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Attorneys for Defendant State of Oregon and Hardy Myers

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

BRIAN P. CARR,

Plaintiff,

v.

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.

Case No. 3:08-cv-0398-HA

RESPONSE TO MOTION FOR LEAVE TO
FILE AMENDED COMPLAINT

Plaintiff seeks leave to file an amended complaint. Plaintiff's original complaint alleges a violation of his constitutional rights because of an alleged failure to expunge his arrest record. Plaintiff now seeks leave to add a claim solely against the City of Portland based on an issue involving parking tickets. Plaintiff's motion should be denied for the reasons that follow.

Plaintiff is required to seek leave to amend his Complaint before adding new claims, and follow the rules for doing so. Fed. R. Civ. P. 15(a); *see also Pickern v. Pier I Imports (U.S.), Inc.*,

457 F.3d 963, 968-69 (9th Cir. 2006) (plaintiff may not add new claims in response to motion for summary judgment). Where, as here, a proposed amendment would be futile or involves bad faith, undue delay, or prejudice to the opposing party, denial of leave to amend is justified. *Western Shoshone Nat. Council v. Molini*, 951 F.2d 200, 204 (9th Cir. 1991), *cert. den.*, 506 U.S. 822, 121 L. Ed. 2d 39, 113 S. Ct. 74 (1992). The matter is within the discretion of the district court. *Id.*

Denial of a motion for leave to amend is appropriate where

“the time and expense of continued litigation on a new theory, with the possibility of additional discovery, would cause undue prejudice.” 866 F.2d at 1161 (internal quotations omitted); *see also M/V American Queen v. San Diego Marine Construction Corp.*, 708 F.2d 1483, 1492 (9th Cir. 1983) (denial of motion to amend upheld where new allegations based on facts moving party already knew would totally alter basis of action and necessitate additional discovery).

Western Shoshone Nat., 951 F.2d at 204.

Defendants have filed a dispositive motion in response to plaintiff's complaint. In that complaint, plaintiff raises issues having nothing to do with the issues raised in his proposed amendment. Allowing the amendment would cause undue delay and is futile as to the State of Oregon, as plaintiff does not seek to add any claims against it or against Hardy Myers, Attorney General of the State of Oregon. Plaintiff's request should be denied.

DATED this 13 day of August, 2008.

Respectfully submitted,

HARDY MYERS
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1 **CERTIFICATE OF SERVICE**

2 I certify that on August 13, 2008, I served the foregoing RESPONSE TO MOTION
3 FOR LEAVE TO FILE AMENDED COMPLAINT upon the parties hereto by the method
4 indicated below, and addressed to the following:

5 Brian Carr
6 11301 NE 7th Street, Apt J5
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11 1221 SW 4th Ave Ste 430
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Of Attorneys for Linda Meng and the
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