing a full, true and correct copy thereof, addressed to the last-known address (or fax number) of said *pro se* plaintiff and said attorney, to be sent by the following method(s):

- to Plaintiff by **mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal Service in Portland, Oregon.
- by **hand-delivery**.
- by **email** pursuant to LR 5.2(b) and/or in accordance with the Court's April 29, 2008, order (docket No. 10).
- by **facsimile transmission**.

/s/ Tracy Pool Reeve
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