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

UPROCK, INC., a Utah corporation, :
BRANDON FULLMER dba UPROK :
RECORDS; NICK MARI dba HI POINT :
ENTERTAINMENT; and RICHARD & :
TRUDY CHILDS' FAMILY TRUST, :

Plaintiffs, : Civil No. 02:05-CV-00732 DAK
 vs. :

:
SHERIFF JAMES O. TRACY, JR., Utah :
 County Sheriff; **LT. GRANT FERRE,** :
 Utah County Sheriff's Department; **KAY** :
BRYSON, Utah County Attorney; :
JERRY D. GROVER, JR., Chair, Utah :
 County Commission; **STEVE WHITE,** :
 Utah County Commissioner; **LARRY** :
ELLERTSON, Vice Chairman, Utah :
 County Commission; and **UTAH** :
COUNTY, a municipal entity and body :
 politic, :

COMPLAINT

(Judge Dale A. Kimball)

(Jury Demanded)

Defendants.

:

PLAINTIFFS, **UPROCK, INC.**, a Utah corporation and **BRANDON FULLMER** *dba* UPROK RECORDS; **NICK MARI** *dba* **HI POINT ENTERTAINMENT** and the **RICHARD & TRUDY CHILDS' FAMILY TRUST**, by and through counsel, BRIAN M. BARNARD and JAMES L. HARRIS, Jr. of the Utah Legal Clinic, as a complaint and causes of action against the defendants state and allege as follows:

PRELIMINARY STATEMENT

1. This is an action brought under 42 U.S.C. § 1983 for declaratory and injunctive relief for an unreasonable search and seizure, restrictions of free expression and for a denial of due process in violation of the First, Fourth, Fifth and Fourteenth Amendments to the United States Constitution. The plaintiffs seek only equitable relief at this time. Plaintiffs seek attorney fees and costs under 42 U.S.C. § 1983 and 42 U.S.C. § 1988.

JURISDICTION AND VENUE

2. Jurisdiction is provided for under 42 U.S.C. § 1983 and § 1988 as well as 28 U.S.C. § 1343, and further arises under 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.

3. Venue is proper in the Central Division of the United States District Court for the District of Utah because the mis-conduct of defendants occurred in Utah County, State of Utah

and in the Central Division of this Court. The individual defendants reside in that division and in Utah County, State of Utah.

PARTIES

4. **UPROCK, INC.**, a Utah corporation is licensed to and doing business in the State of Utah. UPROCK, INC. some times does business under the name UPROK RECORDS.

5. **BRANDON FULLMER** is an adult resident of Salt Lake City. He conducts business under the name UPROK RECORDS. UPROK RECORDS has a place of business at 342 South State Street, Salt Lake City, Utah. UPROCK, INC. and BRANDON FULLMER are referred to hereinafter collectively as “UPROCK.”

6. **NICK MARI** is an adult resident of Salt Lake City. He does business under the name **HI POINT ENTERTAINMENT** (hereinafter “HI POINT”).

7. The **RICHARD & TRUDY CHILDS’ FAMILY TRUST** is a trust created and operating under Utah law (hereinafter the “Trust”). The Trust owns real property in Utah County, Utah.

8. **SHERIFF JAMES O. TRACY, JR.** is the duly elected and serving Sheriff for Utah County. He is the policy maker for Utah County with regard to the actions, policies and decisions which underlie this litigation. He is sued in his official capacity only for equitable relief. He is charged with the duty and responsibility of enforcing county ordinances and state law within Utah County, Utah.

9. **LT. GRANT FERRE** is a duly appointed and serving officer of the Utah County Sheriff's Department. He is in charge of the Patrol Division of the Utah County Sheriff's Department and is the supervisor of sheriff's deputies in the Patrol Division. He is sued in his official capacity only for equitable relief. He is charged with the duty and responsibility of enforcing county ordinances and state law within Utah County, Utah.

10. **KAY BRYSON** is the duly elected and serving County Attorney for Utah County. He is sued in his official capacity only for equitable relief. He is charged with the duty and responsibility of enforcing county ordinances and state law within Utah County, Utah.

11. **JERRY D. GROVER, JR.** is a duly elected and serving County Commission for Utah County. He is the Chair of the Utah County Commission. He is sued in his official capacity only for equitable relief.

12. **LARRY ELLERTSON** is a duly elected and serving County Commission for Utah County. He is the Vice Chair of the Utah County Commission. He is sued in his official capacity only for equitable relief.

13. **STEVE WHITE** is a duly elected and serving County Commission for Utah County. He is sued in his official capacity only for equitable relief.

14. **UTAH COUNTY** is a municipal entity and body politic governing the geographical area known as Utah County. It is the principal and/or employer of the individual defendants named herein.

FACTS

Allegations Related to the TRUST

15. The Trust owns a three hundred and fifty (350) acres parcel of mostly undeveloped land in Diamond Fork Canyon north off of Spanish Fork Canyon (Highway 89) in Utah County, State of Utah. That property is referred to herein as “the Ranch.”

16. For the last three (3) years, during the summer months, outdoor concerts have been held on the Ranch. There have been at least two (2) and as many as five (5) concerts during each summer.

17. Various promoters and individuals have staged the concerts. The Trust leases the Ranch to promoters to stage concerts. The Trust itself has never promoted a concert.

18. Representatives of the Trust are aware of the Utah County Ordinance (§ 13-4-2-1) which provides that a license or permit must be sought from and granted by the Utah County Commission for “an actual or reasonably anticipated assembly of two hundred fifty (250) or more people which continues or can reasonably be expected to continue for twelve (12) or more consecutive hours.”

19. The Trust informs promoters who use the Ranch for concerts that they must comply with Utah County Ordinances and Utah State law.

20. The Trust asks the promoter whether the proposed concert will or can “reasonably be expected to continue for twelve (12) or more consecutive hours.” If the organizer or promoter indicates that the event will not last and is not expected to last for twelve or more (12+) hours, then the position of the Trust is that a permit under §13-4-2-1 is not required.

21. On the evenings of July 16, 2005 and on August 20, 2005 musical concerts were being held at the Ranch. Each concert began about ~9:00 p.m. On July 16th at about 11:15 p.m. and on August 20th at about 11:30 p.m., armed and battle ready uniformed SWAT officers, deputy sheriffs, and other law enforcement officers came on to the Ranch and ordered the concerts to stop. Each evening they were accompanied by attack dogs and a helicopter circling overhead. Some of the officers were masked, wore flack jackets, battle helmets and were armed with full automatic rifles. In each case, the event had been in progress less than three (3) hours. In each case, the officers ordered the music stopped, ordered people off the Ranch and an end to the concert. Defendants threatened persons in attendance with arrest if they refused to leave, telling people, "If you don't leave immediately, you will go to jail." Representatives of the Trust, the owner of the property, on both dates, were ordered off the land by the officers.

22. No law enforcement officer, including Sheriff Tracy, ever asked representatives of the Trust how long the July 16th or August 20th concerts would last or were planned to last.

23. The Trust desires to and anticipates that it will in the near future lease the Ranch to promoters for the purpose of staging outdoor concerts or events during the months of September and October 2005.

Allegations Related to HI POINT and UPROCK

24. HI POINT decided early in Spring 2005 to co-sponsor and co-promote an outdoor concert in August 2005 to help with the release of certain CD's. HI POINT planned to co-

sponsor the event with Brandon Fullmer, Uprock, Inc. and Uprok Records (hereinafter collectively “UPROCK”).

25. In June 2005, HI POINT and UPROCK made arrangements with the Richard & Trudy Childs Family Trust (“the Trust”) to lease land (the “Ranch”) in Diamond Fork Canyon to stage the concert.

26. UPROCK and HI POINT entered into a written lease with the Trust for the exclusive use of the Ranch on August 20 and 21, 2005.

27. The concert was to open to the public about ~9:00 p.m. on Saturday, August 20, 2005. The concert was to be concluded and all patrons gone before 7:30 am on Sunday, August 21, 2005. Based upon those scheduled times UPROCK and HI POINT hired or contracted with various people: DJ’s, stage hands, audio hands, security guards, etc.

28. HI POINT and UPROCK were aware of the Utah County Ordinance (§ 13-4-2-1) which provides that a license or permit must be sought from and granted by the Utah County Commission for “an actual or reasonably anticipated assembly of two hundred fifty (250) or more people which continues or can reasonably be expected to continue for twelve (12) or more consecutive hours.”

29. HI POINT and UPROCK told the Trust that proposed August 20, 2005 concert would not continue for twelve (12) or more consecutive hours.

30. HI POINT and UPROCK sought and were granted (on August 10, 2005) a mass gathering permit from the Utah County Health Department for the August 20, 2005 concert. In making that application HI POINT and UPROCK provided detailed information to Utah County

about the planned event. HI POINT and UPROCK provided all information requested by the Utah County Health Department in seeking the permit. That information included Brandon Fullmer's name, phone number and address. HI POINT and UPROCK gave the Health Department specific times and the date of the concert, indicating that it would be less than twelve (12) hours in duration.

31. On August 10, 2005, UPROCK paid the Utah County Health Department one hundred dollars (\$100.00) for the mass gathering permit. The County Health Department issued UPROCK a document (red in color) entitled mass gathering permit.

32. During the process of securing the permit from the Utah County Health Department, over an approximate four (~4) week period of time, no one from Utah County ever informed UPROCK or HI POINT that any additional permit was required to stage the August 20th concert. Prior to ~11:30 p.m. on August 20th, UPROCK and HI POINT were never informed that they could not stage the concert because they lacked the necessary permit from Utah County.

33. On the evening of August 20, 2005, UPROCK's and HI POINT's concert was held at the Ranch. The concert began about ~9:00 p.m. At about 11:30 p.m. that evening, armed and battle ready uniformed SWAT officers, deputy sheriffs, and other law enforcement officers came on to the Ranch and ordered the concert to stop. They were accompanied by attack dogs and a helicopter circling overhead. Some of the officers wore masks covering their faces, flack jackets, battle helmets and were armed with full automatic rifles. At that time, the event had been in progress for less than three (3) hours. The officers ordered every person who had a camera or a video recorder to cease taking pictures of the officers' conduct. The officers

confiscated or disabled all cameras they found. The law officers told HI POINT and UPROCK the concert was being shut-down because they did not have the required mass gathering permit.

34. Before August 20th at 11:30 p.m., no law enforcement officer, including Sheriff Tracy, ever asked HI POINT or UPROCK how long the August 20th concert would last, was planned to last or was expected to last.

35. HI POINT and UPROCK desire to and anticipate will lease the Ranch again to stage outdoor concerts or events. HI POINT and UPROCK desire to and anticipate will lease other land or venues in Utah County to stage outdoor concerts or events.

Allegations Related to All Plaintiffs

36. Sheriff James O. Tracy, Jr. was personally on the Ranch on the evening of August 20th. He personally ordered the July 16th and August 20th concerts to be stopped because Tracy *reasonably expected* the concerts would continue for more than twelve (12) consecutive hours. The Sheriff and his officers ordered the music stopped, the concerts ended and ordered people off the Ranch.

37. Sheriff James O. Tracy, Jr. personally told UPROCK the August 20th concert was being shut-down because UPROCK and HI POINT did not have the required mass gathering permit.

38. The plaintiffs request a judicial determination and order from the Court with regard to the application of the ordinance (§13-4-2-1). The plaintiffs seek a determination that if they believe that an event will not last more than twelve (12) consecutive hours, that if they do not

reasonably expect an event to last more than twelve (12) consecutive hours and/or if promoters represented that an event will not last more than twelve (12) consecutive hours, that a permit under §13-4-2-1 is not required.

39. The plaintiffs are fearful that unless this Court issues an order and judicial determination that the defendants will again act to stop concerts and events at the Ranch based upon the defendants' application of §13-4-2-1 and/or the defendants' predication that an event may last more than twelve (12+) hours.

40. Because the matters raised in this case affect the First Amendment rights of the plaintiffs, as well as other people who want to promote or attend events at the Ranch and/or in Utah County, the plaintiffs request immediate action and protection by the Court.

41. The provisions in Ut. County Ord. §13-4-2-1, the mass gathering permit ordinance are confusing. That section recites in part, for instance, that a person can not organize or promote a concert or advertise or sell tickets for a concert on the Ranch or other venue in Utah County until a permit or license has been issued but a permit can not be issued until solid detailed plans are made and the application fully processed; that may take extended time. If a person advertises a large concert, or sell tickets without first getting a permit, that person has broken the law. However, advance sales of tickets is necessary to pay expenses required to stage a concert. The ordinance requires that a bond be posted in an undetermined amount (§13-4-2-4) before a permit can be issued and yet a promoter can not organize a concert, contact a land owner and lease the land before a bond is posted and a permit is issued. The ordinance does not say how the amount of the bond is to be determined.

42. Defendants erroneously and improperly determined that the July 16, 2005 and August 20, 2005 concerts on the Ranch could be *reasonably expected* to continue for twelve (12) or more consecutive hours.

43. That certain persons in attendance at the July 16, 2005 and/or the August 20, 2005 concerts may have individually engaged in illegal activity does not provide a basis in law for the defendants to stop the concerts and to order all patrons and attendees to leave the property.

44. Defendants unlawfully entered the Ranch on July 16, 2005 and on August 20, 2005.

45. Defendants had no authority to enter the Ranch on July 16, 2005 or on August 20, 2005.

46. Defendants entered the Ranch on July 16, 2005 and August 20, 2005 without the permission or consent of the plaintiffs.

47. Defendants entered the Ranch on July 16, 2005 and August 20, 2005 without a search warrant or an arrest warrant.

48. There was no basis in law or fact for defendants to take the actions set forth above on July 16, 2005 and on August 20, 2005.

49. There was no basis in law or fact for the officers, agents and employees of Utah County to enter the Ranch on July 16, 2005 and August 20, 2005. No reasonable police officer would have entered the Ranch as set forth above.

50. There was no basis in law or in fact for defendants to order concert attendees to leave. No reasonable police officer would have ordered those in attendance to leave.

51. The conduct of the defendants as set forth above caused harm to the plaintiffs.

Plaintiffs are entitled to equitable relief as a result of defendants' conduct.

52. The plaintiffs have hired legal counsel to represent them in this action. Plaintiffs have incurred attorney fees and court costs in pursuit of this action.

FIRST CAUSE OF ACTION

53. The conduct of defendants as set forth above constitutes an illegal search and/or seizure in a violation of the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

54. Defendants wrongfully entered the Ranch; defendants wrongfully seized that property; defendants wrongfully took control of the activities on the Ranch, ending the concert and ordering concert attendees to leave.

55. The plaintiffs are entitled to declaratory and injunctive relief as a result of that harm.

SECOND CAUSE OF ACTION

56. The conduct of defendants as set forth above constitutes an violation of plaintiffs' right to be secure on their real property in violation of the Fourth and Fourteenth Amendments of the United States Constitution.

57. The plaintiffs are entitled to declaratory and injunctive relief as a result of that harm.

THIRD CAUSE OF ACTION

58. The conduct of defendants as set forth above constitutes a deprivation of liberty interest without due process in violation of the United States Constitution.

59. Defendants had no authority to order plaintiffs' patrons and the concert attendees to leave.

60. The plaintiffs are entitled to declaratory and injunctive relief as a result of that harm.

FOURTH CAUSE OF ACTION

61. Utah County Ord. § 13-4-2-1 violates the due process protections of the 5th and 14th Amendments to the United States Constitution as a vague criminal statute.

62. Utah County Ord. § 13-4-2-1 in part requires a permit issued by the defendant County Commissioners for an assembly of two hundred fifty (250) or more people which "can reasonably be expected to continue for twelve (12) or more consecutive hours." The ordinance contains no guidelines and no criteria to determine whether an event "can reasonably be expected to continue for twelve (12) or more consecutive hours."

63. The Utah County Ordinance (§ 13-4-2-1) is a criminal ordinance; failure to comply with the ordinance and staging a concert without the requisite permit is a criminal offense.

64. Utah County Ordinance § 13-4-2-1 is unconstitutionally vague in that it does not give clear notice to a reasonable person and members of the public as what conduct constitutes a crime. The Ordinance is unconstitutionally vague in that it does not give notice to law enforcement officers as to the conduct which constitutes a crime. The vaguely worded

ordinance allows for arbitrary and capricious application of the ordinance by law enforcement officers. The vaguely worded ordinance chills the plaintiffs' and others' right to expression.

65. The plaintiffs are entitled to declaratory and injunctive relief as a result of that harm.

FIFTH CAUSE OF ACTION

66. The conduct of defendants as set forth above constitutes a deprivation of plaintiffs' right to freedom of association in violation of the United States Constitution.

67. Defendants wrongfully ordered plaintiffs' patrons, who were lawfully gathered on the Ranch to disperse.

68. The plaintiffs are entitled to declaratory and injunctive relief as a result of that harm.

SIXTH CAUSE OF ACTION

69. The conduct of defendants as set forth above constitutes a deprivation of plaintiffs' right to free expression in violation of the United States Constitution.

70. The vaguely worded ordinance chills the plaintiffs' and others' right to expression.

71. Defendants violated plaintiffs' right to free expression by silencing the July 16th and August 20th concerts.

72. The plaintiffs are entitled to declaratory and injunctive relief as a result of that harm.

RELIEF DEMANDED

WHEREFORE, plaintiffs and each of them demand the following relief:

1. For a declaratory judgment and a judicial determination that the conduct of the defendants as set forth above constitutes a deprivation of plaintiffs' constitutional rights.
2. For immediate injunctive relief prohibiting defendants, their agents, officers and employees from enforcing or attempting to enforce that portion of Utah County Ord. § 13-4-2-1 which requires a permit issued by the defendant County Commissioners for an assembly of two hundred fifty (250) or more people which "*can reasonably be expected to continue* for twelve (12) or more consecutive hours." Emphasis added.
3. For the costs of this action including attorney fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988.
4. For such other and further relief as the Court deems just and proper.

DATED this 2nd day of SEPTEMBER 2005.

UTAH LEGAL CLINIC
Attorneys for Plaintiffs

by _____
BRIAN M. BARNARD
JAMES L. HARRIS, Jr.

JURY DEMAND

Plaintiffs request a trial by jury.

DATED this 2ND day of SEPTEMBER 2005.

UTAH LEGAL CLINIC
Attorneys for Plaintiffs

by _____
BRIAN M. BARNARD

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed a true and correct courtesy copy of the
foregoing **COMPLAINT** to:

C. KAY BRYSON
UTAH COUNTY ATTORNEY FAX: (801) 851-8099
Attorney for Defendants
100 E CENTER STREET STE # 2100
PROVO, UTAH 84606

on the 2nd day of SEPTEMBER 2005, postage prepaid in the United States Postal Service.

UTAH LEGAL CLINIC
Attorneys for Plaintiffs

By: _____
BRIAN M. BARNARD
JAMES L. HARRIS, Jr.