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ATTORNEYS FOR PLAINTIFFS

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION**

**PEOPLE FOR THE ETHICAL TREATMENT
OF ANIMALS, INC.**, a Virginia Nonstock
Corporation; **JEREMY BECKHAM**; and
JESSICA JOHNSON,

Plaintiffs,

v.

JORDAN HAMILTON, Utah Transit
Authority Police Officer; and **CONNOR MACKIE**,
Utah Transit Authority Police Officer,

Defendants.

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C O M P L A I N T
(Jury Demanded)

Civil No. _____

Judge _____

PLAINTIFFS, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC.

(“PETA”), a Virginia Nonstock Corporation, **JEREMY BECKHAM** and **JESSICA**

JOHNSON, by and through counsel, BRIAN M. BARNARD and STEWART GOLLAN of the
Utah Legal Clinic, as cooperating attorneys for Utah Civil Rights & Liberties Foundation, Inc. as
a Complaint and as causes of action against the Defendants state and allege as follows:

PRELIMINARY STATEMENT

1. This 42 U.S.C. § 1983 action seeks declaratory and injunctive relief for improper interference with the constitutional rights of Plaintiffs. Plaintiffs seek monetary damages as well as equitable relief. Plaintiffs seek attorney fees and costs under 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

JURISDICTION & VENUE

2. Jurisdiction is proper in this Court under 42 U.S.C. § 1983 and § 1988 as well as 28 U.S.C. § 1343, and arises in order to enforce provisions of the United States Constitution. Declaratory relief is authorized by 28 U.S.C. § 2201 and § 2202 and Rule 57 of the Federal Rules of Civil Procedure. Injunctive relief is authorized by Rule 65 of the Federal Rules of Civil Procedure. This Court has supplemental jurisdiction to hear Plaintiffs' state constitutional claims arising from the same factual situation. Plaintiffs seek only equitable relief under their state law claims.

3. Venue is proper in the Central Division of the United States District Court for the District of Utah because the misconduct of Defendants occurred and will occur in Salt Lake County, State of Utah and in the Central Division of this Court. Defendants' places of business are in Salt Lake County, State of Utah.

PARTIES

4. Plaintiff, **PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC.** ("PeTA"), is a Virginia Nonstock Corporation with offices at 501 Front Street, Norfolk, VA 23510. Plaintiff does business in the State of Utah.

5. **JEREMY BECKHAM** is an adult resident of Salt Lake County, State of Utah. He has participated on behalf of various animal rights groups in various outreach events, rallies, demonstrations, etc. in Utah. He is an employee of PeTA.

6. **JESSICA JOHNSON** is an adult resident of Salt Lake County, State of Utah. She has participated on behalf of various animal rights groups in various outreach events, rallies, protests, demonstrations, etc. in Utah. She has been and is a volunteer of PeTA.

7. **OFFICER JORDAN HAMILTON** (“Officer Hamilton”) is a police officer employed with the Utah Transit Authority.

8. **OFFICER CONNOR MACKE** (“Officer Macke”) is a police officer employed with the Utah Transit Authority.

9. The Utah Transit Authority Police Department (“UTA Police Dept.”) is responsible for law enforcement services, crime investigations, crime prevention, public safety, throughout the light rail, commuter rail and bus transit systems, within the Utah Transit Authority (“UTA”) transit district.

10. At all times pertinent to this action, the Defendants were each acting under color of state law, with powers vested in them by the State of Utah, and the UTA Police Department.

OPERATIVE FACTS

Plaintiffs’ Free Expression Activities

11. On September 22, 2011, during the day, the Ringling Brothers Barnum and Bailey Circus (the “Circus”) was performing at Energy Solutions Arena (the “Arena”) located at 301 West South Temple in downtown Salt Lake City, Utah.

12. Plaintiffs are opposed to the use of animals in the circus and were engaged in public speaking and the distribution of informational non-commercial literature at the light rail or stop located immediately North of and adjacent to the Arena. Plaintiffs were distributing literature outlining their opposition to the practices of the Circus and were speaking to those entering or exiting the light rail trains about the Circus and their concern about the animals used by the Circus.

13. Plaintiffs wanted to inform members of the public about their opposition to the Circus and urge them to not support the practices of the Circus.

14. At no time did Plaintiffs disrupt, impede, or otherwise interfere with transit services, the movement of passengers or UTA employees, or public safety.

15. At no time did Plaintiffs enter a transit vehicle, fixed guideway system, right-of-way, or any other area not generally open to the public or not available for public use. At no time did Plaintiffs solicit or receive monetary donations.

16. At no time did Plaintiffs engage in activity that disrupted, impeded, or otherwise interfered with any announcement, instruction, or request transmitted via UTA's public address system, the light rail audio system, or any Transit Police Officer, Law Enforcement Officer, or Authorized UTA Representative.

17. The UTA Amended and Restated Ordinances in effect on September 22, 2011, specifically permit "public speaking," and the "distribution of non-commercial written materials"

to occur “in any Transit Facility¹.” UTA Amended and Restated Ordinances (adopted May 27, 2009), Ch. 4 § 3. A copy of the relevant UTA ordinances is attached as Exhibit “A.”

18. On September 22, 2011, Defendants Officer Hamilton and Officer Macke came to the Arena light rail platform where Plaintiffs were speaking to members of the public and distributing non-commercial literature.

19. Both Officer Hamilton and Officer Macke told Plaintiffs that Plaintiffs were not allowed to engage in their activities on the light rail platform and ordered them to leave. Officer Hamilton told Plaintiffs that their activities were prohibited by UTA ordinance. The officers told Plaintiffs that if they did not leave that they would be cited for trespassing.

20. Solely in response to officers’ orders and the threat of citation made by the officers, Plaintiffs ceased their activities and left the light rail platform.

21. Plaintiffs have suffered harm as a result of the conduct of Defendants as set forth herein. Plaintiffs are entitled to money damages in an amount to be determined at trial.

Prospective Claims

22. Plaintiffs have in the past conducted public demonstrations, free speech activities and outreach actions with regard to animal rights issues in Utah. They have done so on public streets and sidewalks and on government property open to the public in various cities in Utah.

¹ “Transit Facility” is expressly defined by UTA ordinance to include, *inter alia*, boarding zones platforms, passenger waiting areas and shelters. UTA Amended and Restated Ordinances (adopted May 27, 2009), Ch. 1 § 2(V).

23. Plaintiffs have conducted public protests, demonstrations, public speaking, literature distribution and other free speech activities and outreach actions on property belonging to various governmental entities.

24. Plaintiffs have in the past conducted these activities on an impromptu or spontaneous basis and desire to do so in the future.

25. At all times on September 22, 2011 pertinent to this action and as described above, the areas where Plaintiffs stood were open to the public.

26. Plaintiffs desire to engage in public speaking and the distribution of non-commercial literature at the Arena light rail platform in the future and also at other Transit Facilities owned and controlled by UTA. However, Plaintiffs are fearful that if they return they will be arrested and/or cited by Officer Hamilton and/or Officer Macke. This fear is real and has a chilling effect on the civil rights of the Plaintiffs.

27. Plaintiffs will be harmed if they again engage in public speaking and the distribution of non-commercial literature and Transit Facilities owned and controlled by UTA and Officer Hamilton and/or Officer Macke arrest and/or cite them as they have threatened to do.

28. Plaintiffs are entitled to injunctive relief barring Officer Hamilton and Officer Macke from again violating Plaintiffs' civil rights by ordering them to leave and cease engaging in free expression activities at UTA Transit Facilities which are expressly authorized under UTA ordinance.

FIRST CAUSE OF ACTION

(First Amendment of the United States Constitution)

29. Officers Hamilton and Macke had no valid legal basis to order Plaintiffs to cease their free expression activities – public speaking and the distribution of non-commercial literature. Officer Hamilton and Officer Macke had no valid legal basis to threaten Plaintiffs with citation.

30. UTA ordinances expressly permit the activities that Plaintiffs were engaged in at Transit Facilities. *See* Exh. “A,” UTA Amended and Restated Ordinances (adopted May 27, 2009), Ch. 4 § 3.

31. For the purposes of public speaking and the distribution of non-commercial written materials, UTA Transit Facilities constitute designated public fora.

32. The conduct of Defendants as set forth above in forcing Plaintiffs to forego their free expression and outreach activities in a designated public forum constitutes an infringement of Plaintiffs’ expressive rights as protected by the First (1st) and Fourteenth (14th) Amendments to the United States Constitution.

33. Plaintiffs are entitled to equitable relief in the nature of a preliminary injunction and a permanent injunction barring Officer Hamilton and Officer Macke from interfering with Plaintiffs’ expressive rights under the United States Constitution as set forth above.

34. Plaintiffs are entitled to equitable relief in the nature of a declaratory judgment that defendants' conduct as set forth above violated Plaintiffs' expressive rights under the United States Constitution, First (1st) and Fourteenth (14th) Amendments.

35. Officer Hamilton and Officer Macke caused harm to Plaintiffs for which Plaintiffs are entitled to monetary damages (at least nominal). The amount of damages should be determined at trial.

SECOND CAUSE OF ACTION

(Utah Constitution, Art. 1, § 1.)

36. Officers Hamilton and Macke had no valid legal basis to order Plaintiffs to cease their free expression activities in a designated public forum. Officer Hamilton and Officer Macke had no valid legal basis to threaten Plaintiffs with citation.

37. UTA ordinances expressly permit the activities of Plaintiffs at Transit Facilities. UTA Amended and Restated Ordinances (adopted May 27, 2009), Ch. 4 § 3.

38. The conduct of the Officer Hamilton and Officer Macke as set forth above constitutes an infringement of the Plaintiffs' rights to free expression as protected by the Utah Constitution, Art. 1, § 1.

39. Plaintiffs are entitled to equitable relief in the nature of a preliminary injunction and a permanent injunction barring Officer Hamilton and Officer Macke from interfering with Plaintiffs' rights to free expression under the Utah Constitution as set forth above.

40. Plaintiffs are entitled to equitable relief in the nature of a declaratory judgment that Defendants' conduct as set forth above violated Plaintiffs' rights under the Utah Constitution, Art. I, § 1.

IMMEDIATE INJUNCTIVE RELIEF

41. Defendants' threatened and anticipated future violations of Plaintiffs' rights and the harm to Plaintiffs as described above are real and substantial.

42. The conduct of Officer Hamilton and Officer Macke has had and continues to have a chilling effect on Plaintiffs' rights of free expression.

43. Plaintiffs are fearful that if they again engage in public speaking and the distribution of non-commercial literature at UTA Transit Facilities, as permitted under UTA ordinance, that they will again be ordered to leave and/or arrested or cited by Officer Hamilton and/or Officer Macke.

44. Harm has been and will be suffered by Plaintiffs in being hindered and inhibited in engaging in the expressive activity described above.

45. The harm that will be suffered by Plaintiffs is immediate and irreparable in nature. The harm is to Plaintiffs' First Amendment and Utah Constitutional rights to expression. That harm justifies and warrants the issuance of a temporary restraining order and preliminary injunction against Officer Hamilton and Officer Macke barring them from interfering with Plaintiffs' right to engage in the expressive activities described above.

46. Plaintiffs are fearful that unless immediate injunctive relief is granted Officer Hamilton and Officer Macke will continue to act, as set forth above, in derogation of Plaintiffs' rights.

RELIEF REQUESTED

WHEREFORE, Plaintiffs demand the following relief:

1. For a temporary restraining order, preliminary and permanent injunctions allowing Plaintiffs to engage in the expressive activity described above at Transit Facilities owned and controlled by UTA.
2. For declaratory relief that Defendants' order that Plaintiffs cease their public speaking and distribution of non-commercial literature at the Arena light rail platform violated the constitutional rights of the Plaintiffs as protected by the Utah and United States Constitutions.
3. For declaratory relief that Defendants' future conduct as described above will violate the constitutional rights of the Plaintiffs protected by the Utah and United States Constitutions.
4. For monetary damages (at least nominal) in an amount to be determined at trial.
Plaintiffs seek monetary damages only under their United States Constitutional claims and not their pendent state claims.
5. For an award of attorney fees and court costs under 42 U.S.C. § 1983 and § 1988.
6. For such other and further relief as this Court deems just and proper in the premises.

DATED this 7th day of December, 2011.

UTAH LEGAL CLINIC
Attorneys for Plaintiffs

/s/ Stewart Gollan

by _____
STEWART GOLLAN
BRIAN M. BARNARD