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CIRCUIT COURT OF OREGON  
FOR LANE COUNTY  
AMS

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7 IN THE CIRCUIT COURT OF THE STATE OF OREGON  
8 FOR THE COUNTY OF LANE

9 M.H.

Case No. **26CV15674**

10 Plaintiff,

**CLASS ACTION COMPLAINT**

11 vs.

Statute Establishing Filing Fee:  
ORS 21.160(1)(c) (\$594)

12 BOARD OF PAROLE AND POST-PRISON  
13 SUPERVISION;  
14 and OREGON STATE POLICE,

PRAYER AMOUNT:

15 Defendants.

Not less than \$50,000

Not more than

\$1,000,000.00

16 **INTRODUCTION**

17 This case concerns individuals on Oregon's sex offender registry who completed their  
18 criminal sentences long ago, lived in the community for years or even decades without  
19 committing any new sex offenses, and just in the last few years, got swept into Oregon's modern  
20 sex-offender classification system. All have been systematically misclassified as a higher risk  
21 than they are. Plaintiff is one such person. He completed his sentence in the 1990s. In December  
22 of 2024, long after he had married, raised a family, started a business and generally built a stable  
23 life, the Board conducted an assessment for the first time and assigned him the highest risk  
24 classification available, Level III, based on a methodology (referred to in this complaint as the  
25 challenged methodology and described in detail in paragraph 50, below) that excludes any

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20058782



1 consideration of his decades of offense-free, pro-social conduct. The classification upended his  
2 life and caused severe economic harm.

3         The challenged methodology is the focus of this lawsuit. ORS 163A.100, which created  
4 Oregon’s three-level sex-offender notification classification system went into effect on January  
5 1, 2014. The law requires the Board of Parole and Post-Prison Supervision to classify registrants  
6 into Level I, II, or III based on the risk they present of committing a new sexual offense. For  
7 individuals convicted in recent years, the Board performs an assessment of their present-day risk  
8 and issues a classification close in time to their release. For “historical registrants,” however,  
9 whose convictions and release dates predated the statute by years or decades, the reality is  
10 different. Many of them have not been classified until recently due to administrative backlogs.  
11 When the Board does get around to conducting their risk assessments, it uses the challenged  
12 methodology, which does not claim to measure their present-day risk to the public. It looks,  
13 instead, at what their actuarial risk would have been at the historical moment of release.

14         These historical registrants, by definition, were released prior to January 1, 2014, and  
15 have not committed any new sex offenses since. As a group, they pose a low actuarial risk of  
16 reoffense in absolute terms. For this generally stable group, the consequences of new “High  
17 Risk” classifications have been immediate and severe. Level III requires mandatory public  
18 internet publication of a person’s name, photograph, and address and labels them as Level III  
19 registrants, widely understood to mean that they present the highest possible risk to the public.  
20 Level III status also triggers criminally enforceable restrictions on presence in locations where  
21 children regularly congregate, preventing people from doing ordinary things they have done for  
22 years, like picking up their own kids from school or attending their sporting events. Level III  
23 exposes registrants to additional felony liability for otherwise lawful contact with children based  
24 solely on classification status.

1 Plaintiff brings this action on behalf of himself and a class of similarly situated  
2 individuals who completed their sentences before Oregon enacted its classification regime and  
3 were later designated Level III “high risk” offenders through the challenged methodology which  
4 did not ever assess their present-day risk.

5 **JURISDICTION AND GOVERNING LAW**

- 6 1. This action arises under Oregon law, including ORS chapters 28, 30, and 163A, the  
7 Oregon Constitution, Oregon common law, and this Court’s equitable authority.
- 8 2. Plaintiff asserts no federal causes of action and seeks relief solely under state law.
- 9 3. This Court has subject-matter jurisdiction under ORS 28.010 (declaratory relief); ORS  
10 163A.100–163A.125 (classification and risk assessment); and ORS 30.275 and ORS  
11 30.265 (tort claims and remedies).
- 12 4. An actual and justiciable controversy exists between Plaintiff and Defendants concerning  
13 whether the challenged methodology used to classify Plaintiff as a Level III registrant  
14 under ORS 163A.100 is lawful and whether the Board’s December 3, 2024, Final Order  
15 applying that methodology to Plaintiff is valid. The same controversy exists with respect  
16 to other similarly situated registrants whose Level III classifications were issued using  
17 that methodology.
- 18 5. Plaintiff provided timely tort-claims notice to Defendants pursuant to ORS 30.275 on  
19 January 22, 2025, describing the conduct and harms giving rise to the tort claims asserted  
20 in this action.
- 21 6. Plaintiff has suffered concrete and ongoing injury traceable to Defendants’ actions and  
22 redressable by declaratory and injunctive relief.  
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**PARTIES**

- 7. Plaintiff M.H. is a resident of Eugene, Lane County, Oregon.
- 8. Plaintiff has standing to seek relief on behalf of the Class because he is a member of the proposed Class.
- 9. Defendant Board of Parole and Post-Prison Supervision (hereinafter, the "Board") is an Oregon state agency responsible for assigning sex-offender notification levels under ORS chapter 163A. The Board issued the December 3, 2024 Final Order classifying Plaintiff as a Level III registrant and transmitted that designation for public dissemination to the Oregon State Police.
- 10. Defendant Oregon State Police (hereinafter, "OSP") is an Oregon law-enforcement agency that maintains the state registry website and publishes sex-offender registry information. OSP published Plaintiff's information and Level III designation on Oregon's registry website

**VENUE**

- 11. Venue is proper in Lane County under ORS 14.060 because Plaintiff resides in this county and the cause of action arose in Lane County.

**CLASS ACTION ALLEGATIONS**

- 12. Plaintiff brings this action on behalf of himself and a proposed class under ORCP 32.
- 13. The proposed Class consists of All individuals in Oregon who:
  - A. Completed their sentences for a registrable sex offense before January 1, 2014;
  - B. Were classified by the Board as Level III sex offenders under ORS 163A.100 between January 1, 2014, and the present;

C. Were adult males with at least one registrable adult conviction and, therefore, classified by the Board using the challenged methodology (described in paragraph 50, below); and

D. whose Level III designation was transmitted to the Oregon State Police for publication on Oregon’s sex-offender registry.

14. The Class includes individuals classified as Level III after May 27, 2025 (the effective date of Oregon Laws 2025, chapter 187), if such classifications rely on the challenged methodology.

15. This ties the Class directly to the challenged methodology and excludes all historical registrants (if any) who were female or who were juveniles-charged-as-adults or Category B registrants who were classified using different methodology but still designated as Level III offenders.

**Numerosity (ORCP 32 A(1))**

16. As of February 1, 2025, the Board had classified over 15,000 registrants under ORS 163A.100.

17. Dozens of historical registrants have been classified as Level III during the period between January 1, 2014, when the classification law went into effect, and the present day.

18. Joinder of all Class members would require numerous separate actions in multiple counties and is impracticable.

**Commonality (ORCP 32 A(2))**

19. Common questions of law and fact exist as to all members of the Class:

A. Whether the Board adopted and applied a uniform methodology that fixed the relevant risk-assessment inputs at the time of release, sentencing, or discharge

1 and categorically excluded consideration of present-day characteristics bearing on  
2 risk;

3 **B.** Whether that methodology is consistent with the requirements of ORS 163A.100,  
4 which directs the Board to classify registrants based on the level of risk they  
5 present to the public;

6 **C.** Whether Level III classifications issued pursuant to that methodology are lawful  
7 and valid under Oregon law;

8 **D.** Whether the State may lawfully transmit and publicly disseminate Level III  
9 designations derived from that methodology through the Oregon State Police  
10 registry and related notification systems;

11 **E.** Whether the retrospective application of the Level III classification regime to  
12 individuals who completed their sentences before enactment of ORS 163A.100  
13 and its associated consequences violates Article I, section 21 of the Oregon  
14 Constitution; and

15 **F.** Whether the procedures used to impose Level III designations satisfy the  
16 requirements of Article I, section 10 of the Oregon Constitution.  
17

18 20. Resolution of these questions turns on the legality of Defendants' uniform policies and  
19 practices and does not depend on individualized proof of present-day risk, individualized  
20 Static-99R scoring disputes, or any other registrant-specific factual determinations.  
21

22 **Typicality (ORCP 32 A(3))**

23 21. Plaintiff was classified as Level III during the relevant period pursuant to the challenged  
24 methodology.

25 22. Plaintiff's designation was transmitted to and published by OSP.

23. Plaintiff is subject to the same legal consequences imposed on all Level III registrants under ORS 163A.010, ORS 163.476, ORS 163.479, and ORS 163A.125.

24. Plaintiff is challenging the legality of the same methodology and procedures which all other Class members are likewise subject to.

25. Plaintiff's claims arise from the same course of conduct and are based on the same legal theories as the claims of the Class.

26. No defenses unique to Plaintiff defeat typicality.

**Adequacy of Representation (ORCP 32 A(4))**

27. Plaintiff seeks declaratory and injunctive relief applicable to all members of the Class.

28. Plaintiff has no interests antagonistic to the Class.

29. Plaintiff understands and accepts the responsibilities of serving as class representative.

30. Plaintiff's counsel has the experience and resources necessary to represent the Class and will vigorously prosecute this action.

**31. Maintainability (ORCP 32 B(2))**

32. Certification is appropriate under ORCP 32 B(2). ORCP 32 B(2) applies where the opposing party has acted or refused to act on grounds generally applicable to the class, making final injunctive or corresponding declaratory relief appropriate with respect to the class as a whole.

33. The Board applied the challenged methodology to classify every member of the proposed Class as Level III during the relevant period.

34. For every Class member, the Board transmitted the Level III designation derived from the challenged methodology to the Oregon State Police, and OSP published that designation on the statewide registry website.

1 35. Plaintiff seeks certification of this action under ORCP 32 B(2) for declaratory and  
2 injunctive relief only.

3 36. Plaintiff does not seek classwide monetary damages and seeks certification under ORCP  
4 32 B(2) solely for declaratory and injunctive relief applicable to the Class as a whole.  
5

6 **FACTUAL BACKGROUND**

7 **Plaintiff's Conviction, Discharge, and Long-Term Community History**

8  
9 37. In January 1990, Plaintiff was convicted in Lane County Circuit Court of three counts of  
10 Sexual Abuse in the First Degree.

11 38. Plaintiff was sentenced to a term of incarceration followed by supervision.

12 39. Plaintiff was discharged from supervision on March 21, 1998.

13 40. Plaintiff's obligation to report, and therefore to be assigned a risk level, arises solely  
14 from this sex-crime conviction.

15 41. Since his discharge in 1998, Plaintiff has lived continuously in the community for over  
16 thirty years.

17 42. During that time, Plaintiff has married, raised a family, and maintained stable housing  
18 and employment.

19 43. Plaintiff has not been convicted of any new sex offenses since his 1990 conviction.  
20

21 **Registration Regime in Effect at the Time of Plaintiff's Conviction**

22 44. At the time of Plaintiff's conviction in 1990 and discharge in 1998, Oregon law:

- 23 A. Did not have a risk-based sex offender notification level classification system
- 24 under ORS 163A.100.

25

B. Did not require internet publication of any registrant’s name, photograph, address, and level of risk relative to that of other registrants.

45. Plaintiff completed his sentence and discharge under the legal framework in effect at that time.

**Statutory Framework for Assessing Risk and the Board’s Treatment of Historical Registrants**

46. In 2013, the Oregon Legislature enacted ORS 163A.100, which took effect on January 1, 2014.

47. ORS 163A.100 directs the Board to adopt a methodology that classifies registrants into notification levels based on risk of reoffending.

48. At the time ORS 163A.100 was enacted, Oregon had thousands of so-called “historical registrants” whose convictions and releases predated the statute.

49. ORS 163A.100 required the Board to classify all historical registrants irrespective of how much time had passed since their release.

50. To classify adult males, the Board adopted and applied a risk assessment methodology that:

A. calculated Static-99R scores based solely on static factors and information existing at or near the date of the registrant’s release from incarceration or supervision;

B. categorically excluded consideration of offense-free time in the community after release; and

C. excluded other present-day factors bearing on current risk of reoffense during the initial classification decision.

51. The legislature originally required the Board to classify all historical registrants under ORS 163A.100 by deadlines initially set in HB 2549 (2013) and HB 2320 (2015), with subsequent extensions reflecting persistent underfunding and a growing backlog of tens of thousands of unclassified individuals.

52. Despite these extensions and millions of dollars in allocations, the Board informed the legislature that it still lacked sufficient resources to meet the deadlines.

**Plaintiff's Classification**

53. On July 10, 2024, the Court of Appeals invalidated the challenged methodology. See *Thomsen v. Board of Parole and Post-Prison Supervision*, 333 Or. App. 703 (2024).

54. Despite *Thomsen*, the Board nonetheless proceeded to classify Plaintiff in late 2024 using the methodology that had been invalidated by the Court.

55. Plaintiff had never previously been classified under ORS 163A.100.

56. Plaintiff had never previously been publicly listed on Oregon's online sex offender registry.

57. The Board issued a provisional Static-99R score corresponding to a Level III designation.

58. The Board provided Plaintiff with a written-objection process limited to item-by-item scoring disputes.

59. Plaintiff submitted written objections explaining that he no longer poses a meaningful risk of reoffense and identified his sustained offense-free conduct in the community

60. In addressing those objections, the Board acknowledged that offense-free time in the community is associated with reduced risk of sexual reoffense.

1 61. The Board stated that, under its classification methodology for historical registrants, it  
2 does not consider desistance, offense-free time, or other present-day characteristics  
3 outside the Static-99R scoring factors when making the initial notification-level  
4 determination.

5 62. On December 3, 2024, the Board issued a Final Order classifying Plaintiff as a Level III  
6 registrant.

7 63. The Board transmitted Plaintiff's Level III designation to OSP.

8 64. OSP maintains a public sex-offender registry website.

9 65. The registry website lists only offenders classified as Level III.

10 66. The website suggests that Level III offenders present a higher risk to the public than  
11 other sex offenders.

12 67. OSP published the following information about Plaintiff on the public registry website:

- 13 A. Plaintiff's name
- 14 B. Plaintiff's photograph
- 15 C. Plaintiff's residential address
- 16 D. Plaintiff's Level III High Risk designation

17 68. Once published, registry information is indexed by search engines, incorporated into  
18 private databases, copied to third-party sites, and may persist online even after removal from  
19 official sources.  
20

21 **Appellate Proceedings and the Board's Confession of Error**

22 69. Plaintiff sought judicial review of the December 3, 2024, Final Order.

23 70. In its answering brief before the Oregon Court of Appeals, the Board conceded that  
24 Plaintiff's classification was erroneous under *Thomsen*.  
25

**Legislative Action in Response to *Thomsen***

1 71. In May 2025, after the Board filed its concession and while Plaintiff’s appeal was still  
2 pending, the Legislature enacted Senate Bill 1122 (effective May 27, 2025).

3 72. SB 1122 amended ORS 163A.100 to authorize the Board to use the challenged  
4 methodology.

5 73. As a general rule, the Board has uniformly applied the challenged methodology when  
6 classifying all proposed Class members and continues to do so.

7 74. During a brief period following the Court of Appeals’ decision in *Thomsen*, the Board  
8 reconsidered a handful of classifications using a desistance-chart and issued lower  
9 classifications. However, that departure was temporary and limited in scope. After enactment of  
10 SB 1122, the Board revisited at least some of those re-classifications and reclassified them back  
11 again using the challenged methodology.  
12

13 75. All classifications challenged in this action, including Plaintiff’s, were issued pursuant to  
14 the same methodology.

15 **Ongoing Effects**

16 76. Level III designation triggers mandatory public dissemination of registry information  
17 online. Pursuant to ORS 163A.215(2)(a), the Oregon State Police publish information  
18 concerning individuals classified as Level III registrants on a public website, including the  
19 registrant’s name, photograph, residential location, and notification level.  
20

21 77. Once published, registry information is indexed by search engines and copied to private  
22 databases and third-party websites, expanding the scope and persistence of dissemination  
23 beyond the official registry itself.

24 78. As a result, individuals identified as Level III registrants remain identifiable to  
25 employers, landlords, neighbors, and members of the public even if they are subsequently

1 removed from the government website.

2 79. Plaintiff continues to be publicly identified as a Level III sex offender due to the Board's  
3 December 3, 2024, classification and the State's initial publication of that designation.

4 80. All members of the proposed Class likewise remain publicly identified as Level III  
5 registrants based on classifications issued pursuant to the challenged methodology and the  
6 State's initial publication of that designation.

7 81. ORS 163A.215(2)(b) authorizes additional community notification concerning Level III  
8 registrants to residential neighbors, schools, parks, child-care centers, community organizations,  
9 businesses, and media outlets.

10 82. Level III classification also carries continuing legal consequences independent of any  
11 ongoing criminal supervision. Under ORS 163.476, a person who has been classified as a Level  
12 III sex offender commits a criminal offense by knowingly entering or remaining in locations  
13 where minors regularly congregate without written authorization.

14 83. Oregon administrative rules establish a process through which Level III registrants may  
15 request written authorization to enter such locations. OAR 255-085-0070. The rule further  
16 requires that any written authorization be carried on the registrant's person while present at the  
17 location.  
18

19 84. Level III classification also creates additional criminal exposure under ORS 163.479,  
20 which imposes felony liability for certain contact with minors by individuals classified as Level  
21 III registrants.

22 85. Public designation as a Level III registrant carries substantial reputational, economic, and  
23 personal consequences, including stigma associated with public labeling as a "high risk"  
24 offender and barriers commonly associated with public registry status.  
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**Lack of Complete Relief**

86. The continuing harms caused by Level III classification are not eliminated by the administrative and appellate procedures associated with classification orders.

87. Classification proceedings provide no right to appointed counsel.

88. Many members of the proposed Class did not therefore seek judicial review of their classification orders within the statutory period for appeal.

89. As a result, those individuals remain subject to Level III designations issued pursuant to the challenged methodology without any pending appellate proceeding addressing the validity of those classifications.

90. The statutory framework governing reclassification under ORS 163A.125 provides no realistic path to reduction in notification level for many Level III registrants, due to:

- A. Strict statutory waiting periods
- B. Categorical exclusions and disqualifications that apply to most level III registrants.
- C. The high burden of proof (clear and convincing evidence that they pose no threat to public safety is required to qualify for re-classification as a “moderate” risk); and
- D. Practical barriers, including cost and the absence of appointed counsel

91. For all these reasons, many members of the proposed Class remain subject to Level III classification and its continuing consequences without any realistic avenue for obtaining relief through existing administrative or appellate mechanisms.

**Continuing Justiciability**

92. This action does not become moot if the Court of Appeals vacates Plaintiff’s individual

1 classification order or if the Board issues a new classification order for him during the pendency  
2 of this case.

3 93. First, even if Plaintiff's individual classification were vacated or modified, the effects of  
4 the challenged designation would not be fully undone. Plaintiff was publicly identified on the  
5 statewide registry as a Level III offender, and registry information that has been published will  
6 continue to circulate through search engines, private databases, and third-party websites and/or  
7 other means even after removal from the official registry.

8 94. Moreover, Plaintiff is challenging not merely the issuance of a single administrative  
9 order but the legality of the methodology the Board used to classify historical registrants over-all  
10 and the State's continuing reliance on and dissemination of classifications issued pursuant to that  
11 methodology.

12 95. Level III classifications issued pursuant to the challenged methodology continue to  
13 produce ongoing legal and practical consequences for all members of the proposed Class

14 96. Those consequences do not depend in any way on the continued validity of Plaintiff's  
15 individual Final Order. They arise from the State's reliance on the Level III designation itself.

16 97. The legality of Defendants' methodology and their continued reliance on classifications  
17 issued pursuant to it therefore presents a live controversy capable of resolution by declaratory  
18 and injunctive relief from this Court.  
19  
20

21 **CLAIMS FOR RELIEF**

22 **98. Plaintiff, individually and on behalf of the Class, asserts claims for**  
23 **declaratory and injunctive relief without prejudice to subsequent proceedings concerning**  
24 **monetary relief.**  
25

**Class Action Claims:**

**FIRST CLAIM FOR RELIEF: Declaratory Judgment (ORS 28.010 et seq.)**

99. Plaintiff, individually and on behalf of the Class, realleges and incorporates paragraphs 1 through 97.

100. An actual and present controversy exists between Plaintiff, the Class, and Defendants regarding:

- A. Whether the challenged methodology complied with ORS 163A.100
- B. Whether Level III classifications issued pursuant to that methodology are lawful and valid; and
- C. Whether Defendants may continue to transmit, publish, or rely upon Level III designations derived from that methodology

101. Declaratory relief will resolve the adverse legal interests of Plaintiff, the Class, and Defendants, clarify the scope of the Board’s authority under ORS 163A.100 (before and after amendment), and determine the legal effect of Level III classifications and resulting publications issued pursuant to the challenged methodology.

102. Plaintiff and the Class seek a declaration that Level III classifications issued pursuant to the challenged methodology are unlawful and without legal effect and that Defendants may not lawfully continue to transmit, publish, or rely upon such designations absent procedures compliant with Oregon law and the Oregon Constitution.

**SECOND CLAIM FOR RELIEF: Ultra Vires / Void Agency Action (Equitable)**

103. Plaintiff, individually and on behalf of the Class, realleges and incorporates paragraphs 1 through 97.

104. An administrative action taken in excess of statutory authority is void and subject

1 to equitable relief.

2 105. Prior to May 27, 2025, when the legislature enacted Senate Bill 1122 (Oregon  
3 Laws 2025, chapter 187), ORS 163A.100 as construed by the Oregon Court of Appeals in  
4 *Thomsen v. Board of Parole and Post-Prison Supervision*, 333 Or. App. 703 (2024) required the  
5 Board to classify registrants based on the risk they presented at the time of classification.

6 106. During the period between January 1, 2014, and May 27, 2025, the Board applied  
7 the challenged methodology, which was invalidated in the above case, to Plaintiff and to all  
8 Class members.

9 107. The Board lacked statutory authority to do so.

10 108. Level III classifications issued pursuant to that methodology were therefore  
11 issued in excess of the Board's statutory authority.

12 109. Administrative orders issued in excess of statutory authority have no valid legal  
13 effect.

14 110. Plaintiff and the Class seek equitable relief declaring that Level III classifications  
15 issued pursuant to the challenged methodology prior to May 27, 2025, are void and without legal  
16 effect.

17 111. Plaintiff and the Class further seek an order vacating all Level III classifications  
18 issued under that methodology prior to May 27, 2025 and prohibiting Defendants from  
19 enforcing, relying upon, or republishing designations derived from it (including designations  
20 that continue to appear on the public registry or trigger statutory consequences under ORS  
21 163A.215, 163.476, 163.479, and related provisions).

22 **THIRD CLAIM FOR RELIEF: Violation of Article I, Section 21 of the Oregon**  
23 **Constitution (Ex Post Facto)**  
24  
25

1 112. Plaintiff, individually and on behalf of the Class, realleges and incorporates  
2 paragraphs 1 through 97.

3 113. Article I, section 21 of the Oregon Constitution prohibits the enactment or  
4 application of any ex post facto law.

5 114. Plaintiff and members of the proposed class were all convicted of registrable  
6 offenses and discharged from supervision before the enactment and implementation of ORS  
7 163A.100 and the Level III classification framework and related statutory consequences on  
8 January 1, 2014.

9 115. At the time of Plaintiff's conviction and discharge, Oregon law did not impose a  
10 Level III risk-based classification system, mandatory statewide internet publication of a  
11 "highest risk" designation, or criminal liability for otherwise lawful conduct tied to a Level III  
12 classification.

13 116. Defendants classified Plaintiff and all proposed Class members as Level III sex  
14 offenders under ORS 163A.100 and applied the statutory consequences that attach to that  
15 classification after January 1, 2014.

16 117. The Level III classification and its statutory consequences were applied to  
17 Plaintiff based solely on convictions and conduct that predated enactment of the Level III  
18 statutory scheme.

19 118. The Level III classification and its statutory consequences impose substantial  
20 detriments, restraints, and deprivations of legal rights, including but not limited to mandatory  
21 online branding as a "high risk" offender, ongoing movement restrictions conditioned on  
22 governmental permission, and permanent ineligibility for relief from lifetime reporting. This  
23 results, predictably, in severe, enduring consequences affecting reputation, employment, family  
24  
25

1 relationships, and community participation. These consequences are particularly severe as  
2 applied to historical registrants like Plaintiff.

3 119. These consequences operate as additional punishment beyond that authorized at  
4 the time of Plaintiff's conviction and discharge.

5 120. The retrospective application of the Level III classification and its statutory  
6 consequences to Plaintiff and members of the Class violates Article I, section 21 of the Oregon  
7 Constitution, both on its face (as the regime imposes punitive effects across the class of  
8 historical registrants) and as applied to Plaintiff and similarly situated Class members (whose  
9 low actuarial risk, as a group, demonstrates punitive impact far beyond any regulatory purpose).  
10

11 121. Plaintiff and the Class seek declaratory and injunctive relief declaring that the  
12 retrospective imposition and enforcement of Level III classifications under ORS 163A.100 and  
13 related statutes violate Article I, section 21, both facially and as applied, and prohibiting  
14 Defendants from continuing to enforce or disseminate those classifications.

15 **FOURTH CLAIM FOR RELIEF: Violation of Oregon Constitution, Article I, § 10**  
16 **(Due Course of Law)**

17 122. Plaintiff and Class reallege and incorporate paragraphs 1 through 97 and 118.

18 123. Article I, section 10 of the Oregon Constitution requires procedures proportionate  
19 to the nature and consequences of the governmental action at issue.  
20

21 124. Level III classification implicates a protected liberty interest in freedom of  
22 movement and in avoiding state-imposed stigma coupled with statutory restraints.

23 125. Defendant(s) applied the challenged methodology to all individuals subject to  
24 classification or reclassification as Level III registrants during the relevant period.

25 126. No Class member received a live hearing at which they could present evidence or

1 argument concerning their present risk to the community.

2 127. The paper-bound objection process did not permit any of them to present, for the  
3 Board's consideration, facts or arguments related to present risk.

4 128. The procedures used were categorically insufficient as a matter of law in light of  
5 the magnitude, permanence, and stigmatizing nature of the consequences set forth in paragraph  
6 118.

7 129. The uniform, paper-based objection process did not provide an opportunity to be  
8 heard that was meaningful, i.e. that was commensurate with the grave interests at stake.

9 130. Plaintiffs, on behalf of themselves and the Class, seek declaratory and injunctive  
10 relief vacating the Final Orders classifying them as Level III, prohibiting continued use or  
11 publication of those classifications, and requiring Defendants to implement procedures that  
12 provide due process consistent with Article I, section 10 of the Oregon Constitution prior to  
13 issuing any new designations.  
14

15 **The following Claims are all Individual, not Class-wide**

16 **FIFTH CLAIM FOR RELIEF: Negligence Per Se (ORS Chapter 163A; Oregon**  
17 **Tort Claims Act)**

18 131. Plaintiff realleges and incorporates paragraphs 1 through 97.

19 132. ORS 163A.100 imposes a mandatory statutory duty on the Board to adopt and  
20 apply a lawful risk assessment methodology and to classify registered sex offenders based on the  
21 level of risk they present.  
22

23 133. ORS 163A.105(1), (2), and (4) impose mandatory duties requiring the Board or  
24 supervisory authority to assess a person utilizing the risk assessment methodology described in  
25 ORS 163A.100 and to apply the results of that assessment to place the person in one of three

1 statutory risk levels.

2 134. ORS 163A.105(7)(c)–(d) further impose mandatory duties requiring the  
3 classifying authority to " afford the person an opportunity to be heard as to all factual questions  
4 related to the classification."

5 135. These duties are expressed in mandatory terms ("shall" and "must") and are not  
6 discretionary policy choices.

7 136. Plaintiff is within the class of persons whose legal rights and responsibilities  
8 those statutes are designed to regulate, namely persons subject to risk assessment, classification,  
9 and the resulting public dissemination and legal consequences under ORS chapter 163A.

10 137. The harms Plaintiff has suffered are the foreseeable and direct consequences of  
11 classification under ORS 163A.100 and the mandatory provisions triggered by that  
12 classification.

13 138. Defendants breached ORS 163A.100 by issuing a Level III designation derived  
14 from a methodology that did not lawfully measure the risk Plaintiff presents to the public.

15 139. Defendants breached ORS 163A.105(1), (2), and (4) by failing to properly assess  
16 Plaintiff utilizing a lawful risk assessment methodology and by failing to lawfully apply the  
17 results of that assessment to determine his notification level.

18 140. Defendants breached ORS 163A.105(7)(c)–(d) by failing to classify Plaintiff  
19 based on all available information, including present-day and offense-free factors required to be  
20 considered in a lawful classification determination.

21 141. The Board was fully aware of the *Thomsen* decision and its binding effect on  
22 classifications under then-existing law, including its requirement to consider offense-free time in  
23 the community and other present-day factors bearing on current risk, but did not comply with  
24  
25

1 that decision and proceeded to classify Plaintiff using an invalidated methodology.

2 142. Defendants had no excuse or justification for applying the invalidated  
3 methodology to Plaintiff in late 2024.

4 143. But for these statutory violations, Plaintiff would not have been classified as a  
5 Level III sex offender under ORS 163A.100(3).

6 144. The unlawful Level III classification directly and foreseeably caused Plaintiff's  
7 harm.

8 145. The harm was exacerbated by Defendants' knowing and unjustified persistence in  
9 using the invalidated methodology despite clear judicial guidance that doing so would  
10 unlawfully overstate Plaintiff's present risk.

11  
12 **SIXTH CLAIM FOR RELIEF: False Light (Common Law)**

13 146. Plaintiff realleges and incorporates paragraphs 1 through 97

14 147. Defendants, acting through official state channels, publicized information  
15 identifying Plaintiff as a Level III sex offender and as presenting the highest risk of sexual  
16 reoffense.

17 148. The falsity of the publication lies in its representation that Plaintiff presently  
18 presents the highest risk of sexual reoffense. The Level III designation communicated to the  
19 public that Plaintiff currently poses a high risk, when in fact the classification did not lawfully  
20 assess or reflect Plaintiff's present-day risk.

21 149. The designation further conveyed the false implication that Plaintiff's alleged  
22 high risk had been lawfully, validly, and reliably determined through a proper risk assessment  
23 process, when in reality, the classification rested on a methodology that failed to comply with  
24 governing statutory requirements.  
25

1 150. Defendants knew, or acted with reckless disregard of the truth or falsity of the  
2 published representation, because they knew or consciously disregarded the fact that the  
3 classification methodology used did not lawfully assess present-day risk and that the resulting  
4 Level III designation created a materially misleading impression regarding Plaintiff's current  
5 risk to the public.

6 151. The publication of a misleading representation that Plaintiff presently poses the  
7 highest risk of sexual reoffense, and that such status had been lawfully and reliably determined,  
8 would be highly offensive to a reasonable person and has caused Plaintiff substantial  
9 reputational, emotional, and economic harm.

10 152. This false light claim is asserted solely on behalf of Plaintiff in his individual  
11 capacity, and he seeks individual damages and appropriate equitable relief.

12  
13  
14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, individually and on behalf of the proposed Class, requests that  
16 the Court enter judgment and grant the following relief:

17 **A. Classwide Declaratory Relief.** A declaration that:

18 Level III classifications issued pursuant to the Challenged Methodology prior to May 27,  
19 2025 (the effective date of Oregon Laws 2025, chapter 187) were issued in excess of statutory  
20 authority under then-existing ORS 163A.100 (as construed in *Thomsen v. Board of Parole and*  
21 *Post-Prison Supervision*, 333 Or. App. 703 (2024)) and are invalid and without legal effect;

22 Defendants' continued reliance upon, enforcement of, and public dissemination of such  
23 pre-May 27, 2025, classifications violate Article I, section 21 (ex post facto) and/or Article I,  
24 section 10 (due course of law) of the Oregon Constitution as applied to historical registrants who  
25

1 completed sentences before the modern classification regime, and

2           Such pre-May 27, 2025, classifications remain unlawful and without legal effect  
3 notwithstanding the amendments enacted by Oregon Laws 2025, chapter 187, to the extent they  
4 perpetuate retrospective punitive consequences or procedurally inadequate determinations for  
5 Class members.

6           Classifications issued pursuant to the challenged methodology on or after May 27, 2025,  
7 likewise, exceed statutory authority and violate Article I, section 21 (ex post facto) and Article I,  
8 section 10 (due course of law) of the Oregon Constitution as applied to historical registrants who  
9 completed sentences before January 1, 2014.

11           **B. Classwide Injunctive Relief (Prospective).** A permanent injunction prohibiting  
12 Defendants, their officers, agents, employees, and all persons acting in concert with them from  
13 enforcing, relying upon, transmitting, republishing, or otherwise using any Level III  
14 classification issued under the challenged prior to May 27, 2025 (the effective date of Oregon  
15 Laws 2025, chapter 187) against any member of the Class, or any Level III classification issued  
16 or maintained thereafter to the extent it relies on the challenged methodology and imposes  
17 retrospective consequences prohibited by Article I, sections 10 and 21 of the Oregon  
18 Constitution, unless and until Defendants implement and apply procedures and standards that  
19 comply with Oregon law and the Oregon Constitution, to wit: assessments of present-day risk  
20 incorporating offense-free time and other desistance factors, with meaningful opportunities to be  
21 heard on factual questions related to current risk.

23           **C. Classwide Injunctive Relief (Publication/Dissemination).** A permanent injunction  
24 prohibiting Defendants from continuing to publish or disseminate, in any public registry website  
25 (including the statewide sex offender registry maintained by the Oregon State Police under ORS

1 163A.215) any Level III designation pursuant to the challenged methodology (including those  
2 issued after May 27, 2025) for any member of the Class to the extent such designation continues  
3 to impose retrospective punitive consequences or procedurally inadequate determinations  
4 prohibited by Article I, sections 10 and 21 of the Oregon Constitution, and requiring Defendants  
5 to cease further dissemination of those Level III designations, including by taking reasonable  
6 steps within their control to remove or correct such designations from public-facing records,  
7 websites, and communications.  
8

9 **D. Classwide Corrective Relief (Registry/Records).** An order requiring Defendants to  
10 not only remove Level III designations issued or maintained pursuant to the challenged  
11 methodology (including those issued after May 27, 2025) from the State’s public-facing registry  
12 but also to take reasonable corrective steps within Defendants’ control to prevent continued  
13 governmental reliance on those unlawful or constitutionally defective designations in  
14 Defendants’ systems and communications.

15 **E. Individual Relief as to Plaintiff (If Not Fully Coextensive with Class Relief).** To  
16 the extent necessary to afford complete relief to Plaintiff independent of or in addition to the  
17 Classwide relief above, an order granting the same declaratory and injunctive relief as applied  
18 specifically to Plaintiff.

19 **F. Individual Damages.** An award of compensatory damages to Plaintiff individually,  
20 against Defendants as allowed by law under the Oregon Tort Claims Act, including damages for  
21 economic loss (such as interference with employment opportunities, business operations,  
22 housing access, and professional reputation), reputational harm, emotional distress,  
23 psychological injury, and any other foreseeable harms directly caused by the unlawful Level III  
24 classification and its consequences, in an amount to be proven at trial.  
25

