

## Lohman Jason

---

**From:** Smith James S  
**Sent:** Tuesday, October 26, 2021 4:12 PM  
**To:** Ballard Jackie  
**Subject:** FW: Estate of Finicum v United States et al

Ex. 1

---

**From:** Smith James S  
**Sent:** Monday, October 18, 2021 10:52 AM  
**To:** Morgan Philpot <jmorganphilpot@gmail.com>; jpierce@piercebainbridge.com  
**Cc:** 'Armosino@fdfirm.com' <Armosino@fdfirm.com>  
**Subject:** Estate of Finicum v United States et al

Morgan:

We have received and reviewed plaintiffs' Third Amended Complaint. I write pursuant to LR 7-1 to confer on motions the state defendants feel are necessary to challenge the TAC.

The only state defendants remaining in the case are Gov. Brown, the Oregon State Police and the State of Oregon (ECF #180, p. 19). The conspiracy theory must be alleged under federal law (ECF #180, p. 20). A claim under Section 1983 must be alleged against individual state workers, since the state and its agencies are not a "person" for the purpose of Section 1983. Accordingly, we intend to move to dismiss the conspiracy claim against the State of Oregon and Oregon State Police. Additionally, the allegations against Gov. Brown are conclusory, which we believe will not support a conspiracy claim in the Ninth Circuit, and we intend to move to dismiss.

Finally, the TAC seeks to rekindle negligence and intentional tort theories that have already been dismissed (ECF #180, p. 18-19). We intend to move against those claims.

I will follow up with a call to complete the conferral before filing the motions.

James S. Smith  
Oregon DOJ  
Trial Division, Civil Litigation Section  
(971) 673-3891  
(503) 383-5315 (cell)