

Dear Portland City Council,

I come here today to ask that this government be honest with Last Thursday participants. In general and particularly in regards to the registration requirements on lastthurspdx.org.

I know, as does the City Attorney's Office, that legally speaking, registration is voluntary. However, it is PBOT's policy to tell the public and LT participants that registration is required and if someone doesn't register they will be made to leave. It is a policy that is dishonest, coercive and possible even a violation ORS 163.275 (h).

A couple months ago, I came to your offices in an attempt to convince this government to stop requiring registration since the City has no legal authority to do so. To continue, would be illegal. In speaking with your representatives, specifically Matt Grum, Marshall Runkel, Nathan Howard and Jamie Dunphy, I concluded that the best way to convince this government to stop requiring registration without legal authority, would be to create an alternative management solution. And this solution I've been attempting to provide since Sam Adams and Commissioner Fritz recruited me for (and 70 others) back in 2010. Not once has any City official ever suggested I quit.

I'm giving it another go. I know the job is mainly about acquiring the funds to cover Last Thursday's public safety expenses. Secondly, it's about satisfying the stakeholders, making sure resident business owners and neighbors okay with the plan. If they are okay, they won't be complaining to the City about Last Thursday. When Last Thursday has a permit, therefore all the public safety expenses are paid, and no one is complaining, I can't imagine what more this government would want.

My goal is by 2019's season to have about half the expenses funded, then by 2020, the full ticket with permit. It's ambitious, but from my experience, achievable. However, the greatest hurdle that I must overcome, before I can pay for restrooms, is to make sure this government doesn't tell people that registration is required, if legally, it's voluntary.

What I'm raising money for will depend on if the City is willing to admit registration is voluntary. If the City does admit registration is voluntary, then I'll be raising money for restrooms and street barricades. If then City won't admit this, then I'll have to commit my resources to convincing the City otherwise.

If I could get just one thing from the City, it would be honesty. I would like the City officials to be as satisfied as the rest of the stakeholders. My attempt to hold this government accountable, is me pushing the government to do better, which helps everyone.

~ Michael O'Connor

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

MICHAEL O'CONNOR,)	
)	Case No. 17CV15526
Plaintiff,)	
)	
v.)	
)	NOT SUBJECT TO
CITY OF PORTLAND,)	MANDATORY
)	ARBITRATION
Defendant.)	
)	
)	
)	

Introduction

Plaintiff O'Connor has been involved the gathering known as Last Thursday on Alberta Street (hereinafter Last Thursday) since Former Mayor Sam Adams and Commissioner Fritz held a call-to-action to build a community-based solution so the gathering can be managed by an organization other than the City of Portland in February of 2010. Plaintiff O'Connor worked with Former Mayor Sam Adams' office and the Office of Neighborhood Involvement to build Friends of Last Thursday. In 2012, Plaintiff O'Connor left Friends of Last Thursday because he didn't see the organization capable of fulfilling the public safety expenses as would be required by an event permit. Plaintiff O'Connor formed a nonprofit called Creative Collaborations to host several events a month in inner Southeast Portland, including a four block monthly street fair, to train for the ultimate collapse of Friends of Last Thursday. In, or around February 2014, Friends of Last Thursday resigned stating that they could not work with Former Mayor Charlie Hales. Since Plaintiff O'Connor had prepared for Friends of Last Thursday's resignation, he quickly formed a new nonprofit called Artists United to work with the Alberta community to take over the responsibilities of Last Thursday, including the public safety expenses as would be required for an event permit. Plaintiff O'Connor's dissolved Artists United as he could not reach an agreement with the City of Portland. It is Plaintiff O'Connor's mission to resolve all controversy, either in the neighborhood, or with the City of Portland as it relates to Last Thursday.

Plaintiff alleges:

1.

On May 28th, 2015, Plaintiff O'Connor was on or around NE 20th and Alberta Street in Portland, Oregon, when a Sergeant Jones of the Portland Police Department (hereinafter PPD), under the supervision of then captain Chris Davis of the PPD, told the Plaintiff that what he doing was illegal, he was required to register on the website lastthurspdx.org, and if he didn't leave, he would be subject to a \$250 fine.

2.

On June 11th, 2015, Plaintiff O'Connor registered on the website lastthurspx.org since he was told it was required by Sergeant Jones of the PPD otherwise he would be subject to a \$250 fine.

3.

On June 11th, 2015, Plaintiff O'Connor sent an email to former mayor Charlie Hales' representative Chad Stover, who was responsible for organizing public safety services on behalf of the City of Portland (hereinafter COP), requesting the COP take down the registration website lastthurspx.org as it interfered with potential contractual relations to acquire event sponsors, as well as, to show what rule or ordinance grants the COP the legal authority to require vendors register on lastthurspx.org.

4.

On June 12th, 2015, COP representative Chad Stover called Plaintiff O'Connor and said, "the City will be permitting itself," in reference to the rules or ordinance granting the COP legal authority to require registration on lastthurspx.org.

5.

On June 30th, 2015, Plaintiff O'Connor submitted a public records request with the Portland Bureau of Transportation (hereinafter PBOT) requesting a copy of the COP's event permit for Last Thursday.

6.

On July 1st, 2015, Cevero Gonzalez, representing PBOT, sent Plaintiff O'Connor an email stating, "BRIEFLY: PBOT has no records relating to your request."

7.

Shortly after July 1st, 2015, Plaintiff O'Connor called the Portland City Attorney's Office to complain that the COP did not have an event permit and therefore had no legal authority to require registration on lastthurspx.org for any reason.

8.

On June 25th, 2015, the Oregonian published an article entitled, "Portland amps up police presence for Last Thursday's summer kickoff." The article originally stated that registration was required. On July 8th, 2015, the article was changed under the request of COP officials to read: "event staffers encouraged vendors to register under their free process."

9.

On May 5th, 2015, Plaintiff O'Connor received an email from COP representative Chad Stover stating, "Registration is required and anyone who doesn't have proof of registration clearly displayed they will be asked to break down and leave."

10.

On May 13th, 2015, Plaintiff O'Connor received an email from COP representative Chad Stover stating, "Registration is required and anyone who doesn't have proof of registration clearly displayed they will be asked to break down and leave."

11.

On May 26th, 2016, Plaintiff O'Connor was on or around NE 20th and Alberta Street in Portland, Oregon, when he witnessed a Sergeant of the PPD, under the supervision of Captain Chris Davis of the PPD, telling people they were in violation of city code 17.44, street obstructions, they were required to register on their website lastthurspx.org, and if they didn't

leave an officer would come back to help them pack up and leave.

12.

Between the fall of 2016 and spring of 2017 Plaintiff O'Connor called PBOT Community Events representatives and asked over the phone if the COP had an event permit for Last Thursday's 2016's season and was told the COP did not have an event permit.

13.

Currently, as of August 8th, 2017, on lastthurspdx.org/news a description of a news article posted by Greg Raisman May 5th, 2017 states, "Welcome to the official Last Thursday website! Here you will be able to register as a vendor; not only is it required, but also your service, good or performance type and description will be displayed on the interactive map — on the Find a Vendor page — so Last Thursday revelers can find you easily."

14.

Currently, as of August 8th, 2017, on lastthurspdx.org/vendors-register-online-first-last-thursday-season-june-29-2017 Greg Raisman published an article on May 5th, 2017 stating, "**Registration: Please register** on the site before the season's **first event in June**. You will receive a permit number to display at the event; if you don't, you'll be asked to break down and leave. Registration is free!"

15.

In or around March 2017, Plaintiff O'Connor the COP's Ombudsman's office intent on filing a complaint. Plaintiff O'Connor spoke with Tony Green over the phone and Tony informed Plaintiff O'Connor that they do not have jurisdiction to investigate elected officials.

16.

On several occasions between January, 2017, and August, 2017, Plaintiff O'Connor has contacted the COP's Independent Police Review (hereinafter IPR) in attempt to file a complaint about the PPD officers involved with Last Thursday's registration requirements. On August 8th, 2017 IPR's Lead Investigator Eric Barry gave Plaintiff O'Connor a written response stating, "IPR has no jurisdiction over, or authority to investigate, the conduct of current or former elected officials, including former Mayor Hales. Because IPR has no jurisdiction or authority to investigate former Mayor Hales, we must respectfully decline your request that we investigate him."

17.

On several occasions between January, 2017, and August, 2017, Plaintiff O'Connor has contacted the Oregon Government Ethics Commission, most recently on August 3rd, 2017, and spoke with an investigator name Greg; Greg told Plaintiff O'Connor that the Oregon Government Ethics Commission mainly investigate financial conflicts of interest as is described by law governing the Oregon Government Ethics Commission.

18.

Plaintiff O'Connor met with the mayor's office and a City Attorney on March 29th, 2017, to request the COP offer equitable relief. The COP informed Plaintiff O'Connor that they intended to continue registering vendors as they have done previously.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff O'Connor prays for:

- 1. Injunctive and declaratory relief for myself and all others similarly situated to have the liberty to abstain from registering on the COP's website lastthurspx.org unless defined otherwise by COP ordinance or permit.
- 2. If people have the legal right to abstain from registration on the COP website lastthurspx.org, the COP notify all whom have registered that they will not be adversely affected if they choose to abstain registering.
- 3. If people have the legal right to abstain from registering on the COP website lastthurspx.org, the COP notify all whom have registered that registration is explicitly "voluntary."
- 4. If people have the legal right to abstain from registering on the COP website lastthurspx.org, the COP give the option to all whom have registered an opportunity to opt-out of their registration database. By "opt-out" meaning the registrant can choose to have their information deleted from the COP's registration database.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

DATED: _____, 20__.

/s/ _____
Michael O'Connor

16298 NW Joseclyn Blvd.
Beaverton, OR, 97006
(503) 869-4923
artupdx@gmail.com

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3
4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF MULTNOMAH

6 MICHAEL O'CONNOR, for himself and all
7 others similarly situated,

8 Plaintiff,

9 v.

10 CITY OF PORTLAND,

11 Defendant.

Case No. 17CV15526

DEFENDANT'S MOTION TO DISMISS
PLAINTIFF'S FIRST AMENDED
COMPLAINT

(Filing fee set by ORS 21.135(1),(2)(g))
(Fees deferred at filing pursuant to ORS 20.140)

Not Subject to Mandatory Arbitration

Oral Argument Requested

12
13 **UTCR 5.010(1) Certificate of Compliance**

14 Pursuant to UTCR 5.010(1), conferral is not required on a party's motion to dismiss
15 lack of jurisdiction under ORCP 21A(1) or failure to state a claim under ORCP 21A(8).
16 Nevertheless, the parties conferred via phone call on August 31, 2017, and were unable to
17 reach resolution.

18 **Motion No. 1.**

19 Pursuant to ORCP 21A(1) and ORCP 21A(8), Defendants move for dismissal of
20 Plaintiff's complaint against Defendant City of Portland in its entirety with prejudice to being
21 refiled. Plaintiff asks for relief that is outside the Court's jurisdiction and fails to state a
22 claim for relief.

23 **Points and Authorities**

24 **A. Standard of Review**

25 ORCP 18A requires a complaint to plead "[a] plain and concise statement of the
26 ultimate facts constituting a claim for relief without unnecessary repetition." In considering a

1 motion to dismiss, review is limited to “matters that appear in the complaint.” *Boise*
2 *Cascade Corp. v. Board of Forestry*, 131 Or App 538, 545 (1994), *rev’d in part on other*
3 *grounds*, 325 Or 185 (1997). The Court assumes the truth of all well-pled allegations and
4 any reasonable inferences that may be drawn from them, and views them in the light most
5 favorable to the non-moving party. *Moser v. Mark*, 223 Or App 52, 54-55 (2008). The Court
6 may also consider any exhibits incorporated by reference into the complaint. *Boardmaster*
7 *Corp. v. Jackson Cnty.*, 224 Or App 533, 535 (2008).

8 In order to survive a motion to dismiss for failure to state ultimate facts constituting a
9 claim for relief, a complaint must include some allegation of material fact regarding each and
10 every material element of the claim. *See Suess Builders v. City of Beaverton*, 294 Or 254,
11 264 (1982) (affirming dismissal under Rule 21A(8), because complaint failed to state facts
12 regarding one element of civil conspiracy claim); *Delaney v. Clifton*, 180 Or App 119, 123-
13 24 (2002) (dismissing common law negligence claim for purely psychic injury); *Huang v.*
14 *Claussen*, 147 Or App 330, 334 (1997) (the “mere recitation of the elements of a particular
15 claim for relief, without more, is not a statement of ultimate facts sufficient to constitute a
16 claim for relief”). Moreover, the pleading of bare legal conclusions are not factual
17 allegations, and are insufficient to prevent a motion to dismiss for failure to state ultimate
18 facts. *Wathers v. Gossett*, 148 Or App 548, 558 (1997).

19 **B. Procedural Posture**

20 Plaintiff filed a Complaint on April 14, 2017, seeking seven forms of injunctive and
21 monetary relief against the City of Portland and PPB Assistant Chief Chris Davis.
22 Defendants moved to dismiss Plaintiff’s Complaint in its entirety. Following a hearing on
23 July 18, 2017, the Court ruled from the bench that Plaintiff’s Complaint was dismissed with
24 leave to amend as to Plaintiff’s claim for injunctive and declaratory relief against the City of
25 Portland. Per the Court’s Order, Plaintiff had 30 days leave to amend his Complaint from the
26 date of the hearing on July 18, 2017.

1 On August 8, 2017, Plaintiff filed a First Amended Complaint. The Complaint
2 alleges four claims in the “Prayer for Relief.” The first of those claims seeks “injunctive and
3 declaratory relief for [Plaintiff] and all others similarly situated to have the liberty to abstain
4 from registering on the COP’s website lastthurspdx.org unless defined otherwise by COP
5 ordinance or permit.” The remaining three claims ask the Court to force the City to notify all
6 potential registrants of the Last Thursday event that registration is mandatory and give them
7 an option to opt out of registration.

8 **C. Argument**

9 Plaintiff’s first claim for relief in the First Amended Complaint is identical to the
10 claim in Plaintiff’s original Complaint that the Court previously dismissed with leave to
11 amend. The same arguments raised against the original claim still apply, and the new
12 information Plaintiff provides in his First Amended Complaint does not overcome the
13 original deficiencies in Plaintiff’s claims.

14 The remaining three claims ask for relief beyond what the Court can provide. As
15 Plaintiff is a self-represented litigant, he cannot represent the interests of persons other than
16 himself. Plaintiff can only seek relief that is personal to him.

17 1. Plaintiff fails to state a claim for injunctive or declaratory relief.

18 Paragraph 1 of Plaintiff’s Prayer for Relief asks for the Court to issue declaratory
19 relief for Plaintiff and all others similarly situated “to have the liberty to abstain from
20 registering on the COP’s website lastthurspdx.org unless defined otherwise by COP
21 ordinance or permit.” That demand fails to present a justiciable controversy, and thus the
22 Court does not have subject matter jurisdiction over Plaintiff’s claim. Hence, Plaintiff also
23 fails to state a claim for declaratory relief.

24 a. Plaintiff does not meet the ripeness standard.

25 In Oregon, a plaintiff must meet the standard of ripeness to seek declaratory relief,
26 meaning that Plaintiff must show that an actual and substantial controversy between parties

1 exists.

2 [The] Uniform Declaratory Judgment Act, ORS 28.010 et seq.,
3 confers on Oregon courts of record the “power to declare rights,
4 status, and other legal relations, whether or not further relief is or
5 could be claimed. * * * The declaration ... shall have the force and
6 effect of a final judgment or decree.” ORS 28.010. In order for a
7 court to entertain an action for declaratory relief, the complaint
8 must present a justiciable controversy. Justiciability is a vague
9 standard but entails several definite considerations. A controversy
10 is justiciable, as opposed to abstract, where there is an actual and
11 substantial controversy between parties having adverse legal
12 interests. *Cummings Constr. v. School Distr. No. 9*, 242 Or. 106,
13 408 P.2d 80 (1965). The controversy must involve present facts as
14 opposed to a dispute which is based on future events of a
15 hypothetical issue. *Id.* A justiciable controversy results in specific
16 relief through a binding decree as opposed to an advisory opinion
17 which is binding on no one. *Id.* The court cannot exercise
18 jurisdiction over a nonjusticiable controversy because in the
19 absence of constitutional authority, the court cannot render
20 advisory opinions. *Oregon Cty. Mfgs. Ass'n. v. White*, 159 Or. 99,
21 109, 78 P.2d 572, 576 (1938).

22 *Brown v. Oregon State Bar*, 293 Or. 446, 449 (1982); *See also Beck v. City of Portland*, 202
23 Or App 360, 364 (2005) (“ORS 28.020 codifies a ripeness requirement within the declaratory
24 judgment statute, independent of the constitutional requirement”).

25 Thus, for a claim for declaratory relief to be ripe for review, the Plaintiff must show
26 that he has suffered an actual hardship as a result of a provision of the city code rather than
presenting a hypothetical scenario. In *Beck v. City of Portland*, plaintiffs sought a
declaratory judgment from the court holding that the City of Portland’s proposed plan to
permit an aerial tram above their property would require the payment of just compensation to
the plaintiffs. 202 Or App at 362. The Court of Appeals affirmed the trial court’s dismissal
of plaintiff’s claim pursuant to ORCP 21 A, and held that plaintiffs’ claim for declaratory
relief was not ripe for adjudication at the time it was filed. *Id.* At 370. As the City’s plan to
permit the aerial tram was merely a possibility at the time plaintiffs filed their action, the
court found that plaintiffs had not presented any facts showing that the City’s decision

1 affected their rights, statuses, or legal relations. *Id.* At 371.

2 Similarly, Plaintiff's claim is not ripe for review because Plaintiff's Complaint has
3 not pled any material effect on his rights. The facts alleged in the Complaint do not show
4 that Plaintiff conducts or intends to conduct business at Last Thursday, nor do they show that
5 the City imposed or enforced a registration requirement on Plaintiff or any business Plaintiff
6 planned to conduct at a Last Thursday event. The facts alleged also do not show that
7 Plaintiff has endured any individualized monetary hardship or deprivation of rights due to a
8 registration requirement. Furthermore, Plaintiff does not plead that he has been deterred
9 from conducting business at Last Thursday due to a registration requirement. The only
10 potential harm Plaintiff points to is an alleged threat of a "\$250 fine or potential eviction
11 from public property if it appeared [Last Thursday attendees] were in violation of COP code
12 17.26.010 or 17.44" (Complaint, Paragraph 7). Plaintiff does not allege that the City
13 enforced any such fine against him, nor does he allege that he was deterred from conducting
14 business at Last Thursday due to the threat of such a fine. Plaintiff also does not show that
15 the City of Portland threatened to take enforcement actions based on a failure to register;
16 Rather, Plaintiff asserts that the City would take enforcement actions based on violations of
17 the City Code. Even assuming for the sake of this Motion that Plaintiff's allegations are true,
18 Plaintiff presents only a hypothetical scenario with no basis in present fact.

19 Plaintiff's First Amended Complaint simply adds that Plaintiff is "involved" with
20 Last Thursday (First Amended Complaint, "Introduction"). It does not state that Plaintiff
21 intended to conduct business at Last Thursday or that Plaintiff endured any individualized
22 monetary hardship or deprivation of rights due to a registration requirement. The First
23 Amended Complaint does not demonstrate a controversy that is ripe for judicial review.

24 b. Plaintiff lacks standing.

25 Moreover, Plaintiff lacks standing to bring this action. To seek relief under the
26 Uniform Declaratory Judgments Act, a plaintiff must establish that his rights, status or other

1 legal relations are affected by *the relevant instrument*. *Morgan v. Sisters School Dist. No. 6*,
2 353 Or. 189, 194 (2013) (emphasis added). The relevant instrument in this context is a
3 statute, municipal charter, ordinance that affects the rights, status or legal relations of the
4 plaintiff. *Morgan*, 353 Or. at 194, *citing* ORS 28.020. Plaintiff does not identify any such
5 instrument in his First Amended Complaint.

6 It is not sufficient that a party thinks an enactment or a decision of a government
7 entity to be unlawful. The standing requirements of ORS 28.020 require that the challenged
8 law must affect *that party's* rights, status, or legal relations. *Id.* at 195 (emphasis in original).
9 There is no case for declaratory relief where the plaintiff seeks merely to vindicate a public
10 right to have the laws of the state properly enforced, and plaintiff must plead a dispute based
11 on present facts rather than on contingent or hypothetical events. *Id.* at 195-96. For plaintiff
12 to have standing, the court's decision must have a practical effect on the rights that plaintiff
13 is seeking to vindicate. *Id.* at 197.

14 Additionally, the Uniform Declaratory Judgments Act requires more than speculative
15 economic harm to confer standing on a plaintiff. When economic harm is alleged, it is the
16 relationship between the plaintiff's economic interest and the law that is the subject of the
17 declaratory action that is determinative of the issue of standing under the Uniform
18 Declaratory Judgments Act. *MT&M Gaming, Inc. v. City of Portland*, 274 Or App 100
19 (2015). Plaintiff has not pled that a registration requirement or a hypothetical fine for failing
20 to comply with specific sections of the City Code would affect him personally. Plaintiff must
21 show a legally recognized interest affected by the law that is the subject of the declaratory
22 action, and he has not done so in this case. *MT&M Gaming*, 274 Or App at 106, *citing*
23 *Morgan*, 353 Or at 195.

24 A Court decision in this case would have no practical effect on Plaintiff's rights, as
25 Plaintiff has not shown that his rights have been affected by City actions. Plaintiff asks the
26 Court to declare that he has the liberty to abstain from registering on a City website, but

1 Plaintiff already has the liberty to abstain from registration and he alleges no facts showing
2 otherwise. Consequently, Plaintiff stands in the same legal position that he would be in if the
3 Court grants the relief that he seeks. Because an Order from the Court would have no effect
4 on Plaintiff's legal position, he has no standing to seek judicial review.

5 Defendant anticipates that Plaintiff will point to the allegations in paragraphs 1 and 2
6 of the First Amended Complaint as evidence of injury. Those allegations state:

- 7 1. On May 28th, 2015, Plaintiff O'Connor was on or around NE 20th and
8 Alberta Street in Portland, Oregon, when a Sergeant Jones of the
9 Portland Police Department (hereinafter PPD), under the supervision
10 of then captain Chris Davis of the PPD, told the Plaintiff that what he
11 doing was illegal, he was required to register on the website
12 lastthurspdx.org, and if he didn't leave, he would be subject to a \$250
13 fine.
- 14 2. On June 11th, 2015, Plaintiff O'Connor registered on the website
15 lastthurspdx.org since he was told it was required by Sergeant Jones of
16 the PPD otherwise he would be subject to a \$250 fine.

17 Those allegations fall far short of credibly establishing that Plaintiff would be subject
18 to a \$250 fine as a direct consequence of Plaintiff not registering on the City's website.
19 Plaintiff points to no statute, code or ordinance stating that he would be subject to a \$250
20 fine. Plaintiff does not plead that the City has enforced such a fine against him or any other
21 individual for not registering on the City's website. Plaintiff has not shown that he incurred a
22 fee to register on the City's website, that he has intended to do business and has been
23 prevented or deterred from doing so by registering, or that he has suffered any economic
24 hardship as a result of his registration. Ultimately, plaintiff does not plead that such a fine
25 actually exists, but rather seeks declaratory relief asking the City to prove a negative.

26 Defendant is not aware of any case in Oregon law where a lone government official
threatening a fine has been shown to rise to the level of concrete injury that standing requires.
Conversely, the Supreme Court of Oregon has expressly held that the "potential impact" of
an adverse financial effect is insufficient to confer standing on the potentially impacted

1 individual. *Morgan*, 353 Or at 200.

2 In *Morgan v. Sisters School Dist. No. 6*, a taxpayer argued that as a taxpayer and
3 voter he had standing to seek a declaration that the defendant school district lacked authority
4 to enter into a financing arrangement without a vote of the people. Plaintiff alleged that he
5 had standing because his status as a taxpayer and voter would be adversely affected by the
6 district's decision. *Id.* at 190. Plaintiff argued that the district's resolution entering into the
7 financing agreement, which would take the form of the board selling financial instruments
8 called "certificates of participation," would harm him financially as a taxpayer because the
9 financing arrangement might jeopardize the district's ability for its daily operations if it were
10 unable to pay off the debt incurred by issuing certificates of participation. *Id.* at 190-91.

11 The Court found that the connection between the approval of the certificates and an
12 adverse financial impact on plaintiff was too tenuous to support plaintiff's standing:

13 As we have described, plaintiff alleged that the issuance of the certificates of
14 participation "may jeopardize the district[']s ability to provide for the daily
15 operation of the district." His complaint, however, does not explain why the
16 issuance of those obligations might have that effect. Moreover, he does not
17 allege that the district's potential inability to provide for its daily operations
18 affects him in any way. He also alleged that the issuance of the obligations
19 "increases the likelihood" that the district will have to seek additional funds
20 from taxpayers like himself. The problem is that such a "likelihood" is
21 "increased" only in the event that the district finds itself unable to pay its
22 obligations, and even then, only if the voters were to approve a district request
23 for additional funding, and further, only if plaintiff remains a resident of the
24 district when those other events occur. Thus, plaintiff's allegations that the
25 issuance of the certifications of participation will affect him are predicated on
26 a series of hypothetical contingencies, not on present facts. As such, they are
inadequate to satisfy the requirements of standing under the Uniform
Declaratory Judgments Act.

22 *Id.* at 200-01.

23 In *Morgan*, the Court found that an adverse financial impact predicated on a series of
24 hypothetical contingencies rather than present facts was inadequate to satisfy the
25 requirements of standing. Similarly, in this case Plaintiff's claim is based on hypothetical
26 contingencies and therefore inadequate. Plaintiff does not show a connection between a lone

1 police offer allegedly threatening him with a \$250 fine and any actual financial hardship. His
2 claim is based on numerous hypothetical contingencies that are not borne out in the First
3 Amended Complaint, including Plaintiff actually desiring to conduct business at Last
4 Thursday, refusing to register on the City’s website and incurring a fine as a result. None of
5 these actions have taken place, and Plaintiff’s claim is based entirely on the speculation that
6 they could take place. An argument for standing based on hypotheticals is insufficient to
7 confer standing upon the Plaintiff.

8 2. Plaintiff cannot represent the interests of others as a *pro se*.

9 Plaintiff, proceeding *pro se*, can only represent his own interests in this matter and not
10 those of other individuals. Individuals may appear on their own behalf in court, but may not
11 represent others without a license because to do so would violate Oregon’s prohibition
12 against nonlawyer legal practice. *Johnson v. Premo*, 355 Or 866, 871-72 (2014), citing ORS
13 9.320. ORS 9.160(2) and ORS 9.320 create an exception to the prohibition on unauthorized
14 practice of law for an individual prosecuting an action on the person’s own behalf, but that
15 exception does not extend to representation of other parties. The law prohibits a nonlawyer
16 from representing other persons. *Moro v. State*, 360 Or. 467, 480 (2016).

17 Despite the Court dismissing Plaintiff’s attempt to certify a class action as part of
18 Plaintiff’s previous Complaint, Plaintiff now asks the Court to order declaratory relief from
19 the City in favor of individuals other than Plaintiff. Such a request is improper, as Plaintiff’s
20 action can only concern his own rights and interests.

21 Because Plaintiff, proceeding *pro se*, is prohibited by law from prosecuting this action
22 on behalf of people other than himself, the Court should dismiss the claims in paragraph 2, 3
23 and 4 of the prayer for relief.

24 Additionally, should the Court rule that Plaintiff has no standing to support the claim
25 for relief in paragraph 1 of the prayer for relief, Plaintiff similarly would have no standing to
26 support the claims in paragraphs 2, 3 and 4 and those claims should be dismissed.

1 3. The Court should dismiss the First Amended Complaint with prejudice.

2 Following oral argument on the City's Motion to Dismiss Plaintiff's original
3 Complaint, the Court gave Plaintiff an extended 30 days to amend his Complaint to show that
4 he had standing to enforce a claim for relief. Plaintiff's First Amended Complaint fails to
5 show that Plaintiff has standing or that his claim is ripe for review. Because Plaintiff's
6 Complaint fails to state the required elements to state a claim even after 30 days leave to
7 amend, the Court should exercise its discretion to dismiss the First Amended Complaint with
8 prejudice to being refiled.

9 **Conclusion**

10 Based on the above, the Court should dismiss the claims against Defendant in its
11 entirety. Plaintiff fails to state a claim for relief against Defendant and fails to meet the
12 requirements for the Court to exercise jurisdiction over his claims. As this is the second
13 attempt for Plaintiff, Defendant requests dismissal of Plaintiff's Complaint in its entirety with
14 prejudice.

15 DATED: September 1, 2017.

16 Respectfully submitted,

17
18 /s/ Daniel Simon

19 Daniel Simon, OSB No. 124544
20 Deputy City Attorney
21 Email: dan.simon@portlandoregon.gov
22 Attorney for Defendants
23
24
25
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I served the foregoing DEFENDANTS' MOTION TO DISMISS
3 PLAINTIFF'S FIRST AMENDED COMPLAINT on:

4 Michael O'Connor
5 16298 NW Joscelyn Blvd.
6 Beaverton, OR 97006
Pro Se Plaintiff

7 On September 1, 2017, by causing a full, true and correct copy thereof, addressed to the last-
8 known address (or fax number) of said Plaintiff, to be sent by the following method(s):

- 9 by **mail** in a sealed envelope, with postage paid, and deposited with the U.S. Postal
10 Service in Portland, Oregon.
11 by **hand delivery**.
12 by **facsimile transmission**.
13 by **email**.

14 DATED: September 1, 2017.

15 Respectfully submitted,

16
17 /s/ Daniel Simon
18 Daniel Simon, OSB No. 124544
19 Deputy City Attorney
20 Email: dan.simon@portlandoregon.gov
21 Attorney for Defendants
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(c) Threatening to report a person to a government agency for the purpose of arrest or deportation;

(d) Threatening to collect an unlawful debt; or

(e) Instilling in the other person a fear that the actor will withhold from the other person the necessities of life, including but not limited to lodging, food and clothing.

(2) Subjecting another person to involuntary servitude in the second degree is a Class C felony. [2007 c.811 §3]

Note: See note under 163.261.

163.264 Subjecting another person to involuntary servitude in the first degree.

(1) A person commits the crime of subjecting another person to involuntary servitude in the first degree if the person knowingly and without lawful authority forces or attempts to force the other person to engage in services by:

(a) Causing or threatening to cause the death of or serious physical injury to a person; or

(b) Physically restraining or threatening to physically restrain a person.

(2) Subjecting another person to involuntary servitude in the first degree is a Class B felony. [2007 c.811 §2]

Note: See note under 163.261.

163.266 Trafficking in persons. (1) A person commits the crime of trafficking in persons if the person knowingly recruits, entices, harbors, transports, provides or obtains by any means, or attempts to recruit, entice, harbor, transport, provide or obtain by any means, another person and:

(a) The person knows that the other person will be subjected to involuntary servitude as described in ORS 163.263 or 163.264;

(b) The person knows or recklessly disregards the fact that force, fraud or coercion will be used to cause the other person to engage in a commercial sex act; or

(c) The person knows or recklessly disregards the fact that the other person is under 15 years of age and will be used in a commercial sex act.

(2) A person commits the crime of trafficking in persons if the person knowingly benefits financially or receives something of value from participation in a venture that involves an act prohibited by subsection (1) of this section or ORS 163.263 or 163.264.

(3) As used in this section, "commercial sex act" means sexual conduct or sexual contact, as those terms are defined in ORS 167.002, performed in return for a fee or anything of value.

(4) Violation of subsection (1)(a) or (2) of this section is a Class B felony.

(5) Violation of subsection (1)(b) or (c) of this section is a Class A felony. [2007 c.811 §4; 2013 c.720 §1]

Note: See note under 163.261.

163.269 Victim assertion of defense of duress. A person who is the victim of a crime described in ORS 163.263, 163.264 or 163.266 may assert the defense of duress, as described in ORS 161.270, if the person is prosecuted for conduct that constitutes services under ORS 163.261, that the person was caused to provide. [2007 c.811 §10]

Note: See note under 163.261.

163.270 [Amended by 1955 c.371 §1; 1957 c.640 §1; repealed by 1971 c.743 §432]

COERCION

163.275 Coercion. (1) A person commits the crime of coercion when the person compels or induces another person to engage in conduct from which the other person has a legal right to abstain, or to abstain from engaging in conduct in which the other person has a legal right to engage, by means of instilling in the other person a fear that, if the other person refrains from the conduct compelled or induced or engages in conduct contrary to the compulsion or inducement, the actor or another will:

(a) Unlawfully cause physical injury to some person;

(b) Unlawfully cause physical injury to some animal;

(c) Unlawfully cause damage to property;

(d) Engage in conduct constituting a crime;

(e) Falsely accuse some person of a crime or cause criminal charges to be instituted against the person;

(f) Cause or continue a strike, boycott or other collective action injurious to some person's business, except that such a threat is not deemed coercive when the act or omission compelled is for the benefit of the group in whose interest the actor purports to act;

(g) Testify falsely or provide false information or withhold testimony or information with respect to another's legal claim or defense; or

(h) Unlawfully use or abuse the person's position as a public servant by performing some act within or related to official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

(2) Coercion is a Class C felony. [1971 c.743 §102; 1983 c.546 §4; 1985 c.338 §1; 2007 c.71 §45; 2015 c.751 §1]

Moore-Love, Karla

From: Michael O'Connor <artupdx@gmail.com>
Sent: Thursday, March 01, 2018 10:27 AM
To: Moore-Love, Karla
Subject: Re: Scheduling Testimony

Hi Karla,

I would like to schedule a communication for May 23rd, entitled "Last Thursday on Alberta."

Thanks.

~ Michael O'Connor

On Thu, Feb 22, 2018 at 3:10 PM, Michael O'Connor <artupdx@gmail.com> wrote:
Perfect. Thank you Karla.

On Thu, Feb 22, 2018 at 3:08 PM, Moore-Love, Karla <Karla.Moore-Love@portlandoregon.gov> wrote:

Hello Michael O'Connor,

Policy does not allow me to signup people for Communications more than two months out. Please resubmit your request after February 28th. All Wednesdays in May will be available to you then and currently, I do not show any May absences for Council members.

Thank you,

Karla



Karla Moore-Love | Council Clerk

City of Portland | Office of the City Auditor
1221 SW 4th Ave Rm 130

Portland OR 97204-1900

email: Karla.Moore-Love@portlandoregon.gov
Testimony Email: cctestimony@portlandoregon.gov

phone: 503.823.4086
Clerk's Webpage: www.portlandoregon.gov/auditor/councilclerk

From: Michael O'Connor [mailto:artupdx@gmail.com]
Sent: Thursday, February 22, 2018 2:25 PM
To: Council Clerk – Testimony <CCTestimony@portlandoregon.gov>
Subject: Scheduling Testimony

Dear Council Clerks,

I would like to schedule a communication to City Council, when all council members are expected to attend.

I was hoping to schedule for sometime in May, possibly the second week.

My name is Michael O'Connor and the testimony is in regards to Last Thursday on Alberta.

Thanks,

Michael O'Connor

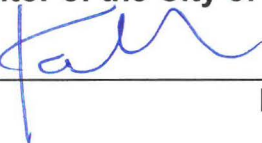
Request of Michael O'Connor to address Council regarding Last
Thursday on Alberta (Communication)

MAY 23 2018

PLACED ON FILE

Filed MAY 15 2018

MARY HULL CABALLERO
Auditor of the City of Portland

By 
Deputy

COMMISSIONERS VOTED AS FOLLOWS:		
	YEAS	NAYS
1. Fritz		
2. Fish		
3. Saltzman		
4. Eudaly		
Wheeler		