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2
3 IN THE CIRCUIT COURT OF THE STATE OF OREGON
4 FOR THE COUNTY OF MULTNOMAH

5 KPANA BENJAMIN, NICOLAS TORREZ,
6 PRINCE BROWN, DIAMOND FAIR,
7 MAXWELL FLOYD, and BRADFORD
8 FRANKS, on behalf of themselves and all
others similarly situated,

9 Plaintiffs,

10 vs.

11 THE STATE OF OREGON, KATE
12 BROWN, in her official capacity as
13 Governor of Oregon, and STEPHEN
14 SINGER, in his official capacity as
Executive Director of the Office of Public
Defense Services for the State of Oregon,

15 Defendants.

Case No. 22CV16098

FIRST AMENDED CLASS ACTION
COMPLAINT

FOR DECLARATORY AND
INJUNCTIVE RELIEF ONLY
ORS § 28.010 et. Seq.
ORS § 30.260 et. Seq.
42 USC § 1983

CLAIM NOT SUBJECT TO
MANDATORY ARBITRATION

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17 Plaintiffs allege:

18 **INTRODUCTION**

19 1. Plaintiffs, and the class members they seek to represent, are all people who are
20 charged with crimes by the State of Oregon, have been arraigned in criminal court, and have
21 been deprived of legal representation, despite the fact that their right to counsel has attached.
22 Plaintiffs have been deemed indigent and have asked that a lawyer be appointed to represent
23 them. But the State has failed to provide counsel in clear violation of basic standards of
24 justice and long-settled state and federal law. Plaintiffs file this lawsuit to remedy that
25 violation. They ask this Court to order the State to either fulfill its legal obligation to provide

1 counsel to all indigent defendants within a reasonable time, including those currently
2 awaiting an attorney and those arraigned in the future, or dismiss any cases in which an
3 attorney cannot be provided.

4 5 **DEFENDANTS**

6 2. Defendant State of Oregon is solely responsible both for prosecuting violations
7 of the state criminal code and for providing counsel to those it prosecutes who cannot afford
8 to hire their own lawyer.

9 3. Defendant Kate Brown is the Governor of the State of Oregon and retains
10 ultimate executive authority over the actions of the state. The governor retains ultimate
11 authority to take full charge of any state prosecution by directing the Attorney General to do
12 so under ORS 180.070 and 180.080. Further, Governor Brown has emergency powers under
13 ORS 401.165 to ORS 401.236 to take remedial action during a crisis. Governor Brown is
14 subject to suit for declaratory and injunctive relief under the laws of the State of Oregon and
15 42 U.S.C. § 1983 for violation of state and federal constitutional rights for her own acts in
16 her official capacity under color of law, and under state law for the acts of the officers,
17 employees, and entities under her control.

18 4. Stephen Singer is the Executive Director of the Office of Public Defense
19 Services for the State of Oregon (OPDS). Mr. Singer is subject to suit for declaratory and
20 injunctive relief under the laws of the State of Oregon and 42 U.S.C. § 1983 for violation of
21 state and federal constitutional rights for his own acts in his official capacity under color of
22 law, and under state law for the acts of the officers, employees, and entities contracting with
23 OPDS. He has the power to remedy violations of the duty to provide assistance of counsel to
24 people accused of crimes who cannot afford an attorney. He has the duty to oversee the
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1 assignment of appointed counsel and to carry out the administrative policies and procedures
2 for the public defense system. His specific statutory duties are outlined in ORS 151.219(1).

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4 **FACTUAL BACKGROUND**

5 5. At the time of their respective arraignments, each of the four plaintiffs
6 requested an attorney to defend them against pending criminal charges. Each provided
7 personal financial information to the court. The court deemed each of them to be unable to
8 hire a private attorney and eligible for a court-appointed attorney. However, the state has not
9 provided them with a lawyer nor dismissed the charges against them.

10
11 **Kpana Benjamin**

12 6. On March 23, 2022, Plaintiff Kpana Benjamin was arrested and charged with
13 felony and misdemeanor crimes. She was released on her own recognizance the same day.
14 The next day, Ms. Benjamin went to an arraignment in the Circuit Court for Multnomah
15 County. The judge told her that she qualified for a court-appointed attorney but that none
16 were available to represent her. She was told to come back on April 14th. The clerk gave her
17 a piece of paper to call to try to get an attorney. She called and left a message. No one has
18 responded. Ms. Benjamin appeared in court by telephone on April 14th, as instructed. She
19 was not given any information about what to expect or when she could hope to get an
20 attorney. The judge spoke to her very briefly and her case was adjourned to May 16, 2022.

21 7. Ms. Benjamin has never before been arrested or charged with a crime.

22 8. Ms. Benjamin's racial identity is Black and her gender identity is female.

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1 **Nicolas Torrez**

2 9. On March 22, 2022 Plaintiff Nicolas Torrez learned that he had been charged
3 with a felony during a phone call with his probation officer with whom he checks in
4 periodically in connection with a prior conviction. He turned himself in that day and was
5 booked into the Marion County Jail. He spent three days in jail. The court had set security
6 release for Mr. Torrez at \$15,000, which required a \$1500 deposit. Mr. Torrez posted the
7 deposit on March 24th and was released that day.

8 10. Mr. Torrez was arraigned on March 28, 2022, in the Circuit Court for Marion
9 County. The judge told him, along with about a dozen other people at the arraignment, that
10 there were no attorneys available to represent them. The court clerk gave Mr. Torrez a piece
11 of paper with a phone number for OPDS and instructed him to call and leave a message.
12 Neither the piece of paper nor anyone in the courtroom gave him any explanation about how
13 long he should expect to wait. He called the number on the paper the very same day and left
14 his name and case number and a brief message. He never heard back. He called several more
15 times in the next two weeks.

16 11. At his next court appearance on April 18th, the clerk gave him the same piece of
17 paper again and again instructed him to call and leave a message, which he did the same day.
18 Again there was never a response.

19 12. Mr. Torrez is required to attend each court appearance in person. Appearance
20 by telephone or video is not allowed. He has to sit in the courtroom for hours waiting for his
21 turn. On March 28th he waited three hours. On April 18th he waited two and a half hours,
22 after which the judge spoke to him for half a minute, and he was done.

23 13. Mr. Torrez's racial identity is Hispanic and his gender identity is male.

24 **Prince Brown**

1 14. Plaintiff Prince Brown was indicted on April 19, 2022 and arraigned the next
2 day in the Circuit Court for Multnomah County. He has remained in custody ever since. He
3 qualified for a court-appointed attorney but no attorney was appointed to represent him.

4 15. Mr. Brown had charges pending from previous incidents. The court had
5 previously appointed an attorney for him for those charges. However, on April 4, 2022, the
6 court granted that attorney's request to withdraw from representing him due to a conflict of
7 interest. On that same date, the judge told Mr. Brown that no attorney was available to
8 appoint to represent him in place of that attorney.

9 16. Mr. Brown has been very confused and anxious about not having an attorney to
10 help him with his cases and help him understand what is happening at each of the numerous
11 court appearances.

12 17. Mr. Brown's racial identity is Black and his gender identity is male.

13 18. As of this filing, Mr. Brown has been without counsel for a total of 37 days
14 since his arraignment on the new charges, and 53 days since the withdrawal of his court
15 appointed attorney on his older charges.

16 **Diamond Fair**

17 19. Plaintiff Diamond Fair was arrested on April 15th and jailed until her
18 arraignment on Monday, April 18th in the Circuit Court for Multnomah County. The judge
19 told her that she qualified for a court-appointed attorney but that none were available to
20 represent her. The judge released her on her own recognizance. She was told to come back
21 for another court date for possible appointment of an attorney.

22 20. Not having an attorney to help her with this process has been difficult.

23 21. Ms. Fair's racial identity is Black and her gender identity is female.
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1 22. As of this filing, Ms. Fair has been without counsel for a total of 39 days since
2 her arraignment.

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4 **Maxwell Floyd**

5 23. Plaintiff Maxwell Floyd was arrested on April 25, 2022 and booked into the
6 Washington County Jail. He has remained in custody ever since. He was arraigned the next
7 day in the Circuit Court for Washington County. He qualified for a court-appointed attorney
8 but no attorney was appointed to represent him.

9 24. The jail is experiencing a staffing shortage. When there are not enough deputies
10 available, the jail is put on lockdown status and prisoners are confined to their cells most of
11 the day. There have been four lockdowns during the 17 days Mr. Floyd has been in jail.

12 25. Mr. Floyd's security release is set at an amount that he cannot afford. Until he
13 has an attorney, he cannot seek a reduction in the amount of his security release. Mr. Floyd
14 believes that his strong ties to the community and lack of any criminal history would make
15 him eligible for a reduction in the security release amount, if he could get an attorney to
16 present the information to a judge.

17 26. Mr. Floyd's racial identity is White and his gender identity is male.

18 27. As of this filing, Mr. Floyd has been without counsel for a total of 31 days since
19 his arraignment.

20 **Bradford Franks**

21 28. Plaintiff Bradford Franks was arrested March 18, 2022, and faces felony and
22 misdemeanor charges. He was arraigned in the Circuit Court for Multnomah County the same
23 day. Mr. Franks qualified for a court-appointed attorney but none were available to represent
24 him. The judge released him on his own recognizance. He was told to appear for court by
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1 telephone on April 8, 2022. At that court appearance, Mr. Franks was told to appear by phone
2 again on April 29. At that court appearance, he was again told to appear by phone on June 2,
3 2022. He has yet to be appointed an attorney.

4 29. Mr. Franks' racial identity is White and his gender identity is male.

5 30. As of this filing, Mr. Franks has been without counsel for a total of 70 days
6 since his arraignment.

7
8 **DISPROPORTIONATE IMPACT ON BLACK INDIGENT DEFENDANTS**

9 31. The State's failure to make court-appointed attorneys available for indigent
10 defendants has a disproportionate impact on Black indigent defendants.

11 32. Black indigent defendants are more likely to be subjected to pretrial detention,
12 prosecuted, convicted, sentenced to jail or prison, placed on probation, and sanctioned with
13 jail time for a post-prison supervision or probation violation. As such, the consequences of
14 the State's failure to provide indigent defendants with an attorney within a reasonable time
15 are magnified for Black class members.

16 33. Of the 83 defendants on the April 29, 2022 statewide conflicts list created by
17 OPDS who were waiting for an attorney, 19 of them (or 23%) were Black, despite the fact
18 that Black people make up less than 3% of Oregon's population.

19 34. Of the 87 defendants on the May 20, 2022 statewide conflicts list created by
20 OPDS who were waiting for an attorney, 16 of them (or 18%) were Black.

21 35. Of the 274 defendants on the May 11, 2022 list of people in Multnomah
22 County specifically who had not been appointed an attorney at arraignment and were
23 continuing to wait for an attorney, 56 of them (or 20%) were Black, despite the fact that
24 Black people make up less than 6% of the population of Multnomah County.
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1 43. There are questions of law or fact common to the class, including whether the
2 State’s failure to appoint counsel within a reasonable time to an indigent person charged with
3 a crime violates the state and federal constitutions.

4 44. The claims of the representative parties are typical of the claims of the class, as
5 they stem from the same course of conduct as the larger class claims—namely the State’s
6 systematic failure to provide legal representation to indigent criminal defendants within a
7 reasonable time.

8 45. The proposed class representatives will fairly and adequately protect the
9 interests of the class, and will be represented by experienced, well-resourced counsel.
10 Moreover, ORS 14.195 allows for adjudication of this important case of public interest,
11 where the fluidity of the individual class members may otherwise render the issues moot.

12 46. A class action is superior to other available methods for the fair and efficient
13 adjudication of the controversy because:

- 14 a. The class members do not have counsel in their individual criminal cases and
15 therefore cannot adequately advocate for the relief they are entitled to in those
16 cases;
- 17 b. The relief sought is solely declaratory and injunctive relief;
- 18 c. The case raises a systemic issue that, if litigated in hundreds of individual cases
19 around the state, would create a risk of inconsistent or varying adjudications;
20 and
- 21 d. The simple legal question presented here predominates over any individual
22 questions for individual class members.

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FIRST CLAIM FOR RELIEF

**VIOLATION OF THE RIGHT TO COUNSEL, ARTICLE I, SECTION 11 OF THE OREGON CONSTITUTION
(Uniform Declaratory Judgment Act and Oregon Tort Claims Act.)
(Against all Defendants)**

47. The State of Oregon has an obligation under Article I, section 11 of the Oregon Constitution to provide effective representation to all persons it charges with crimes when that person cannot afford a lawyer.

48. The State of Oregon is failing to fulfill that obligation with respect to all plaintiffs and class members.

49. Plaintiffs are entitled to declaratory and injunctive relief to remedy this violation.

SECOND CLAIM FOR RELIEF

**VIOLATION OF THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(42 U.S.C. § 1983)
(Against Defendants Brown and Singer)**

50. Defendants Brown and Singer are the individuals responsible for fulfilling the Oregon's obligation under the Sixth Amendment to the United States Constitution (applicable through the Fourteenth Amendment) to provide adequate representation to all persons the state charges with crimes when that person cannot afford a lawyer.

51. Defendants Brown and Singer are failing to fulfill that obligation with respect to all plaintiffs and class members.

52. Plaintiffs are entitled to declaratory and injunctive relief to remedy this violation and an award of attorney fees and costs.

1 **THIRD CLAIM FOR RELIEF**

2 **VIOLATION OF THE RIGHT TO EQUAL PRIVILEGES AND IMMUNITIES,**
3 **ARTICLE 1, SECTION 20 OF THE OREGON CONSTITUTION**
4 **(Uniform Declaratory Judgment Act and Oregon Tort Claims Act.)**
5 **(Against all Defendants)**

6 53. The State of Oregon has an obligation under Article 1, Section 20 of the
7 Oregon Constitution to protect and not infringe upon the right to equal privileges and
8 immunities under Oregon law for all individuals, including indigent criminal defendants,
9 across the state.

10 54. The State of Oregon is failing to fulfill that obligation with respect to Black
11 indigent defendants.

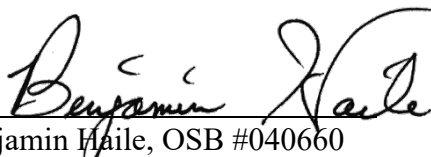
12 55. Black people are a protected class under Oregon law, and the State has no
13 compelling governmental interest in treating Black indigent defendants differently than other
14 indigent defendants.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs, and all proposed class members, pray for the following relief:

- 17 1) Order that the case proceed as a class action under ORCP 32;
18 2) Declare that it is unlawful for the State of Oregon to charge any indigent person with
19 a crime and not provide that person with a lawyer within a reasonable period of time;
20 3) Enjoin the Defendant from prosecuting any indigent person with a crime if it cannot
21 provide that person with a lawyer within a reasonable period of time.

22 DATED this 27th day of May, 2022.

23 By: 
24 Benjamin Haile, OSB #040660
25 Alex Meggitt, OSB #174131

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