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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON**  
**PORTLAND DIVISION**

**MATS JARLSTROM**, an individual,

Plaintiff,

v.

**CITY OF BEAVERTON**, an Oregon municipal  
corporation,

Defendant.

Case No.: 3:14-cv-00783-AC

**PLAINTIFF'S RESPONSE TO  
DEFENDANT'S LIMITED  
OBJECTIONS TO MAGISTRATE'S  
FINDINGS AND RECOMMENDATION**

Defendant City of Beaverton objects to the Findings and Recommendation issued by Judge Acosta on August 26, 2014, *see* Findings and Recommendation, Dkt No. 27 (Aug. 26, 2014) (F&R), to the extent that the F&R did not address the City's argument under Fed. R. Civ. P. 12(b)(6) that Mr. Jarlstrom failed to state a claim for relief. Def.'s Limited Objection to Magistrate's F&R, Dkt No 35 (Sept. 10, 2014) at 1. According to the City, Mr. Jarlstrom failed to state a claim for relief because he failed to establish a substantive due process right. *Id.* at 2.

Plaintiff's briefing before Judge Acosta fully outlines the reasons why the allegations in both Mr. Jarlstrom's original complaint and his proposed First Amended Complaint were

sufficient to allege a claim under Section 1983 of the Civil Rights Act under the danger-creation exception theory. *See* Pl.'s Mem. in Opp'n to Def.'s Mot. to Dismiss, Dkt. No. 14 (Jul. 3, 2014) at 9-13; Reply in Supp. of Pl.'s Mot. for Leave to File First Am. Compl., Dkt. No. 24 (Aug. 4, 2014) at 6-8. In addition, at oral argument, Mr. Haglund further explained that the City's considered choice not to address the dangerous yellow light durations, even after Mr. Jarlstrom notified the City of the danger, constituted deliberate indifference on the part of the City. Declaration of Shenoa L. Payne, Ex. A, Dkt. No. 34-1 (Sept. 10, 2014) (Motion Hearing) at 17:12-19:18 (citing *Hammel v. Tri-County Metropolitan Transp. Dist. of Oregon*, 955 F. Supp. 2d 1205, 1212 (D. Or. 2013) ("When "actual deliberation" is practical, the deliberate indifference standard applies . . . . Actual deliberation cases are characterized by extended opportunities to do better... teamed with protracted failure to even care." (internal citation omitted))).

Even if this Court determines that Mr. Jarlstrom's allegations are not sufficient to state a claim for relief under Section 1983 of the Civil Rights Act, this Court should not dismiss the case with prejudice on *de novo* review. As explained in Plaintiff's Objections to the F&R, unless it is clear that the complaint cannot be saved by *any* amendment, the plaintiff should be allowed an opportunity to amend. Plaintiff's Objections to F&R, Dkt. No. 32 (Sept. 10, 2014) at 17. This Court must consider whether it can conceive of additional facts that could, if formally alleged, cure the deficiencies in the complaint. *Id.* at 17-18.

As Mr. Jarlstrom explained in his declaration attached to plaintiff's Objections to the F&R, it is conceivable that he can allege even more details establishing the substantial risk of serious harm that the short yellow lights pose. Declaration of Mats Jarlstrom, Dkt. No. 33 (Sept. 10, 2014) ¶¶ 9-25 (explaining in detail how the short yellow lights cause a serious risk of harm to

pedestrians, drivers traversing the intersection, and drivers of third-party vehicles in the vicinity). Mr. Jarlstrom also previously demonstrated that he can allege factual details explaining that he presented the dangers to the City on several occasions, but the City nonetheless failed to change the short duration of the yellow lights. Declaration of Mats Jarlstrom, Dkt. No. 15 (Jul. 3, 2014) ¶ 6. Therefore, at the very least, Mr. Jarlstrom should be allowed to amend his complaint.

For the reasons stated above, plaintiff respectfully requests that, in reviewing defendant's limited objection to the F&R *de novo*, this Court determine that Mr. Jarlstrom stated a claim for relief under Section 1983 of the Civil Rights Act or, in the alternative, is permitted leave to amend his Complaint.

DATED this 22th day of September, 2014.

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By: /s/ Michael E. Haglund  
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CERTIFICATE OF SERVICE

I hereby certify that on the 22th day of September, 2014, I served the foregoing  
**PLAINTIFF'S RESPONSE TO DEFENDANT'S LIMITED OBJECTIONS TO  
MAGISTRATE'S FINDINGS AND RECOMMENDATION**, on the following:

Gerald L. Warren  
Law office of Gerald Warren  
901 Capitol Street, NE  
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Attorney for Defendant

by the following indicated method(s):

- by **mail** with the United States Post Office at Portland, Oregon in a sealed first-class postage prepaid envelope.
- by **email**.
- by **hand delivery**.
- by overnight mail.
- by **facsimile**.
- by the court's Cm/ECF system.

/s/ Michael E. Haglund \_\_\_\_\_  
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