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

KA'ILA FARRELL-SMITH; ROWENA JACKSON; SARAH WESTOVER; and ROSEMARY FRANCIS EATHERINGTON,

Plaintiffs,

v.

THE OREGON DEPARTMENT OF JUSTICE; ELLEN ROSENBLUM, in her official capacity as the Attorney General of the State of Oregon; and MICHAEL SLAUSON, in his official capacity as Chief Counsel of the Criminal Justice Division of the Oregon Department of Justice,

Defendants.

Case No. _____

COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF

(CLAIM NOT SUBJECT TO MANDATORY ARBITRATION)

Fee Authority: ORS 21.135

Jury Trial Demanded

Plaintiffs allege as follows:

INTRODUCTION

1.

The Oregon Department of Justice ("OR DOJ") is home to an unauthorized and unaccountable domestic intelligence program that conducts surveillance on law-abiding Oregon residents, including upon individuals and groups exercising political rights guaranteed by the Oregon and United States Constitutions.

2.

OR DOJ is an executive agency of the State of Oregon. Like every state agency, OR DOJ exists solely by virtue of its enabling legislation and cannot engage in any activity unless it has

1 been vested with the power to do so by the legislature.

2 3.

3 In blatant disregard of this bedrock principle of administrative and constitutional law, OR
4 DOJ currently operates the Oregon TITAN Fusion Center (“TITAN”)—an opaque and pervasive
5 domestic intelligence program that is authorized by no statute. In short, TITAN is *ultra vires*—
6 beyond OR DOJ’s legal power.

7 4.

8 TITAN’s central activities include the collection, synthesis, retention, and widespread
9 dissemination of “intelligence” on Oregon residents and organizations. TITAN receives this
10 information from, and disseminates this information to, more than 170 local law enforcement
11 agencies, dozens of federal and state intelligence hubs, and an unknown number of public and
12 private partners.

13 5.

14 Because TITAN was never legislatively authorized, TITAN’s activities are insulated from
15 meaningful accountability or statutory safeguards.

16 6.

17 TITAN’s surveillance operations regularly target law-abiding members of the Oregon
18 public—a predictable result of a state intelligence agency operating without appropriate oversight
19 or authorization.

20 7.

21 For example, in just the last few years, among other unlawful actions, TITAN analysts
22 have:

- 23 a. Surveilled and issued baseless reports on environmental advocates peacefully
24 protesting a fossil fuel infrastructure project;
- 25 b. Coordinated intelligence operations with firms hired by the private company
26 funding the above-mentioned fossil fuel project to suppress public dissent;

- 1 c. Used surveillance software to track the physical location of social media users
2 posting the “Black Lives Matter” hashtag, resulting in the creation of a threat
3 assessment report against OR DOJ’s own Director of Civil Rights; and
4 d. Monitored and prepared “criminal intelligence” reports on the Women’s March
5 and similar political demonstrations.

6 8.

7 Following TITAN’s profiling of Black Lives Matter supporters, outside counsel conducted
8 a formal investigation and found that TITAN staff operate with insufficient clarity regarding their
9 mission and without the necessary guardrails that should constrain their activities. This, too, is the
10 predictable result of an agency operating without oversight or authorization.

11 9.

12 The need for legislative oversight of executive agencies is at its greatest in this exact
13 context: surveillance operations by law enforcement, where the people’s fundamental freedoms
14 are most at stake. Under our constitutional system of government, it is the legislative branch that
15 must balance any competing policy interests, and it is the legislative branch that is charged with
16 crafting appropriately tailored solutions that promote public safety with adequate regard for
17 personal security and privacy.

18 10.

19 Plaintiffs are community organizers and social justice advocates who regularly attend and
20 organize nonviolent demonstrations in defense of the environment, housing rights, women’s rights,
21 indigenous rights, racial equity, and immigration rights, among other entirely lawful and legitimate
22 causes. Because of their engagement in these constitutionally protected activities, Plaintiffs have
23 been, and continue to be, subject to TITAN’s unauthorized and unlawful intelligence operations.

24 11.

25 Plaintiffs bring this matter pursuant to the Oregon Declaratory Judgment Act, ORS 28.010-
26 28.160. They ask this Court to declare that TITAN’s operations are *ultra vires* and enjoin TITAN

1 from operating unless and until the people, acting through their elected officials in the Oregon
2 Legislative Assembly, determine if, when, and under what circumstances, OR DOJ may develop
3 and use intelligence on Oregon residents.

4 **PARTIES**

5 **Plaintiffs**

6 12.

7 **Plaintiff Ka'ila Farrell-Smith** is a member of the Klamath Tribes and a resident of Modoc
8 Point, Oregon. She is an internationally recognized artist, writer, and environmental and
9 indigenous rights activist. *See* Ka'ila Farrell-Smith, Portfolio, CV/Resume, *available* at
10 <https://www.kailafarrellsmith.com>. Ms. Farrell-Smith serves as a board member for environmental
11 justice nonprofit Rogue Climate, and previously worked with Signal Fire, a nonprofit that connects
12 artists and activists with nature through educational backcountry trips.

13 13.

14 **Plaintiff Rowena Jackson** is a member of the Klamath Tribes and a resident of Klamath
15 Falls, Oregon. She is a graphic designer, writer, and *ambo* (“water”) protector. She works with her
16 people at the Klamath Tribes Administrative Office as an Intensive Case Manager for the COVID-
17 19 Emergency Rental Assistance program.

18 14.

19 **Plaintiff Sarah Westover** is a resident of Phoenix, Oregon. She is a community organizer
20 and social justice advocate and, from 2016 to 2020, was an elected member of the Phoenix City
21 Council. Before joining the City Council, Ms. Westover worked as an organizer with Rogue
22 Climate. She also served as a coordinating organizer for the No LNG Exports Coalition, an alliance
23 of environmental groups opposed to Jordan Cove LNG.

24 15.

25 **Plaintiff Rosemary Francis Eatherington** is an environmental activist and president of
26 the Oregon Women's Land Trust (“OWLT”), a nonprofit based in Southern Oregon dedicated to

1 ecological preservation and providing women access to nature.

2 16.

3 The Plaintiffs all have served as leaders and organizers of the community opposition to
4 Jordan Cove LNG—a \$10-billion fracked liquefied natural gas pipeline and export terminal
5 pursued by Canadian fossil fuel company, the Pembina Pipeline Corporation (“Pembina”). The
6 Plaintiffs have published articles, organized and spoken at peaceful protests, hosted educational
7 events, submitted written comments to regulatory agencies, and given public testimony opposing
8 Jordan Cove LNG.

9 17.

10 On information and belief, TITAN has monitored, coordinated surveillance of, retained
11 information related to, and/or generated “intelligence products” (defined in ¶42 below) concerning
12 many, if not all, of the events and activities described in ¶ 16.

13 18.

14 Plaintiffs are dedicated advocates and organizers. They intend to continue to join and lead
15 peaceful community movements that reflect their social and political views. On information and
16 belief, these events and activities will continue to be the object of TITAN’s intelligence operations.
17 Such operations impair Plaintiffs’ well-being and threaten Plaintiffs’ ability to communicate freely
18 with members of their community and to recruit new supporters (*see* ¶¶ 92-94 below).

19 19.

20 None of the Plaintiffs engage in or support, nor have ever engaged in or supported,
21 criminal activity that would warrant OR DOJ’s attention or fall within OR DOJ’s delegated
22 powers.

23 **Defendants**

24 20.

25 **Defendant Oregon Department of Justice** is an executive agency of the State of Oregon.
26 OR DOJ oversees, administers, staffs, and otherwise operates TITAN.

1 21.

2 **Defendant Ellen Rosenblum** is sued in her official capacity as Attorney General of
3 Oregon. The Attorney General is the head of OR DOJ.

4 22.

5 **Defendant Michael Slauson** is sued in his official capacity as the Chief Counsel of the
6 Criminal Justice Division of OR DOJ. TITAN is a program of the Criminal Justice Division. The
7 Chief Counsel of the Criminal Justice Division has oversight and responsibility for all programs
8 the Criminal Justice Division administers, including TITAN.

9 **JURISDICTION**

10 23.

11 This Court has jurisdiction to hear this claim pursuant to the Oregon Declaratory Judgment
12 Act, ORS 28.010-28.160, which confers on courts within their respective jurisdictions “power to
13 declare rights, status, and other legal relations,” “in any proceedings where declaratory relief is
14 sought, in which a judgment will terminate the controversy or remove an uncertainty.” ORS
15 28.010, 28.050.

16 **VENUE**

17 24.

18 Venue is appropriate in this Court because Plaintiffs’ causes of action arose, at least in
19 part, in Marion County, where OR DOJ maintains TITAN’s physical offices. ORS 14.060.

20 **ALLEGATIONS**

21 **A. The National Network of Fusion Centers**

22 25.

23 TITAN is a member of a network of 80 so-called “fusion centers” throughout the United
24 States.

25 26.

26 Fusion centers are domestic intelligence hubs that collect, analyze, retain, and distribute

1 data and “threat-related” information in collaboration with federal, state, local, and tribal agencies,
2 as well as public- and private-sector partners.

3 27.

4 In the aftermath of the 9/11 Commission Report, the U.S. Department of Homeland
5 Security (“DHS”) conceived of fusion centers as a tool for assessing and anticipating terrorist
6 threats. Over the past two decades, however, many of the agencies that administer fusion centers
7 have expanded the intelligence priorities of these domestic intelligence clearinghouses well
8 beyond terrorist threats, adopting instead an “all crimes/all hazard approach.” This change
9 essentially sweeps any activity deemed suspicious into a fusion center’s purview.

10 28.

11 Fusion centers increasingly have embraced emerging surveillance and data-compilation
12 technologies. Intelligence analysts working for fusion centers have described them “as a sort of
13 ‘wild west’ for analysts in that they can use a variety of technologies before ‘politics’ catches up
14 and limits options.” Adena Schutzberg, “MetaCarta Users Tap Unstructured Data for New
15 Geographic Uses,” *Directions Magazine* (May 31, 2007).

16 29.

17 A two-year bipartisan investigation into fusion centers by the United States Senate’s
18 Permanent Subcommittee on Investigations concluded that “fusion centers forwarded
19 ‘intelligence’ of uneven quality – oftentimes shoddy, rarely timely, . . . occasionally taken from
20 already-published public sources, and more often than not unrelated to terrorism.” *Federal Support
21 for and Involvement in State and Local Fusion Centers* at 1, Majority and Minority Staff Report,
22 Permanent Subcommittee on Investigations, United States Senate (Oct. 3, 2012) [hereinafter
23 “*Subcommittee on Investigations Report*”]. In fact, after reviewing 13 months of reports from
24 dozens of fusion centers, the investigation “could identify no reporting which uncovered a terrorist
25 threat, nor could it identify a contribution such fusion center reporting made to disrupt an active
26 terrorist plot.” *Id.* at 2.

1 30.

2 Fusion centers regularly use their information-sharing networks to issue reports and
3 bulletins characterizing constitutionally protected and innocuous activity as threats to national
4 security. To name only a few examples, fusion centers in the national network have issued reports
5 and bulletins which: call on law enforcement agencies to monitor Muslim “hip hop fashion
6 boutiques;” identify political bumper stickers supporting Ron Paul as red flags for membership in
7 domestic militias; and characterize student groups at historically black colleges as “breeding
8 grounds for terrorism.” The Constitution Project, *Recommendations for Fusion Centers:
9 Preserving Privacy & Civil Liberties while Protecting Against Crime and Terrorism* at 10 (2012).

10 31.

11 The Governor of each state may designate one center as the “Primary Fusion Center” for
12 that state. To do so, the Governor need only communicate the designation in writing to the
13 Secretary of Homeland Security and the U.S. Attorney General. These Primary Fusion Centers are
14 afforded priority access to federal resources. *See* Nat’l Counterterrorism Ctr., “Information
15 Sharing Environment Guidance, Federal Resource Allocation Criteria” at 2-3 (June 3, 2011).

16 32.

17 Although state fusion centers may receive federal support in the form of grants, technology,
18 training, and personnel, each center is owned and operated entirely by the state or city in which it
19 is based. “As state and local entities,” fusion centers are subject to and governed by the laws,
20 regulations, operating procedures and priorities of their home states; “the exact missions of
21 individual fusion centers are largely beyond the authority of the federal government to determine.”
22 *Subcommittee on Investigations Report* at 11.

23 **B. The Oregon TITAN Fusion Center**

24 33.

25 TITAN is the primary and only fusion center for the State of Oregon.
26

1 34.

2 TITAN does not limit itself to terrorism-related investigations. Rather, TITAN
3 characterizes its “scope of operations” to include “all crimes” and “all threats.” *See* United States
4 Government Accountability Office, Report to Congressional Committees, “Homeland Security:
5 Federal Efforts are Helping to Alleviate Some Challenges Encountered by State and Local Fusion
6 Centers” at 48 (Oct 2007). Likewise, TITAN’s own website describes the fusion center as “an *all-*
7 *crimes* criminal information clearinghouse supported by multiple agencies.” OR DOJ, Oregon
8 TITAN Fusion Center Website, <https://justice.oregon.gov/ortitan/> (last accessed December 11,
9 2021) (*emphasis added*).

10 35.

11 In a presentation on TITAN to the Oregon House Committee on Veterans and Emergency
12 Preparedness, Defendant Michael Slauson, the Chief Counsel of the Criminal Justice Division,
13 stated, “a lot of what we do is assisting law enforcement in the apprehension and prosecution of
14 criminals engaged in common crimes, not necessarily terrorism.”

15 36.

16 TITAN began operations in June 2007.

17 37.

18 On information and belief, in 2011, then-Governor John Kitzhaber officially designated
19 TITAN the “primary” fusion center for the State of Oregon by submitting a letter to the requisite
20 federal officers.

21 38.

22 This letter is not available to the public.

23 39.

24 OR DOJ characterizes TITAN as a “program” of its Criminal Justice Division. *See* OR
25 DOJ Website, “Criminal Justice,” available at [https://www.doj.state.or.us/oregon-department-of-](https://www.doj.state.or.us/oregon-department-of-justice/divisions/criminal-justice/)
26 [justice/divisions/criminal-justice/](https://www.doj.state.or.us/oregon-department-of-justice/divisions/criminal-justice/) (last accessed December 11, 2021). On information and belief,

1 TITAN is physically located in OR DOJ's offices and staffed by OR DOJ employees, including
2 supervisors from the Criminal Justice Division and, as of 2017, at least five full-time OR DOJ
3 analysts.

4 40.

5 More specifically, OR DOJ has positioned TITAN within a subsection of the Criminal
6 Justice Division alternately called the Criminal Intelligence Unit ("CIU"), "Criminal Intelligence
7 Center," or the "Criminal Information Services Section."

8 41.

9 TITAN's operations are largely secret, but from the little that is known, it is apparent that
10 TITAN culls and retains data from myriad sources, including social media, public records,
11 commercial databases, unclassified government material, and reports from the public (including
12 uncorroborated, anonymous tips). It shares information from and with federal, state, tribal, and
13 local law enforcement agencies, as well as public-sector partners (such as utility and public health
14 agencies) and even private companies.

15 42.

16 TITAN analysts then turn this information into "intelligence products." These "intelligence
17 products" include, but are not limited to: suspicious activity reports ("SARs") (official but
18 uncorroborated documentation of behavior that an analyst or other TITAN database user believes
19 is indicative of future terrorist or other criminal activity); threat assessments (investigations and
20 related reports on potentially threatening incidents or people); and safety bulletins (widely
21 distributed notifications of potential safety concerns).

22 43.

23 TITAN disseminates these "intelligence products" to an extended network of local, state,
24 federal, and tribal agencies, along with public and private partners.

25 44.

26 TITAN likewise receives similar "intelligence products" from out-of-state fusion centers

1 and agencies. TITAN then distributes this information throughout the state as well.

2 45.

3 Analysts are not required to find any evidentiary threshold satisfied, even “reasonable
4 suspicion,” in order to generate, retain, and disseminate many of these “intelligence products.”

5 **C. The Oregon TITAN Fusion Center Generates “Intelligence Products”**
6 **Related to Innocent and Constitutionally Protected Activity**

7 46.

8 TITAN analysts routinely surveil, and facilitate the surveillance of, individuals engaged in
9 innocuous and constitutionally protected activity, including peaceful assemblies.

10 47.

11 On information and belief, TITAN analysts regularly include the names of individuals and
12 organizations engaging in such lawful activity in SARs, threat assessment reports, safety bulletins,
13 and other “intelligence products” that TITAN analysts generate and distribute throughout TITAN’s
14 extensive network of state, federal, local, and tribal law enforcement agencies, and public- and
15 private-sector partners.

16 48.

17 In 2019, journalists writing for the news outlet *The Guardian* obtained emails from the
18 Coos County Sheriff’s Office demonstrating that TITAN has, for years, engaged in and facilitated
19 the surveillance of environmental advocacy groups, community organizations, and Native
20 American tribes opposing the proposed \$10 billion fossil fuel pipeline and export terminal known
21 as Jordan Cove LNG. *See* Will Parish and Jason Wilson, “Revealed: anti-terror center helped
22 police track environmental activists,” *Guardian* (Oct. 2, 2019), *available* at
23 [https://www.theguardian.com/us-news/2019/oct/02/oregon-pipelines-protests-monitoring-police-](https://www.theguardian.com/us-news/2019/oct/02/oregon-pipelines-protests-monitoring-police-anti-terror-unit)
24 [anti-terror-unit.](https://www.theguardian.com/us-news/2019/oct/02/oregon-pipelines-protests-monitoring-police-anti-terror-unit)

25 49.

26 As part of these operations, TITAN facilitated the creation of, and worked closely

1 alongside, a taskforce that included a dedicated unit within the Coos County Sheriff's office funded
2 entirely by Pembina, the private fossil fuel company that sought to build Jordan Cove LNG.

3 50.

4 TITAN's Jordan Cove LNG intelligence operations never revealed any evidence of
5 criminal wrongdoing—a fact that TITAN personnel were well aware of when they continued to
6 generate, disseminate, and retain “intelligence products” on groups and individuals peacefully
7 organizing against the pipeline and export terminal.

8 51.

9 For example, in one email, a Coos County Sheriff Deputy reports to a TITAN analyst that,
10 “as promised,” he is tracking attendance at a “Rally and Public Hearing to Stop Jordan Cove LNG,”
11 despite an acknowledged “lack of a criminal nexus.” The Deputy goes on to report that the event
12 is sponsored by Rogue Climate, No LNG Exports, and Citizens Against LNG, before adding,
13 alarmingly, that “most of the names” of individuals who RSVP'd to the event on social media
14 “were recognized.”

15 52.

16 In addition to surveilling Plaintiffs and other peaceful Jordan Cove LNG protestors and
17 organizations, TITAN, on information and belief, generated SARs and additional “intelligence
18 products” that mischaracterized peaceful protestors as potential terrorist or criminal threats.

19 53.

20 For example, in 2018, a Coos County Sheriff Deputy sent a TITAN analyst an article
21 describing environmental advocates and local business owners non-violently interrupting a
22 Medford Chamber of Commerce meeting to read a letter denouncing the Medford Chamber of
23 Commerce PAC for taking \$70,000 in donations from Pembina to distribute throughout local
24 elections—63% of the total contributions the PAC received that year. In response to the article,
25 the TITAN analyst said he would “put this in as a SAR.”

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54.

According to DHS, Suspicious Activity Reports (SARs) are “[o]fficial documentation of observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity.” Department of Homeland Security, “Information Sharing Environment, Function Standard, Suspicious Activity Reporting,” *available* at <https://www.dhs.gov/xlibrary/assets/privacy/privacy-pia-dhswide-sar-ise-appendix.pdf> (last accessed Dec. 6, 2021).

55.

While conducting its unauthorized Jordan Cove intelligence operations, TITAN also repeatedly cooperated and coordinated with Teneo—a private public relations firm retained by Pembina to monitor opposition to the project and turn public sentiment against the organizations and individuals opposing it, like Plaintiffs. In other words, TITAN essentially became an arm of a private entity in the course of a legitimate disagreement between private individuals and a for-profit company regarding appropriate social and environmental policy.

56.

For example, in one email, Teneo instructed the Pembina-funded unit within the Coos County Sheriff’s Department to avoid the Freedom of Information Act (“FOIA”) and public records requirements by funneling information related to Jordan Cove LNG through the TITAN analysts copied on the email exchange.

57.

In another email, a Teneo employee alerts a TITAN analyst to a June 5, 2019, “Block the Pipe” party and film screening organized by Plaintiffs. The TITAN analyst forwards the email to Coos County Sheriff Deputies.

58.

These glimpses into TITAN’s surveillance of protestors opposing the Jordan Cove LNG project were made public only because the Coos County Sheriff’s Office complied with a public

1 records request related to the Jordan Cove LNG protests that tangentially involved TITAN
2 communications.

3 59.

4 OR DOJ refused to comply with a similar public records request concerning TITAN's
5 surveillance of Jordan Cove LNG protestors. As a result, the full extent of the surveillance of
6 Plaintiffs and similarly situated law-abiding members of the public remains unknown to this day.

7 60.

8 Jordan Cove LNG is only one example of TITAN's surveillance of social justice advocates
9 engaging in constitutionally protected activity. On information and belief, generating "intelligence
10 products" related to such activity is a regular aspect of TITAN's operations.

11 61.

12 For example, in 2016, a TITAN analyst used the surveillance software DigitalStakeOut to
13 physically locate social media users posting the Black Lives Matter hashtag (#blacklivesmatter)
14 on Twitter. This surveillance led to the creation of a formal threat assessment report against OR
15 DOJ's own Director of Civil Rights, Erious Johnson. OR DOJ later settled a civil rights lawsuit
16 brough by Mr. Johnson challenging his surveillance.

17 62.

18 Journalists also have filed public records requests seeking information on reports and
19 assessments that TITAN has prepared concerning other political demonstrations, such as the
20 Women's March and protests against Donald Trump's Executive Orders on immigration. Despite
21 acknowledgment from OR DOJ that TITAN "had located responsive records," the Department
22 declined to disclose the reports on the grounds that "criminal intelligence information" is exempt
23 from disclosure.

1 **D. OR DOJ’s Administration of the Oregon TITAN Fusion Center is Not
Authorized by Law**

2 **1. OR DOJ is an Executive Agency and Cannot Act Without Legislative
3 Authorization**

4 63.

5 It is a bedrock principle of administrative and constitutional law that executive agencies
6 only can act pursuant to an authorization from the people’s elected representatives. As explained
7 by the Oregon Supreme Court, “[a]n agency is a creature of statute” and “has no inherent power,
8 but only such power and authority as has been conferred upon it by its organic legislation.” *Ochoco
9 Const., Inc. v. Dep’t of Land Conservation & Dev.*, 295 Or 422, 426 (1983).

10 64.

11 Agency action that exceeds the scope of the agency’s enabling statutes is *per se* unlawful.
12 See *Lipscomb v. State Bd. of Higher Educ.*, 305 Or 472, 478 (1988).

13 **2. The TITAN Program Exceeds the Authority Vested in OR DOJ by
14 the Oregon Legislative Assembly**

15 65.

16 There is no provision in the Oregon Revised Statutes that authorizes TITAN.

17 66.

18 OR DOJ itself has conceded that TITAN does not have an authorizing statute. In 2013,
19 TITAN, which receives grant funding from the federal government, completed a self-assessment
20 survey to “verify compliance” with federal privacy and civil rights law. The first question on the
21 survey is: “Does the intelligence enterprise have legislation, an executive order, or other authority
22 establishing the center/unit?” TITAN selected “other” and specified, “Letter from Governor.”

23 67.

24 On information and belief, this “Letter” refers to then-Governor Kitzhaber’s 2011 letter to
25 the Director of Homeland Security and U.S. Attorney General, designating TITAN as Oregon’s
26 “primary” fusion center.

1 **3. TITAN is Not Subject to Any Other Democratic Oversight**

2 68.

3 OR DOJ has not promulgated a single regulation related to TITAN.

4 69.

5 OR DOJ regulations establishing the Criminal Intelligence Unit (CIU), the unit in which
6 TITAN is housed, have not been updated since 2000, when the agency first transitioned from hard
7 copies of criminal intelligence files to an electronic database. *See Or. Admin. R., Ch. 137, Div. 90.*
8 That was seven years before TITAN purportedly was established.

9 70.

10 When discussing TITAN’s operations in 2016, then-Chief Counsel of OR DOJ’s Criminal
11 Justice Division, Darin Tweedt, stated he already considered the regulations governing the CIU to
12 be “out of date.”

13 **E. TITAN’s Targeting of Lawful and Constitutionally Protected Activities is the**
14 **Predictable Result of Operating Without Authorization or Oversight**

15 71.

16 TITAN’s intelligence operations targeting lawful, peaceful, and constitutionally protected
17 activities, discussed paragraphs 46 - 62 above, are the foreseeable result of TITAN’s unlawful
18 insulation from legislative accountability.

19 72.

20 In the aftermath of TITAN’s surveillance of Erious Johnson, Mr. Tweedt, then-Chief
21 Counsel of OR DOJ, expressed concern that TITAN “was operating in an outdated manner with
22 few written policies that were poorly communicated and were insufficient to address relevant
23 issues.” *See Carolyn D. Walker, “Investigation Report,”* at 21, fn 24 (April 6, 2016). He also
24 expressed concern about the information that TITAN disseminates as “intelligence products,”
25 acknowledging that, “in the past, [TITAN] was prepared to report on groups that were assembling
26 in protest even when there was no report of criminal nexus or public safety concern.” *Id.*

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73.

As the examples detailed in Section C demonstrate, however, this pattern of collecting, disseminating, and retaining intelligence without any criminal nexus or legitimate public safety concern continues unabated. *See* ¶¶ 46 - 62.

F. The Plaintiffs are Environmental Justice, Indigenous Rights, and Social Justice Advocates Who Have Served as Leaders of the Community Opposition to Jordan Cove LNG

74.

As an activist and Rogue Climate board member, Plaintiff Ka’ila Farrell-Smith serves as a leader in the community movement opposing Jordan Cove LNG. Ms. Farrell-Smith has helped organize peaceful protests, spoken at rallies and educational events, and published articles all opposing the pipeline and export terminal. In order to raise awareness about the opposition to Jordan Cove LNG and to build community solidarity, Ms. Farrell-Smith organized the April 5, 2019, “Block the Pipe” party and film screening, and helped lead and organize a peaceful hike along the proposed Jordan Cove LNG pipeline.

75.

In 2019, Governor Kate Brown invited Ms. Farrell-Smith to showcase her art in the Governor’s Salem office. Ms. Farrell-Smith declined the invitation, which was extended as part of the prestigious “Art in the Governor’s Office” program, citing Governor Brown’s failure to take a stand against Jordan Cove LNG. *See* Ka’ila Farrell-Smith, *The Oregonian*, “Why I refuse to hang my paintings in Gov. Brown’s Office” (Sept. 22, 2019), available at <https://www.oregonlive.com/opinion/2019/09/opinion-why-i-refuse-to-hang-my-paintings-in-gov-browns-office.html>.

76.

Plaintiff Rowena Jackson also serves as a leader and spokesperson for the indigenous and broader community opposition to Jordan Cove LNG. Ms. Jackson regularly attends rallies and educational events opposing the pipeline and export terminal and provided testimony in the form of poetry at multiple regulatory and municipal hearings on the Jordan Cove LNG project.

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77.

Ms. Jackson regularly leads and attends other environmental and social justice protests.

78.

As both an organizer and former city councilor, Plaintiff Sarah Westover regularly spearheads peaceful protests and public education campaigns that reflect her political and social views, including her opposition to Jordan Cove LNG. Among other activities, she has attended and spoken at rallies and protests, published articles, and submitted public comments in opposition to the Jordan Cove LNG project.

79.

Ms. Westover currently is a steering member with the Rogue Action Center, a nonprofit that organizes community members around social justice causes, and a volunteer organizer with Real Solutions Coalition, a group of community members and elected officials committed to criminal justice reform. Ms. Westover also attended the Women’s March and other protests opposing President Donald Trump’s policies.

80.

Plaintiff Francis Eatherington is the President of OWLT and has been an environmental activist for more than 40 years.

81.

OWLT’s mission is to “hold in perpetuity land and other assets in trust for the benefit of women, particularly for women who would otherwise be denied such access . . . to encourage, thereby, a development of harmonious and ecologically sound land-based communities . . . to preserve land and protect it from speculation and overdevelopment and to foster the recognition of land as a sacred heritage and resource belonging to all.” December 9, 1975, Oregon Women’s Land Trust Articles of Incorporation.

82.

The original proposed route of the Jordan Cove LNG pipeline crossed through Owl Farm,

1 a property held in trust by OWLT.

2 83.

3 As an activist and, as President of OWLT, an impacted landowner, Ms. Eatherington
4 regularly participates in regulatory proceedings concerning, and peaceful protests opposing,
5 Jordan Cove LNG.

6 **G. Injuries to Plaintiffs**

7 84.

8 Plaintiffs, and the organizations and coalitions they work with, have been the targets of
9 TITAN’s unregulated, unauthorized, and otherwise unlawful intelligence operations.

10 85.

11 The emails involving TITAN analysts obtained by *the Guardian*, discussed above in ¶¶ 48,
12 51, 53, 56, 57, repeatedly name Rogue Climate, NO LNG Exports, and other organizations, events,
13 and coalitions with which Plaintiffs publicly associate. These same emails reveal that TITAN
14 analysts have been monitoring “groups involved” with Jordan Cove LNG, “tribal issues,” and
15 “protest activity”—including programs organized by plaintiffs such as “Hike the Pipe” and the
16 “Block the Pipeline” party—since at least 2015.

17 86.

18 TITAN’s activities violate Plaintiffs’ liberty interest in participating in society, including
19 through the exercise of their constitutional rights, without being the subject of a state law
20 enforcement agency’s *ultra vires* intelligence operations.

21 87.

22 TITAN’s *ultra vires* operations have allowed the program to operate in the shadows, free
23 from democratic accountability or appropriate guardrails. In turn, TITAN analysts, law
24 enforcement agencies on the TITAN-facilitated Jordan Cove task force, and law enforcement
25 agencies with TITAN-embedded officers, have for years surveilled Plaintiffs based on their
26

1 political and social views, in violation of Plaintiffs rights as codified by ORS 181A.250.

2 88.

3 ORS 181A.250 prohibits law enforcement agencies from “collect[ing] or maintain[ing]
4 information about the political, religious or social views, associations or activities of any
5 individual, group, association, [or] organization...unless such information directly relates to an
6 investigation of criminal activities, and there are reasonable grounds to suspect the subject of the
7 information is or may be involved in criminal conduct.”

8 89.

9 Defendants’ own email communications explicitly acknowledge that TITAN engages in,
10 and helps other law enforcement officers engage in, the collection and maintenance of information
11 about the political and social views, associations, and activities of Rogue Climate, No LNG
12 Exports, and other organizations the individual Plaintiffs are associated with, without any evidence
13 that these organizations are engaged in criminal conduct. *See, e.g.*, ¶ 51.

14 90.

15 These same email communications reveal that TITAN engages in, and helps other law
16 enforcement officers engage, the collection and maintenance of information about the attendees of
17 events in which Plaintiffs take part, without any evidence that those organizing or attending the
18 events, including the individual Plaintiffs, are engaged in criminal conduct.

19 91.

20 On information and belief, TITAN currently retains records that undermine the reputation
21 and legitimacy of Rogue Climate, No LNG Exports, and other organizations and coalitions with
22 which Plaintiffs publicly associate and in which Plaintiffs hold, or have held, leadership positions.
23 Such records, on information and belief, are available to a variety of law enforcement personnel.

24 92.

25 As a direct result of TITAN’s unlawful intelligence operations and the absence of
26 appropriate legislative guardrails, Plaintiffs, the organizations they work with, and the community

1 members they seek to empower have been forced to implement heightened security protocols and
2 to adopt an attitude of hypervigilance, creating feelings of paranoia and distress, thereby
3 threatening the effectiveness and expansion of their movement.

4 93.

5 For example, following the investigative reporting from news outlet *The Guardian*
6 revealing that Rogue Climate and other organizations opposing Jordan Cove LNG were the targets
7 of TITAN's expansive domestic intelligence network, but lacking further information about those
8 operations, Ms. Farrell-Smith, Ms. Jackson, Ms. Westover, and their colleagues became concerned
9 that their phones were bugged, became suspicious of any new potential supporters of the
10 movement, and became distrustful of innocuous interactions with members of their community.

11 94.

12 Following *The Guardian's* revelation, Plaintiffs and their colleagues were forced to
13 dedicate significant resources to trainings and conversations about potential implications of the
14 surveillance on vulnerable members of their community.

15 95.

16 The surveillance has impacted Ms. Farrell-Smith's family and put a strain on her
17 interpersonal relations. Following *The Guardian's* revelations, Ms. Farrell-Smith's mother and
18 other family members became extremely concerned for her safety and repeatedly requested that
19 she stop serving as a public face for opposition to Jordan Cove LNG.

20 96.

21 Following *The Guardian's* revelations, Ms. Jackson no longer felt comfortable walking to
22 her car alone after events in which she provided public testimony against Jordan Cove LNG. She
23 also became increasingly fearful that the same law enforcement officials she believed should
24 protect her constitutional rights instead saw her as a threat. And she experienced despair that her
25 efforts to protect her ancestral lands would not succeed.

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97.

Ms. Jackson was largely motivated to join the movement against Jordan Cove LNG by her desire to heal the deep inter-generational and historical trauma the Klamath Tribes have experienced as a result of government-sanctioned confiscation and destruction of their ancestral lands. As she wrote in her public testimony opposing Jordan Cove LNG (in the form of a poem): “My elders fought hard, near and far./Inter-generational trauma,/I nurture my scar/ I am water from Klamath and Crater Lake.”

98.

Upon learning that a surveillance program founded to combat terrorism had focused its attention on those opposing Jordan Cove LNG, often in concert with the private company that held a financial interest in the pipeline and export terminal, Ms. Jackson was reminded of the historical narratives created by American governments that indigenous peoples were threats and should not be afforded basic constitutional rights. This experience caused her terror and, at times, physical illness.

99.

TITAN’s lack of transparency and oversight also deprives Plaintiffs of their ability to evaluate the privacy and security risks that TITAN’s operations pose to the community members whom Plaintiffs seek to organize and empower. A central function of a community organizer’s responsibilities is to accurately assess and communicate these risks to members of their community.

100.

The individual Plaintiffs are committed organizers and social justice advocates. Plaintiffs intend to continue to engage in activism that, on information and belief, will continue to subject them to TITAN’s operations. They neither consent to, nor feel safe with, this attention from an

1 unauthorized and unlawful government program.

2 101.

3 Plaintiffs are entitled to express their social and political views, and to advocate on behalf
4 of their communities and ancestral lands, free from the unlawful, obfuscated, and intimidating
5 surveillance operations of a secretive government entity that acts wholly without legislative
6 authorization.

7 102.

8 TITAN's operations cause, and will continue to cause, irreparable injury to Plaintiffs by
9 interfering with the exercise of their constitutional rights, subjecting them and the organizations of
10 which they are a part to the *ultra vires* intelligence operations of law enforcement agencies,
11 disrupting their lives, sundering their reputations, and interfering with their ability to communicate
12 freely with members of their community, to recruit supporters, to assess adequately the security
13 and privacy risks of engaging in constitutionally protected activity, and to assess the risks that they
14 are asking vulnerable community members to take on when encouraging them to engage in the
15 same.

16 **CLAIMS FOR RELIEF**

17 **FIRST CLAIM**

18 **Declaratory Judgment (ORS 28.010 *et seq.*)**

19 ***(Ultra Vires Agency Action)***

20 103.

21 Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though
22 fully set forth herein.

23 104.

24 Defendant Oregon Department of Justice is an executive agency of the State of Oregon.
25 ORS 180.210, 183.310. As such, it exists solely by virtue of its enabling legislation and cannot
26 exceed the scope of powers afforded to it by the Oregon Legislative Assembly. Any action by

1 Defendant agency or officers exceeding the powers conferred upon it by the legislature is *per se*
2 unlawful. *Ochoco*, 295 Or at 426.

3 105.

4 Defendant OR DOJ currently operates TITAN, an “all crimes” and “all threats” fusion
5 center.

6 106.

7 There is no law that authorizes Defendant OR DOJ or its officers to operate an “all crimes”
8 and “all threats” fusion center. TITAN is, therefore, unlawful.

9 107.

10 The Oregon TITAN Fusion Center is an *ultra vires* program, unlawfully administered by
11 the Defendant state agency by and through its officers.

12 108.

13 Because TITAN is *ultra vires*, it cannot continue to operate, absent explicit authorization
14 through the legislative process.

15 109.

16 ORS 28.010 empowers “courts of record within their respective jurisdiction . . . to declare
17 rights, status, and other legal relations, whether or not further relief is or could be claimed.”

18 110.

19 Plaintiffs are entitled to a declaration that TITAN’s operations are unlawful.

20 111.

21 If not enjoined by this Court, Defendants will continue to administer and operate TITAN,
22 which subjects Plaintiffs to the injuries specified herein. These operations will continue to cause
23 Plaintiffs to suffer irreparable injury, for which Plaintiffs have no adequate remedy at law.

24 112.

25 Declaratory and injunctive relief would have a practical effect on Plaintiffs rights because
26 it would cause Defendants’ unlawful conduct to cease. This would ensure that Plaintiffs no longer

1 are the target of TITAN's unlawful domestic surveillance and intelligence operations and would
2 enable Plaintiffs to continue their advocacy and exercise of constitutional rights free from the
3 injuries and undue burdens specified herein.

4 113.

5 Accordingly, Plaintiffs are entitled to declaratory and injunctive relief.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiffs respectfully request the following relief:

8 1. A declaration that the Oregon TITAN Fusion Center exceeds the statutory
9 authority of the Oregon Department of Justice, is not otherwise authorized by law, and therefore
10 is operating ultra vires;

11 2. An order enjoining the Defendants and their officers, agents, and employees from
12 their ultra vires operation of the Oregon TITAN Fusion Center;

13 3. An order compelling the Oregon TITAN Fusion Center to destroy and expunge all
14 records related to Plaintiffs and the organizations with which they work that were collected and
15 retained in the course of TITAN's ultra vires activities;

16 4. An award in favor of Plaintiffs of reasonable attorneys' fees, costs, disbursements,
17 and expenses, pursuant to ORS § 182.090 and this Court's equitable authority; and

1 5. Such other relief, including damages, as the court deems just and equitable.

2 DATED this 14th day of December, 2021.

3 DAVIS WRIGHT TREMAINE LLP

4 By: s/ Tim Cunningham

5 Tim Cunningham, OSB #100906

6 timcunningham@dwt.com

7 Telephone: (503) 241-2300

8 Facsimile: (503) 778-5299

9 THE POLICING PROJECT

10 WASHINGTON SQUARE LEGAL SERVICES, INC.

11 Barry Friedman (pro hac vice application forthcoming)

12 barry.friedman@nyu.edu

13 Farhang Heydari (pro hac vice application forthcoming)

14 farhang.heydari@nyu.edu

15 Annie Hudson-Price (pro hac vice application
16 forthcoming)

17 annie.hudsonprice@nyu.edu

18 40 Washington Square South

19 New York, NY 10012

20 (212) 992-6950

21 CLEARY GOTTLIEB STEEN & HAMILTON, LLP

22 Jeffrey Rosenthal (pro hac vice application
23 forthcoming)

24 jrosenthal@cgsh.com

25 Patrick Swiber (pro hac vice application forthcoming)

26 pswiber@cgsh.com

 One Liberty Plaza

 New York, NY 10006

 (212) 225-2086

 Of Attorneys for Plaintiffs