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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC., a
non-profit public benefit corporation,

Plaintiff,

v.

OREGON HEALTH & SCIENCE
UNIVERSITY, a public corporation,

Defendant.

Case No. 20CV15874

**PLAINTIFF’S MOTION FOR LEAVE
TO FILE THIRD AMENDED
COMPLAINT**

UTCR 5.010 CERTIFICATION

Counsel for Plaintiff People for the Ethical Treatment of Animals, Inc. (“PETA”) certifies that the parties conferred but were unable to fully resolve their dispute with respect to the issues presented by this motion. Specifically, Defendant Oregon Health & Science University (“OHSU”) does not oppose PETA’s request to amend the complaint to add PETA’s proposed new Fourth Claim for Relief. However, OHSU opposes PETA’s request to add its proposed new Fifth Claim for Relief (ORS 181A.250).

I. MOTION

Pursuant to ORCP 23 A, Plaintiff PETA respectfully moves for leave to file a Third Amended Complaint that adds two new claims and relevant supporting allegations. The proposed

1 Third Amended Complaint, which is attached in the UTCR-required format, would add the
2 following two claims:

- 3 • A **Fourth Claim for Relief** alleging additional violations of the Oregon Public Records
4 Law (OPRL) arising out of the same public records requests already at issue. This claim
5 arises out of OHSU's withholding of hundreds of responsive photographs for
6 approximately three years, which an OHSU witness revealed only recently during a
7 deposition in this case.
- 8 • A **Fifth Claim for Relief** alleging violations of ORS 181A.250, a statute that prohibits
9 law enforcement from collecting information on an organization's political or social
10 views or activities except in the course of a properly supported criminal investigation.
11 Again, the amendment is based on discovery recently provided by OHSU in this case,
12 which reveals that OHSU's police force routinely engages in the unlawful collection of
13 information on PETA's political and social views and activities.

14 OHSU does not oppose the addition of the new Fourth Claim for Relief, and PETA therefore
15 does not address it in this motion because the requirements of ORCP 23A have already been
16 satisfied as to that claim. *See* ORCP 23A (allowing amendment with either leave of court or
17 opposing party's consent). However, OHSU opposes the addition of the new Fifth Claim for
18 Relief, and PETA addresses that claim below.

19 **II. MEMORANDUM**

20 The Court should grant PETA leave to file its proposed Third Amended Complaint in
21 full, including the new Fifth Claim for Relief to which OHSU objects. Courts ordinarily should
22 grant leave to amend liberally, and leave is well justified in this case.

23 The Court has broad discretion to grant leave to amend. *Crandon Capital Partners v.*
24 *Shelk*, 219 Or App 16, 40 (2008). Leave to amend "shall be freely given when justice so
25 requires." ORCP 23A. A trial court evaluating a request for leave to amend should consider four
factors: "(1) the nature of the proposed amendments and their relationship to the existing
pleadings; (2) the prejudice, if any, to the opposing party; (3) the timing of the proposed

1 amendments and related docketing concerns; and (4) the colorable merit of the proposed
2 amendment.” *Herinckx v. Sanelle*, 281 Or App 869, 879 (2016). In this case, each of those
3 factors supports granting PETA’s request for leave to add the new Fifth Claim for Relief.

4 **A. The Proposed Amendment Relates Closely to PETA’s Existing Claims.**

5 First, the proposed Fifth Claim for Relief relates closely to the issues that are already at
6 the heart of this case—namely, OHSU’s unlawful, discriminatory treatment of PETA based on
7 its disagreement with PETA’s constitutionally protected viewpoint.

8
9 As noted briefly above, PETA’s proposed Fifth Claim for Relief would seek declaratory
10 and injunctive relief based on OHSU Police’s apparently routine monitoring of PETA’s
11 protected political and social views and activities—monitoring activity that clearly violates ORS
12 181A.250. OHSU’s unlawful monitoring of PETA is consistent with, and builds on, the
13 allegations PETA is already litigating. From the outset of the operative Second Amended
14 Complaint, PETA alleges that OHSU has engaged in discriminatory tactics “motivated by
15 OHSU’s disagreement over PETA’s anticipated statements about the [public] records, or
16 statements made by PETA in the past about similar records.” (Compl. ¶¶ 1, 3.) PETA alleges that
17 OHSU intentionally deleted certain public records “to prevent PETA from advancing its
18 constitutionally protected viewpoint,” and that OHSU unlawfully and unconstitutionally acted
19 with animus towards PETA “based on the content and viewpoint expressed by the requester’s
20 speech.” (*See, e.g., id.* ¶¶ 7, 67-68.)

21
22 The new Fifth Claim for Relief is directly related to those existing allegations of OHSU’s
23 unlawful animus towards PETA. Specifically, in unlawfully collecting near-daily “threat”
24 assessments that describe PETA’s protected speech as “extremism” or worse, OHSU’s conduct
25 evidences precisely the form of animus that PETA already has alleged in the Second Amended

1 Complaint. Indeed, because it is strong evidence of an institutional animus towards PETA—the
2 same animus that motivates OHSU’s unlawful handling of PETA’s public records requests—this
3 new evidence of OHSU’s routine violation of ORS 181A.250 is already relevant to the existing
4 claims in the Second Amended Complaint, and PETA would introduce it at trial in any event.
5 For that reason, it is not only appropriate but also efficient to allow PETA to amend the
6 complaint to add a freestanding claim based on OHSU’s violations of ORS 181A.250.

7
8 **B. There is Little to No Prejudice to OHSU.**

9 Second, little to no prejudice to OHSU would result from allowing PETA to add its
10 proposed Fifth Claim for Relief.

11 As discussed in the proposed new pleading itself, PETA’s new claim under ORS
12 181A.250 is based on (and could be proved by) discovery that OHSU already has produced. In
13 addition, because ORS 181A.250 focuses on whether *OHSU* unlawfully collected or maintained
14 information, any additional information needed to prove (or defend) the Fifth Claim for Relief is
15 already by definition within OHSU’s control.

16
17 PETA requested the discovery on which the new Fifth Claim is based some 10 months
18 ago, in October 2020—promptly after filing a First Amended Complaint based on OHSU’s
19 intentional deletion of the Vole Videos to prevent them from “falling into the wrong hands.”
20 OHSU refused to produce *any* documents in response to PETA’s October 2020 RFPs, forcing
21 PETA to file a motion to compel discovery. (*See* Pltf’s Mot. to Compel (Dec. 11, 2020).) OHSU
22 agreed to confer on search terms and begin producing documents in response to those RFPs only
23 in April 2021, some five to six months later, after the Court largely denied its dispositive
24 motions. Had OHSU timely complied with its RFPs, PETA would have obtained the relevant
25

1 information and could have filed its new Fifth Claim for Relief much sooner.¹ Accordingly, any
2 prejudice to OHSU from the timing of this amendment is due in no small part to OHSU’s own
3 decisions in this case, and this factor weighs in favor of allowing PETA’s amendment in full.

4 **C. The Proposed Amendment Leaves Ample Time Before Trial.**

5
6 Third, the proposed amendment leaves ample time to prepare the new Fifth Claim for
7 Relief for the bench trial already scheduled for December 6-9, 2021.

8 As discussed below, PETA already has developed evidence of OHSU’s violation of ORS
9 181A.250 that would be sufficient to warrant declaratory and injunctive relief, meaning there is
10 no need for complicated or burdensome discovery on this topic. PETA anticipates pursuing
11 focused additional discovery on this topic, and there is both ample time to conduct that discovery
12 before December and ample time to try this relatively straightforward claim during the four trial
13 days the Court already has allotted.
14

15 **D. The Proposed Amendment is Both Well-Founded and Important.**

16 The new Fifth Claim for Relief is not only well-founded; it is important. PETA should be
17 permitted to amend its complaint to address the serious, ongoing misconduct of OHSU Police
18 that OHSU has revealed only recently through discovery in this litigation.
19

20 In discovery in this case, PETA learned that OHSU law enforcement² routinely and
21 unlawfully collects information on PETA’s protected speech activities—its political and social
22

23 ¹ While OHSU produced one email in April 2021 that—in retrospect—evidences the type
24 of unlawful information-collection on which PETA’s new Fifth Claim is based, PETA could not
25 have known until receiving OHSU’s extensive July 2021 document production that OHSU
Police were routinely engaged in this unlawful practice.

² Oregon law authorizes OHSU to maintain a police force with “all of the authority and
immunity of a municipal police department of this state.” *See* ORS 353.125.

1 commentary, public education and legislative advocacy activities—through a subscription to a
2 third-party “intelligence” service. That service provides near-daily “risk” and “threat”
3 assessments on PETA’s lawful, constitutionally protected speech activities, and OHSU Police
4 collect all that information in clear violation of Oregon law. As noted above, PETA intends to
5 introduce evidence of this unlawful practice in any event because it is relevant to PETA’s
6 existing claims of viewpoint discrimination. However, the Court should also permit PETA to
7 litigate its independent claim for relief under ORS 181A.250 so that the merits of OHSU Police’s
8 apparently unlawful practices can be promptly litigated and resolved.
9

10 **III. CONCLUSION**

11 For the foregoing reasons, the Court should exercise its broad discretion and grant PETA
12 leave to file its Third Amended Complaint in full.
13

14 Date: August 16, 2021.
15

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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I caused a true copy of the foregoing PLAINTIFF’S MOTION FOR
3 LEAVE TO FILE THIRD AMENDED COMPLAINT to be served on:

4 C. Robert Steringer
5 James E. Mountain, Jr.
6 Erica Tatoian
7 Harrang Long Gary Rudnick P.C.
8 1050 SW Sixth Avenue, Suite 1600
9 Portland, OR 97204-1116
10 bob.steringer@harrang.com
11 james.e.mountain@harrang.com
12 erica.tatoian@harrang.com

By hand delivery _____
By first-class mail* _____
x By email _____
By overnight mail _____
By facsimile transmission _____
Fax #: 503-241-1458 _____
Ph #: 503-242-0000 _____

10 Attorneys for Defendant

11 *With first-class postage prepaid and deposited in Portland, OR.

12 Date: August 16, 2021.

13
14 s/ Colin H. Hunter _____
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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC., a non-
profit public benefit corporation,

Plaintiff,

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OREGON HEALTH & SCIENCE
UNIVERSITY, a public corporation,

Defendant.

Case No. 20CV15874

***[SECOND]* ~~*THIRD*~~ AMENDED
COMPLAINT FOR INFRINGEMENT
OF THE OREGON AND UNITED
STATES CONSTITUTIONS AND
VIOLATIONS OF OREGON PUBLIC
RECORDS LAW AND FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

**NOT SUBJECT TO MANDATORY
ARBITRATION**

ORS 21.135(2)(a): \$281

In its latest attempt to stifle public criticism for wasteful and cruel experiments conducted on animals, Defendant Oregon Health & Science University (“OHSU”) has taken the extraordinary step of destroying public records to prevent them from falling into the hands of Plaintiff, People for the Ethical Treatment of Animals, Inc. (“PETA”), or other members of the public with whose viewpoints OHSU disagrees. This case thus presents important questions of discriminatory treatment prohibited by State and Federal Constitutional law, and OHSU’s obligation to assure equal and reasonable access to public records in its custody—regardless of a

PAGE 1 – ***[SECOND]* ~~*THIRD*~~ AMENDED COMPLAINT FOR INFRINGEMENT OF THE OREGON AND UNITED STATES CONSTITUTIONS AND VIOLATIONS OF OREGON PUBLIC RECORDS LAW AND FOR DECLARATORY AND INJUNCTIVE RELIEF**

1 requester’s views or anticipated criticisms about the matters contained in such records.
2 Specifically, in this action, PETA seeks declaratory and injunctive relief against OHSU to secure
3 PETA’s rights to Free Speech and Equal Protection under the Oregon and United States
4 Constitutions and for relief from violations of the Oregon Public Records Law (“OPRL”),
5 pursuant to ORS 28.010, ORS 192.407, and ORS 192.415(1)(b). **{In addition, PETA seeks**
6 **declaratory and injunctive relief prohibiting OHSU law enforcement from continuing to**
7 **unlawfully collect information on PETA’s protected speech activities in violation of ORS**
8 **181A.250.** In support of its Complaint, PETA alleges as follows:

10 INTRODUCTION

11 1.

12 At its core, the First Amendment forbids public entities such as OHSU from restricting
13 speech in ways that favor some viewpoints or ideas at the expense of others. Accordingly, OHSU
14 cannot suppress speech based on the speaker’s motivating ideology, opinion, or perspective.
15 When responding to public records requests, and in applying its records retention policies and
16 customs, OHSU’s disparate treatment of PETA has been deliberate, discriminatory, and without
17 sufficient constitutional justification. PETA therefore seeks relief from OHSU’s unlawful
18 conduct as well as for statutory penalties, arising from OHSU’s conduct in violation of the
19 Oregon and United States Constitutions{,} [and] the OPRL **{and Oregon statute prohibiting**
20 **law enforcement agencies from collecting or maintaining information on protected political**
21 **and advocacy activities.**

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25 PAGE 2 – [SECOND] **{THIRD}** AMENDED COMPLAINT FOR INFRINGEMENT OF THE
26 OREGON AND UNITED STATES CONSTITUTIONS AND VIOLATIONS OF
OREGON PUBLIC RECORDS LAW AND FOR DECLARATORY AND
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2.

OHSU has engaged in a pattern and practice to thwart PETA’s right to inspect public records in order to prevent PETA from exercising its constitutionally protected rights to publicize information contained in these records and to promote its opposition to OHSU’s experimentation on animals. Most recently, OHSU intentionally deleted videographic records of experiments carried out by OHSU researchers on prairie voles (the “Vole Videos”) funded by two National Institutes of Health (“NIH”) grants, and for months misled PETA about the records’ existence. Since PETA discovered OHSU’s unlawful destruction, OHSU has disavowed that it had any obligation to preserve the public records in question, effectively endorsing the position that its members – who are public employees – have discretion to destroy any such public records they wish to keep hidden.

3.

OHSU’s conduct was not only unlawful, in that it intentionally thwarted the public’s and PETA’s right to inspect public records, but also unconstitutional, in that OHSU deleted the records in question because it disagrees with the content of PETA’s speech. Indeed, internal OHSU emails show that—after PETA made public statements calling for an end to the animal experiments shown in the videos—OHSU’s researchers deleted the videos in order to ensure they would not “fall into the wrong hands.” Other evidence similarly shows that OHSU’s obstructionist tactics in responding to PETA’s past records requests were motivated by OHSU’s disagreement over PETA’s anticipated statements about the records, or statements made by PETA in the past about similar records.

PAGE 3 – [SECOND] **{THIRD}** AMENDED COMPLAINT FOR INFRINGEMENT OF THE OREGON AND UNITED STATES CONSTITUTIONS AND VIOLATIONS OF OREGON PUBLIC RECORDS LAW AND FOR DECLARATORY AND INJUNCTIVE RELIEF

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4.

As a public body subject to the public records laws, OHSU must make public records reasonably available for the public to inspect. In addition, as a public body subject to the state and federal constitutions' guarantees of free speech and equal protection, OHSU cannot constitutionally discriminate (or retaliate) against public records requesters based on their viewpoints—that is to say, the content of their speech.

5.

By intentionally deleting the Vole Videos to prevent PETA from obtaining them, OHSU has violated both the law and the state and federal constitutions. And, unless this Court intervenes, there is every reason to believe OHSU will do so again, preventing PETA (and the public) from learning about, or debating, the contents of thousands of additional videos depicting animal experiments that OHSU is currently withholding pursuant to exemptions in the public records laws. Judicial relief is necessary both to protect PETA's rights in this case and essential to ensure the public can meaningfully scrutinize the conduct of its government in every such case.

6.

PETA seeks an order requiring OHSU to produce the Vole Videos in accordance with OHSU's obligations under the OPRL including, to the extent necessary, an order compelling OHSU to make an appropriate search for copies of the Vole Videos that may still exist, and/or to determine whether the deleted Videos may be restored, and to produce such records to the extent they may be restored and/or located. In any event, PETA seeks a declaration that OHSU's failure

PAGE 4 – [SECOND] **{THIRD}** AMENDED COMPLAINT FOR INFRINGEMENT OF THE OREGON AND UNITED STATES CONSTITUTIONS AND VIOLATIONS OF OREGON PUBLIC RECORDS LAW AND FOR DECLARATORY AND INJUNCTIVE RELIEF

1 to make the Vole Videos reasonably available for inspection and its intentional deletion of the
2 Vole Videos violate the OPRL.

3 7.

4 Because OHSU intentionally deleted these public records to prevent PETA from
5 advancing its constitutionally protected viewpoint, PETA also seeks a declaration that OHSU's
6 conduct violated the Oregon and United States Constitutions.

7
8 **{8.}**

9 **{During the course of this litigation, PETA discovered that OHSU failed to produce**
10 **hundreds of photographs that were responsive to its public records requests—photographs**
11 **that OHSU previously represented did not exist. Despite making *three* public records**
12 **requests seeking photographs related to OHSU's experiments on prairie voles and other**
13 **rodents, it was not until three years later—in response to questions asked during a**
14 **deposition in this matter—that the lead experimenter revealed the existence of these**
15 **photographs (the “Responsive Photographs”), along with the existence of three additional**
16 **storage drives that contained responsive image data. While OHSU has now belatedly**
17 **produced these materials in response to PETA's demand, the Court should award**
18 **statutory penalties under ORS 192.407 for OHSU's obstructive conduct and extremely**
19 **unreasonable, undue delay in providing these public records.}**
20

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25 PAGE 5 – [SECOND] **{THIRD}** AMENDED COMPLAINT FOR INFRINGEMENT OF THE
26 OREGON AND UNITED STATES CONSTITUTIONS AND VIOLATIONS OF
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1 **PARTIES**

2 [8.] {**9.**}

3 Plaintiff PETA is a not-for-profit public interest corporation formed under the laws of
4 Virginia and registered with the State of Oregon to conduct business as a foreign non-profit
5 corporation. PETA is dedicated to protecting animals, including those used in experimentation,
6 from abuse, neglect, and cruelty. PETA undertakes these efforts through, *inter alia*, news
7 dissemination campaigns, cruelty investigations, animal rescue, legislation, public education
8 efforts, and peaceful protest campaigns.
9

10 [9.] {**10.**}

11 Defendant OHSU is a public body located in Multnomah County, Oregon. Defendant is
12 subject to the OPRL pursuant to ORS 353.100(1).
13

14 **JURISDICTION AND VENUE**

15 [10.] {**11.**}

16 The Court has subject matter jurisdiction pursuant to ORS 28.010, ORS 192.411, ORS
17 192.415, and ORS 192.431.
18

19 [11.] {**12.**}

20 Venue is proper in this Court pursuant to ORS 192.415(1)(b) because Defendant is
21 located in Multnomah County.
22
23

24 //

25 //

1 the conduct of the public’s business” and are “owned, used, or retained” by the agency are public
2 records within the scope of the OPRL.

3 **OHSU’S OBLIGATION AND ADOPTION OF POLICY TO PRESERVE PUBLIC**
4 **RECORDS**

5 [17.] {**18.**}

6 A public entity’s obligation to preserve public records is mandated pursuant to the OPRL,
7 regulations promulgated by the Secretary of State, and criminal law. It is a crime to knowingly
8 destroy, conceal, remove, or falsely alter a public record without lawful authority. ORS 162.305.

9 [18.] {**19.**}

10 The preservation obligations under the OPRL requires each state agency and political
11 subdivision generally to retain public records. ORS 192.001. This general retention obligation
12 applies to OHSU because it is a public body. ORS 353.100(1) (“The provisions of ORS chapter[]
13 * * * 192 * * * apply to Oregon Health and Sciences University under the same terms as they
14 apply to public bodies other than the state.”).

15 [19.] {**20.**}

16 The preservation obligation applies to any record that (A) is prepared, owned, used or
17 retained by a state agency or public subdivision; (B) relates to an activity, transaction or function
18 of a state agency or political subdivision; and (C) is necessary to satisfy the fiscal, legal,
19 administrative or historical policies, requirements or needs of the state agency or political
20 subdivision. ORS 192.005.

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23 PAGE 8 – [SECOND] {**THIRD**} AMENDED COMPLAINT FOR INFRINGEMENT OF THE
24 OREGON AND UNITED STATES CONSTITUTIONS AND VIOLATIONS OF
25 OREGON PUBLIC RECORDS LAW AND FOR DECLARATORY AND
26 INJUNCTIVE RELIEF

1 [20.] {21.}

2 Consistent with the OPRL and regulations promulgated thereunder, OHSU implemented
3 a Records Retention Policy (“OSHU Policy”), which applies to all public records generated by
4 OHSU or an OHSU member “in any format,” expressly including video, “regardless of location
5 or ownership of the storage transmission or computer device.” The OHSU Policy specifically
6 acknowledges that “OHSU is subject to the Public Records Law,” that “any Record * * * may be
7 requested under the law,” and that “[a]ny OHSU Member may be required to provide Record(s)
8 if a valid Public Records request is made and the record is relevant.” The OHSU Policy requires
9 each department or division to ensure its compliance with the retention schedule, including
10 ensuring each department is “maintaining Records for the length of time required * * * .”

12 [21.] {22.}

13 The OHSU Policy specifically provides that “[a]ll Records created by OHSU and/or
14 OHSU Members are OHSU Records and OHSU property.” It also specifically requires each
15 department or division, in the course of determining “how [public] Records can be retrieved or
16 preserved,” to ensure that it “consider[s] locations inside and outside of OHSU where Records
17 might be kept * * * .”

19 [22.] {23.}

20 Under the OHSU Policy, “Research Services-NIH Grant Records” must be retained for
21 “3 years after the Final Status Report Has Been Filed.” To the extent it does not specify any
22 applicable retention period for a particular set of records, the OHSU Policy instructs that
23 “analogous provisions from the Oregon State Archivist’s general record retention rules may be
24

25 PAGE 9 – [SECOND] {THIRD} AMENDED COMPLAINT FOR INFRINGEMENT OF THE
26 OREGON AND UNITED STATES CONSTITUTIONS AND VIOLATIONS OF
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1 used for guidance.” The analogous provisions from the Oregon State Archivist’s general records
2 retention rules—those applicable to state universities’ retention of research materials—mandate
3 that research records for grant-funded projects, including but “not limited to research data * * *
4 and related documentation,” must be retained for “5 years after final financial report is submitted
5 and account is closed[.]”

6
7 **FACTUAL BACKGROUND**

8 [23.] {24.}

9 This case arises from a public records request by PETA under the OPRL for videos of
10 experiments on animals conducted by OHSU researchers pursuant to National Institutes of
11 Health (“NIH”) grants. The request sought video recordings of publicly-funded experiments on
12 prairie voles (the “Vole Videos”). This case seeks relief to declare that OHSU’s intentional
13 destruction of the Vole Videos violated the OPRL and PETA’s rights under the Oregon and U.S.
14 Constitutions.

15
16 {25.}

17 **{During the course of this litigation, PETA discovered that OHSU withheld**
18 **hundreds of photographs of experiments on prairie voles and other rodents that were**
19 **responsive to PETA’s public records request and two other related requests made three**
20 **years ago. PETA seeks statutory penalties for OHSU’s undue delay in providing these**
21 **public records.**

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25 PAGE 10 – [SECOND] {**THIRD**} AMENDED COMPLAINT FOR INFRINGEMENT OF THE
26 OREGON AND UNITED STATES CONSTITUTIONS AND VIOLATIONS OF
OREGON PUBLIC RECORDS LAW AND FOR DECLARATORY AND
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1 [28.] {30.}

2 Pursuant to the terms of the aforementioned NIH grants, Ryabinin and Walcott prepared,
3 and then viewed and analyzed, the Vole Videos—video recordings of prairie voles while the
4 voles underwent behavioral tests under the influence of alcohol.

5 [29.] {31.}

6 At the time the Vole Videos were recorded, the voles were located at the Portland VAMC
7 Veterinary Medical Unit (“VAMC”), 3710 SW U.S. Veterans Hospital Road, Portland, Oregon.
8 After the experiments concluded, the Vole Videos were taken to Ryabinin’s laboratory at OHSU
9 for analysis.
10

11 [30.] {32.}

12 On November 17, 2017, Walcott and Ryabinin published the results of their Vole Video
13 analysis in an article titled Alcohol’s Effects on Pair-Bond Maintenance in Male Prairie Voles,
14 in *Frontiers of Psychiatry* (the “Voles Article”).
15

16 [31.] {33.}

17 Following publication of the Voles Article, PETA issued a press release on November 29
18 sharply criticizing OHSU’s research on voles (“University Faces Flak Over Deadly Taxpayer-Funded
19 Experiments on Voles”). PETA also published a blog post on its widely-viewed website criticizing
20 the vole research (“Voles Fed Alcohol, Killed in Dumb Experiment Studying Why Drunk Men
21 Cheat”) and calling on OHSU to terminate all such research in the future. PETA scientists
22 simultaneously sent a letter to OHSU’s internal animal care and use committee challenging the
23 integrity and validity of the voles study and calling for an end to such studies in the future.
24

25 PAGE 12 – [SECOND] {THIRD} AMENDED COMPLAINT FOR INFRINGEMENT OF THE
26 OREGON AND UNITED STATES CONSTITUTIONS AND VIOLATIONS OF
OREGON PUBLIC RECORDS LAW AND FOR DECLARATORY AND
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1 [32.] {34.}

2 PETA’s public criticism of the vole studies—and the press attention it generated in *The*
3 *Oregonian*—caused OHSU to strategize internally, including with Ryabinin himself, on the specific
4 subject of how to respond to PETA’s criticism. Among other things, in response to PETA’s criticism,
5 OHSU assured the public that its experiments were valuable and followed all applicable regulations
6 and protocols—two claims that notably the public could only assess by obtaining access to the Vole
7 Videos.

8 **II. PETA’S REQUESTS FOR THE VOLE VIDEOS**

9 [33.] {35.}

10 On January 22, 2018, PETA submitted a public records request to OHSU seeking “copies
11 of all records associated with ongoing, completed, and/or planned studies for which Andrey E.
12 Ryabinin was the Principal Investigator (PI) or co-PI” from January 2016 to the date of the request.
13 The request sought (but was expressly not limited to) any protocols for such studies approved by
14 OHSU’s Institutional Animal Care and Use as well as any photographic or videographic records
15 associated with such protocols.
16

17 [34.] {36.}

18 Upon receiving the request, Ryabinin acknowledged internally that PETA was “most
19 likely target[ing] me for my work with prairie voles.” And, in fact, videos **and photographs** of
20 both Ryabinin’s vole experiments (the Vole Videos), as well as numerous videos of certain
21 experiments Ryabinin conducted on mice, were responsive to PETA’s request.
22

1 [35.] {37.}

2 Nonetheless, beginning in February 2018, OHSU misled PETA by claiming no
3 responsive photographs or videos existed in response to PETA’s request, forcing PETA to
4 submit two additional public records requests (in July and August 2018) specifically seeking any
5 photographs or videos of the vole experiments. In response to PETA’s second (July) request,
6 Ryabinin incorrectly identified only videos of mice experiments as responsive.
7

8 [36.] {38.}

9 Because OHSU still had failed to produce or even acknowledge the existence of the Vole
10 Videos, on August 15, 2018, PETA submitted yet another request to OHSU for “copies of
11 photographs and videos captured as part of the experiments reported in the paper, ‘Alcohol’s
12 effects on pair bond maintenance in male prairie voles,’” published by Walcott and Ryabinin in
13 November 2017, as well as other videos.
14

15 [37.] {39.}

16 In response to PETA’s third request, OHSU belatedly produced videos of Ryabinin’s
17 mice experiments, but still did not provide the Vole Videos referenced in the Voles Article {**or**
18 **any photographs**}. Therefore, on October 19, 2018, PETA’s Dr. Alka Chandna wrote to OHSU
19 to question OHSU’s assertion that “no responsive documents were identified,” given that the
20 Voles Article explicitly referenced videos of experiments that would have been responsive to
21 PETA’s request.
22

23 //

24 //

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1 [38.]{40.}

2 On October 22, 2018, OHSU responded that “Ryabinin confirmed the videos of resident-
3 intruder test (as well as the partner preference test) are not available because these experiments
4 were performed at the Veterans Administration Hospital.” OHSU falsely claimed that “[t]he
5 videos are the property of VA Hospital and the VA Hospital is the custodian of such videos, not
6 OHSU. The VA Hospital does not allow distribution of videos taken within the VA Hospital.” In
7 truth, the VAMC did not have custody of the videos and its policy against video recording
8 expressly exempts videos taken for research purposes. Ryabinin even obtained express written
9 permission from the VAMC to record the Voles Videos.
10

11 [39.] {41.}

12 In responding to PETA’s third request for the Voles Videos, OHSU still did not disclose
13 that they were kept at Ryabinin’s laboratory at OSHU, nor that they were destroyed while in
14 OHSU’s custody and (as of October 22, 2018) no longer existed. Rather, OHSU directed PETA
15 to request them from the VAMC’s Freedom of Information Act (“FOIA”) coordinator.
16

17 [40.] {42.}

18 Pursuant to OHSU’s guidance, on October 29, 2018, PETA contacted the VAMC’s FOIA
19 coordinator and requested copies of all “videos captured as part of experiments” reported in the
20 Voles Article.
21

22 [41.]{43.}

23 On November 9, 2018, the VAMC informed PETA that Ryabinin (who “is not a VA
24 employee”) had responded that “the video data were destroyed.”
25

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1 [42.] {44.}

2 In fact, Ryabinin’s emails reveal that he decided to destroy the Vole Videos at some point
3 after publication of the Voles Article in order to ensure the videos “would not fall into wrong
4 hands.” Upon information and belief, even though Ryabinin’s research pursuant to the NIH
5 grants is ongoing and planned in the future, copies of the Vole Videos were destroyed with
6 Ryabinin’s knowledge and/or at his request sometime after PETA published a scathing critique
7 of Ryabinin’s vole experiments and called for an end to his research on voles. OHSU has since
8 ratified Ryabinin’s conduct by contending he had no obligation to preserve the records.
9

10 [43.] {45.}

11 OHSU researchers testified at a recent trial involving videographic records of animal
12 experiments that such records are of great value for OHSU’s ongoing and future research efforts.
13 In light of this testimony, and upon information and belief, and given Ryabinin’s own frank
14 admission, it is likely that OHSU destroyed the Vole Videos not because OHSU perceived they
15 lacked further value, but rather to prevent them from falling into the hands of PETA—with
16 whose viewpoint and First Amendment activities OHSU disagrees.
17

18 [44.] {46.}

19 Throughout the process of OHSU’s response to PETA’s public records requests,
20 Ryabinin demonstrated opposition to releasing records to PETA based not on any legitimate
21 statutory consideration under the OPRL, or rational reason from deviating from OHSU Policy
22 and customs, but rather due to his disagreement with PETA’s message and anticipated use of the
23 videos. For example, despite recognizing the responsiveness of certain mice videos, he suggested
24

1 that OHSU’s response should be informed by the fact that it was PETA that had requested the
2 videos. Specifically, Ryabinin wrote that he “ha[d] no problems sharing this video with lay
3 audience. However, of course I worry that PETA might want to manipulate the video to distort
4 what is shown.” On that basis, he suggested that—despite the videos’ acknowledged
5 responsiveness to PETA’s request—OHSU’s public records coordinator should “evaluate
6 whether it is appropriate for me to provide these videos.” He later added that, because he
7 considered the mice videos “benign,” he had “no specific concerns with the release of the videos,
8 except PETA’s reputation of distorting facts.”
9

10 [45.] {47.}

11 After the VAMC ultimately declined to renew the protocol for Ryabinin’s vole
12 experiments, Ryabinin expressed animus towards PETA, writing to VAMC officials that he
13 believed the “popularity” of his work had “attracted the attention of PETA, an organization
14 known to distort information to discredit important research performed in laboratory animals.”
15 Ryabinin further informed the VAMC that he “underst[ood] the unpleasantness of dealing with
16 this organization.” He also expressed “worr[y] that discontinuing a research direction due to
17 inquiry from PETA will send a wrong message to PETA and its supporters.”
18

19 **III. PETA’S PETITION TO THE DISTRICT ATTORNEY**

20 [46.] {48.}

21 On April 13, 2020, PETA filed a petition to review OHSU’s effective denial of PETA’s
22 public records request for the Vole Videos with the District Attorney for Multnomah County
23 pursuant to ORS 192.411 and ORS 192.415(1)(a) (the “Petition”).
24

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1 [47.] {49.}

2 The District Attorney acknowledged receipt of the Petition on April 13, 2020, and on the
3 same day requested information from OHSU regarding the Petition.

4 [48.] {50.}

5 As of the filing of the initial complaint on April 21, 2020, the District Attorney had not
6 issued an order under ORS 192.415 with respect to PETA's Petition. Pursuant to ORS
7 192.418(1), the failure of the District Attorney to issue an order denying, granting, or denying in
8 part or granting in part a petition within seven days from the day of receipt of the petition shall
9 be treated as an order denying the petition for the purpose of determining whether a person may
10 institute proceedings for injunctive or declaratory relief under the OPRL.
11

12 **IV. PETA'S SUIT TO OBTAIN THE PRIMATE VIDEOS**

13 [49.] {51.}

14 OHSU's actions regarding the Vole Videos are of particular significance when seen in
15 the context of other requests by PETA involving video recordings of OHSU's experiments on
16 animals. Beginning on November 6, 2017, PETA submitted a series of public records requests to
17 OHSU seeking copies of the Primate Videos carried out with NIH funding at OHSU's Oregon
18 National Primate Research Center. OHSU denied those requests, asserting several exemptions
19 under the OPRL, and PETA ultimately filed suit to force the videos' disclosure.
20

21 [50.] {52.}

22 Most relevantly, OHSU asserted that it was entitled to withhold the Primate Videos from
23 public disclosure in their entirety pursuant to the OPRL's "faculty research" exemption, which
24

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1 allows a public body to withhold “[w]ritings prepared by or under the direction of faculty of
2 public educational institutions, in connection with research, until publicly released, copyrighted
3 or patented,” unless “the public interest requires disclosure in the particular instance.”

4 [51.] {53.}

5 During litigation regarding PETA’s request for the Primate Videos, OHSU
6 representatives stated that they opposed PETA’s records request in part because they believed
7 PETA would use the videos to promote messages with which OHSU substantively disagrees—in
8 particular, messages that oppose animal experiments generally and that criticize OHSU
9 researchers’ experiments in particular.

11 [52.] {54.}

12 Following trial in March 2020, Judge David Rees of the Multnomah County Circuit
13 Court ordered OHSU to disclose 74 of the Primate Videos, reasoning that, whether or not the
14 faculty research exemption applied, the public interest required their disclosure both to ensure
15 OHSU’s compliance with animal welfare requirements and to understand whether OHSU’s
16 animal experiments are a “worthy use of public funds.”

18 [53.] {55.}

19 However, the Court concluded that several thousand additional Primate Videos were not
20 presently subject to disclosure because they had not yet been the subject of publication, and
21 therefore “currently” qualified for the faculty research exemption, but concluded that those
22 several thousand videos “may become subject to disclosure under the OPRL” in the future if and
23 when OHSU publishes analyses based on them or ceases using them in research.

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1 [54.] {56.}

2 Since OHSU's release of the 74 Primate Videos in accordance with the Court's judgment
3 in that case, PETA has disseminated relevant portions of those videos to the public and the
4 media, challenging the validity of the research along with messaging calling for an end to
5 primate experiments at OHSU.

6 [55.] {57.}

7 PETA fully intends to seek the remaining Primate Videos once the conditions identified
8 by Judge Rees are satisfied. However, based on OHSU's intentional destruction of the Vole
9 Videos and its express (but impermissible) position that OHSU members may deviate from
10 OHSU's Policy and destroy public records at their discretion, including when they disagree with
11 a requester's viewpoint or messaging, PETA has legitimate fears that the remaining Primate
12 Videos may be similarly destroyed before PETA has a reasonable opportunity to obtain them.
13 This would not only forever deprive PETA and other public records requesters of the statutory
14 right to inspect those videos, but would also deprive PETA and the public of the ability to
15 consider the information depicted in those videos in public discourse and policymaking
16 regarding animal experimentation.

17
18
19 V. **{OHSU ADMITS, ONE YEAR INTO THIS LITIGATION AND THREE**
20 **YEARS AFTER PETA'S REQUESTS, THAT ADDITIONAL RESPONSIVE**
21 **PUBLIC RECORDS EXIST.}**

22 {58.}

23 **{On June 18, 2021, in response to questions asked during his deposition in this case,**

24 **Ryabinin revealed for the first time the existence of hundreds of photographs of**

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1 experiments conducted on prairie voles and other rodents. These photographs were
2 responsive to the public records requests PETA made on January 22, 2018, July 16, 2018,
3 and August 15, 2018. Ryabinin further testified that, although he was aware that these
4 photographs existed at the time PETA made its public records requests, he did not provide
5 them because he assumed PETA was only interested in videos of his experiments, not these
6 photographs.

7
8 {59.}

9 {Following Ryabinin’s deposition, on June 30, 2021, PETA insisted that OHSU
10 produce the photographs Ryabinin identified as responsive to PETA’s public records
11 requests that had not been collected or produced. OHSU belatedly provided hundreds of
12 photographs in July 2021, more than three years after PETA initially requested them.}

13 VI. {FURTHER EVIDENCING OHSU’S ANIMUS TOWARD PETA, OHSU LAW
14 ENFORCEMENT UNLAWFULLY MONITORS PETA’S PROTECTED
15 SPEECH ACTIVITIES}

16 {60.}

17 {In addition to (and consistent with) its unlawful and unconstitutional response to
18 PETA’s public records requests, OHSU also has engaged, during this same timeframe in
19 the unlawful monitoring of PETA’s protected speech and political activities.}

20 {61.}

21 {Under ORS 181A.250, law enforcement agencies—including the OHSU Police—are
22 prohibited from collecting or maintaining information on a person or organization’s
23 political or social views, associations, or activities. Accordingly, OHSU’s unlawful
24

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1 monitoring of PETA’s activities is not only further evidence of OHSU’s animus towards
2 PETA and its protected viewpoint; it also constitutes actionable misconduct under Oregon
3 law for which declaratory and injunctive relief is independently warranted.}

4 {62.}

5 {Specifically, discovery in this case reveals that OHSU Police officers, including
6 OHSU Police Chief Heath Kula, have regularly collected and maintained information
7 about PETA’s political and advocacy activities by subscribing to intelligence-style updates
8 on PETA’s activities from a company called INA (“Information Network Associates”),
9 which bills itself as “offer[ing] premier investigative and security services to government
10 entities, private corporations and individuals across the globe.”}

12 {63.}

13 {At least three OHSU Police officers, including the Police Chief, subscribe to regular
14 INA updates on PETA’s political and advocacy activities, which are sent by INA’s director
15 of “Risk and Threat Intelligence.” The “intelligence” and “threat” updates collected and
16 maintained by OHSU Police have reported on PETA’s political and advocacy activities on
17 a near-daily basis. In addition, on information and belief, OHSU Police subscribes to and
18 receives periodical publications from INA, with names such as “Extremist Watch – Animal
19 Rights,” that similarly monitor and assess the “threat” posed by PETA’s protected political
20 and social views, associations, and activities.}

22 //

24 //

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{64.}

{The protected political and social conduct on which OHSU Police have regularly and unlawfully collected and maintained information include, to provide only a few examples, PETA’s publication of blog posts calling for an end to experiments on nonhuman primates; PETA’s publication on Facebook of materials detailing the inhumane treatment to which animals have been subjected in experimentation; PETA’s publication on Twitter of a video criticizing experimentation on an infant monkey at a public university; PETA’s publication of an article criticizing the use of animal experimentation by the National Institutes of Health; and PETA’s sending of letters demanding that COVID-19 precautions be implemented to protect the health of monkeys at federally-funded institutions.}

{65.}

{All of PETA’s activities on which OHSU Police collected and maintained “intelligence” and “threat” information are fully lawful, constitutionally protected activities, and OHSU Police neither had nor have any reasonable grounds on which to believe otherwise.}

CLAIMS FOR RELIEF

[56.] {66.}

A justiciable controversy presently exists between PETA and OHSU over (1) whether OHSU violated the OPRL by intentionally deleting the Vole Videos in order to prevent PETA from obtaining them, and by failing to make them reasonably available for public inspection; and (2) whether OHSU’s destruction of the Vole Videos to prevent PETA from obtaining them

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1 constitutes a violation of PETA’s rights to free speech and equal treatment under Article I,
2 Sections 8 and 20 of the Oregon Constitution and the First and Fourteenth Amendments to the
3 U.S. Constitution.

4 **FIRST CLAIM FOR RELIEF**
5 ***Declaratory Relief—Failure to Provide Records***

6 [57.] {**67.**}

7 The above paragraphs are hereby re-alleged and incorporated by reference.

8 [58.] {**68.**}

9 Plaintiff seeks declaratory relief pursuant to ORS 28.010 and ORS 192.415(1)(b).

10 [59.] {**69.**}

11 The Vole Videos are writings within the meaning of ORS 192.311(7) and public records
12 within the meaning of ORS 192.311(5)(a) because they relate to the conduct of the public’s
13 business, and because they were “prepared, owned, used or retained” by OHSU. ORS
14 192.311(5)(a).
15

16 [60.] {**70.**}

17 By destroying the Vole Videos, OHSU violated the OPRL’s requirement that public
18 records be made available for inspection pursuant to ORS 192.314, including the requirement
19 that it provide “proper and reasonable opportunities for inspection and examination of the
20 records” pursuant to ORS 192.318.
21

22 [61.] {**71.**}

23 The Vole Videos were improperly withheld because OHSU has not met, and cannot
24 meet, its burden to demonstrate that as of August 15, 2018, the Vole Videos were not within its
25

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1 custody, possession, or control. At minimum, OHSU cannot meet its burden to demonstrate that
2 the Vole Videos were not within its custody, possession, or control as of January 22, 2018, the
3 date of PETA’s original request for the Vole Videos.

4 [62.] {72.}

5 The Vole Videos were further improperly withheld for purposes of the OPRL by OHSU’s
6 obstructive conduct, including its misleading responses as to their existence and their location as
7 well as their intentional destruction.

8 [63.] {73.}

9
10 Plaintiff is entitled to an award of statutory penalties under ORS 192.407(3)(b) for
11 OHSU’s failure to respond (or, at minimum, undue delay in responding) to PETA’s request for
12 the Vole Videos.

13 [64.] {74.}

14 Plaintiff is entitled to an award of reasonable attorney fees and costs pursuant to ORS
15 192.431(3) or, in the alternative, pursuant to the public benefit doctrine set forth in *Deras v.*
16 *Myers*, 272 Or 47, 535 P2d 541 (1975) and its progeny.

17
18 **SECOND CLAIM FOR RELIEF**
19 ***Declaratory and Injunctive Relief—Infringement of Constitutional Guarantees to Free***
20 ***Speech and Expression***

21 [65.] {75.}

22 The above paragraphs are hereby re-alleged and incorporated by reference.

23 [66.] {76.}

1 As a public body, OHSU is bound by the guarantees of free speech and expression set
2 forth in Article I, Section 8, of the Oregon Constitution and the First and Fourteenth
3 Amendments to the United States Constitution.

4 [67.] {77.}

5 In responding to public records requests, both Article I, Section 8, and the First and
6 Fourteenth Amendments prohibit OHSU from discriminating or retaliating in the provision of
7 public records, as well as disparate treatment, based on the content and viewpoint expressed by
8 the requester’s speech.
9

10 [68.] {78.}

11 OHSU’s selective non-enforcement and departure from the OPRL and OHSU Policy and
12 customs, and its intentional deletion of the Vole Videos to prevent PETA from obtaining them
13 based on the content of PETA’s speech—or, at minimum, OHSU’s failure to make them
14 reasonably available for PETA’s inspection on that basis—infringed on PETA’s constitutional
15 rights to free speech and expression under Article I, Section 8, and the First and Fourteenth
16 Amendments.
17

18 [69.] {79.}

19 In addition to constituting viewpoint discrimination, OHSU’s intentional deletion of the
20 Vole Videos also amounted to unconstitutional retaliation against PETA. PETA’s speech
21 regarding the animal experimentation depicted in the Vole Videos is free speech protected by
22 Article I, Section 8, and the First and Fourteenth Amendments. OHSU’s intentional deletion of
23 the Vole Videos, with claimed impunity, to prevent a party (here, PETA) from obtaining them
24

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1 based on the content of that party’s speech would deter a person of ordinary firmness from
2 continuing to engage in that speech. In fact, OHSU’s intentional destruction of the Vole Videos
3 actually deterred PETA from speaking with respect to the animal experimentation depicted in the
4 Vole Videos, by rendering PETA incapable of reviewing the Vole Videos and presenting its
5 view of what they depicted to the public. OHSU’s conduct deprived PETA of a more effective
6 means of communicating with its audience. OHSU’s intentional destruction of the Vole Videos
7 was motivated by PETA’s speech regarding OHSU’s animal experimentation, including PETA’s
8 prior published criticism of the vole experiments.
9

10 [70.] {**80.**}

11 PETA is entitled to recover its reasonable attorneys’ fees pursuant to the public benefit
12 doctrine set forth in *Deras v. Myers*, 272 Or 47, 535 P2d 541 (1975) and its progeny.
13

14 **THIRD CLAIM FOR RELIEF**
Declaratory and Injunctive Relief—Denial of Rights to Privileges and Immunities and Equal
Protection

15 [71.] {**81.**}

16 The above paragraphs are hereby re-alleged and incorporated by reference.
17

18 [72.] {**82.**}

19 As a public body, OHSU is bound by the guarantees of privileges and immunities and
20 equal protection and due process set forth in Article I, Section 20, of the Oregon Constitution and
21 the Fourteenth Amendment to the United States Constitution.
22

23 [73.] {**83.**}

24
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1 The right to inspect public records is a privilege—that is, an entitlement created pursuant
2 to state law and policy—that OHSU must provide on an equal basis to all citizens.

3 [74.] {84.}

4 OHSU’s selective non-enforcement and arbitrary disregard of the OPRL and OHSU
5 Policy, and its intentional deletion of the Vole Videos—or, at minimum, its failure to make them
6 reasonably available for PETA’s inspection on that basis—based on OHSU’s disagreement with
7 PETA’s views, infringed on PETA’s constitutional right to equal privileges under Article I,
8 Section [8]{20}, of the Oregon Constitution, and its right to equal protection of the laws under
9 the Fourteenth Amendment to the United States Constitution.
10

11 [75.] {85.}

12 PETA is entitled to recover its reasonable attorneys’ fees pursuant to the public benefit
13 doctrine set forth in *Deras v. Myers*, 272 Or 47, 535 P2d 541 (1975) and its progeny.
14

15 **{FOURTH CLAIM FOR RELIEF**
Declaratory Relief—Failure to Provide Records}

16 {86.}

17 **{The above paragraphs are hereby re-alleged and incorporated by reference.}**

18 {87.}

19 **{Plaintiff seeks declaratory relief pursuant to ORS 28.010 and ORS 192.415(1)(b).}**

20 {88.}

21 **{The Responsive Photographs are writings within the meaning of ORS 192.311(7)**
22 **and public records within the meaning of ORS 192.311(5)(a) because they relate to the**
23

24
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1 conduct of the public’s business, and because they were “prepared, owned, used or
2 retained” by OHSU. ORS 192.311(5)(a).}

3 {89.}

4 {By affirmatively misrepresenting the existence of the Responsive Photographs and
5 failing to produce them in response to three separate public records requests, OHSU
6 violated the OPRL’s requirement that public records be made available for inspection
7 pursuant to ORS 192.314, including the requirement that it provide “proper and
8 reasonable opportunities for inspection and examination of the records” pursuant to ORS
9 192.318.}

11 {90.}

12 {The Responsive Photographs were improperly withheld for purposes of the OPRL
13 by OHSU’s obstructive conduct, including its misleading responses as to their existence and
14 failure to provide them to PETA until three years after they were initially requested and
15 only following the filing of this lawsuit.}

17 {91.}

18 {Plaintiff is entitled to an award of statutory penalties under ORS 192.407(3)(b) for
19 OHSU’s extremely unreasonable, undue delay in responding to PETA’s request for the
20 Responsive Photographs.}

21 //

22 //

24

25

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1 {92.}

2 {Plaintiff is entitled to an award of reasonable attorney fees and costs pursuant to
3 ORS 192.431(3) or, in the alternative, pursuant to the public benefit doctrine set forth in
4 Deras v. Myers, 272 Or 47, 535 P2d 541 (1975) and its progeny.}

5 {FIFTH CLAIM FOR RELIEF
6 ORS 181A.250 – Declaratory and Injunctive Relief}

7 {93.}

8 {The above paragraphs are hereby re-alleged and incorporated by reference.}

9 {94.}

10 {OHSU Police is a department of OHSU and a “law enforcement agency” as that
11 term is defined by ORS 181A.010 and ORS 353.125.}

12 {95.}

13 {As a law enforcement agency, OHSU Police is prohibited under ORS 181A.250
14 from “collect[ing] or maintain[ing] information about the political, religious or social
15 views, associations, or activities of any individual, group, association, organization,
16 corporation, business or partnership unless such information directly relates to an
17 investigation of criminal activities, and there are reasonable grounds to suspect the subject
18 of the information is or may be involved in criminal conduct.”}
19

20 {96.}

21 {OHSU Police is in violation of ORS 181A.250 because it regularly collects and
22 maintains information about PETA’s political and social views, associations, and activities,
23 including but not limited to the information described in paragraphs 60-65 above. The
24

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1 information collected by OHSU Police does not relate to any investigation of criminal
2 activities, and OHSU Police neither had nor has any reasonable grounds to suspect that
3 PETA was or may have been involved in criminal conduct relating to the information
4 collected and maintained. Instead, OHSU Police’s conduct amounts to pervasive, unlawful
5 monitoring of PETA’s protected advocacy activities.}

6 {97.}

7
8 {Pursuant to ORS 28.010, PETA is entitled to a declaration that OHSU has violated
9 ORS 181A.250. In light of the pervasive, flagrant, and ongoing nature of OHSU’s violations
10 of that statute, PETA also is entitled to supplemental relief pursuant to ORS 28.080
11 enjoining OHSU Police from unlawfully collecting or maintaining any further information
12 on PETA’s political or social views, associations, or activities.}

13 {98.}

14 {Plaintiff is entitled to an award of reasonable attorney fees and costs pursuant to
15 the public benefit doctrine set forth in *Deras v. Myers*, 272 Or 47, 535 P2d 541 (1975) and
16 its progeny.}

17
18 **WHEREFORE**, Plaintiff prays for a judgment in favor of Plaintiff and against
19 Defendant as follows:

- 20 1. Declaring that as of the time of Plaintiff’s request for the Vole Videos, they were
21 “public records” subject to disclosure under the OPRL;
- 22 2. Declaring that OHSU violated the OPRL by failing to provide the Vole Videos in
23 response to Plaintiff’s request;
- 24 3. Declaring that OHSU violated the OPRL by destroying the Vole Videos without,
25 at minimum, providing a proper and reasonable opportunity for their inspection;

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- 1 4. Declaring that OHSU’s selective non-enforcement and arbitrary departure from
2 OSHU Policy and deletion of the Vole Videos to prevent PETA from obtaining
3 them—or, at minimum, failure to provide a proper and reasonable opportunity for
4 their inspection—based on OHSU’s disagreement with PETA’s views, violated
5 Article I, Sections 8 and 20 of the Oregon Constitution and the First and
6 Fourteenth Amendments to the United States Constitution;
- 7 5. **{Declaring that, as of the time of Plaintiff’s requests for the Responsive**
8 **Photographs, they were “public records” subject to disclosure under the**
9 **OPRL;}**
- 10 6. **{Declaring that OHSU violated the OPRL by failing to timely provide the**
11 **Responsive Photographs in response to Plaintiff’s requests;}**
- 12 7. **{Declaring that OHSU violated the OPRL by failing to timely provide a**
13 **proper and reasonable opportunity for the inspection of the Responsive**
14 **Photographs;}**
- 15 8. Awarding PETA statutory penalties under ORS 192.407(3)(b) for OHSU’s
16 effective failure to respond (or, at minimum, undue delay in responding) to its
17 request for the Vole Videos;
- 18 9. **{Awarding PETA statutory penalties under ORS 192.407(3)(b) for OHSU’s**
19 **undue delay in responding to its request for the Responsive Photographs;}**
- 20 10. **{Declaring that OHSU violated ORS 181A.250 by unlawfully collecting and**
21 **maintaining information on PETA’s political and social views, associations,**
22 **and activities, and enjoining OHSU Police from any further such conduct;}**
- 23 11. Awarding PETA all costs and attorneys’ fees associated with this action pursuant
24 to ORS 192.431(3) and/or the public benefit doctrine as described in *Deras v.*
25 *Myers*, 272 Or 47, 535 P2d 541 (1975) and its progeny; and
- 26 12. Granting all other just and equitable relief the Court deems necessary and proper.

Dated: _____, 2021

s/Colin H. Hunter
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**Pro hac vice [applications pending]*

Of Attorneys for Plaintiff

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PAGE 33 – *[SECOND]* **THIRD** AMENDED COMPLAINT FOR INFRINGEMENT OF THE OREGON AND UNITED STATES CONSTITUTIONS AND VIOLATIONS OF OREGON PUBLIC RECORDS LAW AND FOR DECLARATORY AND INJUNCTIVE RELIEF

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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that I caused a true copy of the foregoing THIRD AMENDED
5 COMPLAINT to be served on:

6 C. Robert Steringer
7 Harrang Long Gary Rudnick P.C.
8 1050 SW Sixth Avenue, Suite 1600
9 Portland, OR 97204-1116
10 bob.steringer@harrang.com

11 Attorneys for Defendant

_____ By hand delivery
_____ By first-class mail*
 x By email
_____ By overnight mail
_____ By facsimile transmission
_____ Fax #:
_____ Ph #:
_____ EM:

12 *With first-class postage prepaid and deposited in Portland, OR.

13 DATED this __ day of August, 2021.

14 s/Colin H. Hunter
15 **ANGELI LAW GROUP LLC**
16 COLIN H. HUNTER, OSB No. 131161
17 colin@angelilaw.com
18 KRISTEN L. TRANETZKI, OSB No. 115730
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