

TORT CLAIM NOTICE

April 2, 2016

Ellen Rosenblum
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1162 Court St. NE
Salem, OR 97301
Ellen.F.Rosenblum@doj.state.or.us
VIA EMAIL
VIA HAND DELIVERY

George Naughton
Director
Acting State Chief Operating Officer and
DEPARTMENT OF ADMINISTRATIVE SERVICES
Executive Building
155 Cottage Street NE
Salem, OR 97301
oregon.info@oregon.gov
VIA EMAIL
VIA HAND DELIVERY

Re: Tort Claim Notice for Erious Johnson, Jr.

This communication is intended to serve as a formal, written Tort Claim Notice pursuant to ORS 30.275.

Erious Johnson, Jr. graduated with Honors from Howard University School of Law in May 2002. After working as a litigation associate from 2002 to 2004, he became an Assistant Corporation Counsel for the City of New York. One of his responsibilities in this position was as a trial attorney defending New York City Police officers against allegations of civil rights violations, excessive use of force and wrongful death.¹

On March 18, 2014, Mr. Johnson was sworn in as the Civil Rights Director for the Oregon Attorney General.² One of his responsibilities in this position was to provide support to the Law Enforcement Profiling Work Group.³ This work group was legislated by HB 2002⁴ and

¹ See, e.g., Timothy Williams, *Mother Awarded \$10 Million Asks Reopening of Police Case*, NY Times, June 8, 2007, available at http://www.nytimes.com/2007/06/08/nyregion/08bronx.html?_r=0, last visited March 24, 2016.

² See <http://www.doj.state.or.us/releases/Pages/2014/rel031814a.aspx>, last visited March 24, 2016.

³ See <http://www.doj.state.or.us/releases/Pages/2015/rel082615.aspx>, last visited March 24, 2016.

⁴ See <https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureDocument/HB2002/Introduced>, last visited March 24, 2016.

“was created to propose ways to detect patterns of improper profiling, and to help eliminate the practice.”⁵

On the evening of October 26, 2015, Mr. Johnson received an email from Joan Green, Attorney General Ellen Rosenblum’s (AG) assistant stating “[p]lease come to the AG’s office.” Since the work day had ended by that time, Mr. Johnson was summoned to the AG’s office the next morning.

On the morning of October 27, 2015, Mr. Johnson attended a meeting at the AG’s Office located at 1162 Court St., NE, Salem, OR. The AG was present, along with the Deputy AG Fred Boss and her Legislative Director, Aaron Knott. The AG proceeded to tell Mr. Johnson—in sum and substance—that the meeting was called because:

- An Investigator in the Oregon Department of Justice’s Criminal Justice Division (CJD) was conducting a “threat assessment” with a software program called Digital Stakeout.⁶
- This “threat assessment” involved the Investigator inputting the terms “black lives matter” and “fuck the police” into the program.
- This “threat assessment” involved the Investigator limiting the program’s search area to “Salem, OR.”
- This “threat assessment” resulted in the Investigator identifying Mr. Johnson’s Twitter account; @EriousEsq.
- This “threat assessment” resulted in the Investigator identifying Erious Johnson, Jr. as a “threat” to public safety based on his use of the Twitter hashtag #blacklivesmatter .
- This Investigator downloaded Mr. Johnson’s entire Twitter feed, including photographs, because he considered, assessed or designated Mr. Johnson as a “threat” to public safety based on his use of the hashtag #blacklivesmatter.
- This Investigator compiled a file based on Mr. Johnson’s entire Twitter feed, including photographs, because he considered, assessed or designated Mr. Johnson as a “threat” to public safety based on his use of the hashtag #blacklivesmatter.
- This Investigator maintained a file based on Mr. Johnson’s entire Twitter feed, including photographs, because he considered, assessed or designated Mr. Johnson as a “threat” to public safety based on his use of the hashtag #blacklivesmatter.
- This Investigator stored a file based on Mr. Johnson’s entire Twitter feed, including photographs, because he considered, assessed or designated Mr. Johnson as a “threat” to public safety based on his use of the hashtag #blacklivesmatter.
- Despite the lack of probable cause or reasonable suspicion and the Investigator’s unjust consideration, designation or assessment of Mr. Johnson

⁵ See *infra* n. 3.

⁶ See <http://www.digitalstakeout.com/>, last visited March 26, 2016.

as a “threat” to public safety, this Investigator brought Mr. Johnson’s file to the attention of his supervisor David Kirby.

- Despite the lack of probable cause or reasonable suspicion and the Investigator’s unjust consideration, designation or assessment of Mr. Johnson as a “threat” to public safety, David Kirby then brought Mr. Johnson’s file to the attention of Darin Tweedt, Director of the CJD.
- Despite the lack of probable cause or reasonable suspicion and the Investigator’s unjust consideration, designation or assessment of Mr. Johnson as a “threat” to public safety, Darin Tweedt brought Mr. Johnson’s file to the attention of the Deputy AG Fred Boss.
- Despite the lack of probable cause or reasonable suspicion and the Investigator’s unjust consideration, designation or assessment of Mr. Johnson as a “threat” to public safety, Darin Tweedt brought Mr. Johnson’s file and use of the Twitter hashtag #blacklivesmatter to the attention of the AG’s office in an effort to negatively affect Mr. Johnson’s employment with the AG’s office, as well as his professional reputation.
- Upon information and belief, Darin Tweedt was attempting to adversely affect Mr. Johnson’s employment and defame his professional reputation based on a statement Mr. Tweedt made—in sum and substance—that Mr. Johnson’s use of the hashtag #blacklivesmatter would “reflect poorly on the office.”

Despite the community outcry⁷; the violation of Mr. Johnson’s First, Fourth, and Fourteenth Amendment rights under the US Constitution; the violation of Mr. Johnson’s rights under Article I, §§ 8, 9, 10 and 26 of the Oregon Constitution; the CJD’s violation of criminal statute ORS 181.575 and its own Privacy Policy⁸, the AG hired an employment lawyer, Carolyn D. Walker of Stoel Rives LLP, who specializes in defending employers⁹, as a Special Assistant Attorney General to conduct an “audit” of the aforementioned activities and provide a “written report.”¹⁰ As of the date of this Complaint, this “written report,” as well as the aforementioned “audit” has yet to be completed or provided.

On or about January 22, 2016, the AG announced that she was removing Darin Tweedt as the CJD Director.¹¹ On or about February 2, 2016, Darin Tweedt was assigned to the Oregon Department of Justice’s Civil Recovery Section, located at Spinnaker Pointe 2250 McGilchrist

⁷ See, e.g., <https://s3.amazonaws.com/wapopartners.com/wweek-wp/wp-content/uploads/2015/11/10160349/erious.pdf>, last visited March 24, 2016.

⁸ See http://www.doj.state.or.us/pdf/oregon_titan_fusion_center_privacy_policy.pdf, last visited March 24, 2016.

⁹ See <http://www.stoel.com/cwalker>, last visited March 24, 2016.

¹⁰ See Denis C. Theriault, *Oregon will spend \$88,000 investigating Black Lives Matter profiling allegations*, available at http://www.oregonlive.com/politics/index.ssf/2015/11/black_lives_matter_justice_dep.html, last visited March 24, 2016.

¹¹ See Nigel Jaquiss, *Attorney General Ellen Rosenblum Removes Her Agency’s Top Criminal Lawyer: Darin Tweedt has been under scrutiny because one of his agents monitored #BlackLivesMatter hashtags*, available at <http://www.wweek.com/2016/01/22/attorney-general-ellen-rosenblum-removes-her-agencys-top-criminal-lawyer/>, last visited March 28, 2016.

St. SE Salem, OR 97302. Darin Tweedt was assigned an office on the Second Floor of Spinnaker Point, which was located three doors down from Mr. Johnson's office. Mr. Johnson discovered this on February 8, 2016, when he saw Darin Tweedt come into the office through the reception area, which Mr. Johnson's office directly faces. This prompted Mr. Johnson to send an email to both the AG and the Deputy AG, asking "[g]ood afternoon. Didn't it occur to someone that I should have been warned that I was likely to run into Darin Tweedt at the office today?" Mr. Johnson has yet to receive a substantive response from either individual. Mr. Johnson has come face to face with Mr. Tweedt on at least one subsequent occasion, March 14, 2016.

None of Mr. Johnson's Twitter activity, including photographs, violated the Oregon Department of Justice's "Social Media Policy." Nor did any of his Twitter activity indicate involvement in criminal activity, or any other activity that could be reasonably considered threatening to public safety.

Along with the statutes and laws referenced above and in Mr. Johnson's BOLI complaint, the AG by and through her agents employed in CJD violated the US Constitution, the Oregon Constitution, Federal and State law, and give rise to civil actions, including but not limited to: employment discrimination, hostile work environment, defamation *per se*, and Intentional Interference with Economic Relations.

Please also accept notice that Mr. Johnson intends to seek lost earning potential, attorney fees, punitive damages, and all remedies applicable under the law for the aforementioned claims.

Sincerely,



Erious Johnson, Jr.