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**UNITED STATES DISTRICT COURT
DISTRICT OF WYOMING**

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.,

Plaintiff,

v.

SOUTHWEST WYOMING
REGIONAL AIRPORT, and
DEVON BRUBAKER, in his official
capacity as the Director of Southwest
Wyoming Regional Airport

Defendants.

Case No. _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
(Violation of First and Fourteenth Amendment Rights)

PRELIMINARY STATEMENT

1. Southwest Wyoming Regional Airport (“SWRA” or “the Airport”) is a public airport in Rock Springs, Wyoming. The Airport offers paid advertising in its terminal.

2. In June 2022, People for the Ethical Treatment of Animals, Inc. (“PETA”), a nonprofit animal rights membership corporation, sought to purchase advertising space at SWRA. PETA’s proposed advertisement urged travelers to consider purchasing vegan luggage rather than leather luggage.

3. At the time of PETA’s submission, SWRA had no written policy governing its advertising program. There was no reason to believe that PETA’s submission would be rejected, and no legitimate basis for rejecting it.

4. SWRA has never rejected *any* proposed advertisement for *any* reason.

5. When Devon Brubaker—SWRA’s Airport Director—received PETA’s submission, he decided that PETA’s ad was “just not something [SWRA] need[ed] to have in [its] terminal,” given his view that the ad was “less than appropriate for [the] family environment.” This rejection was not based on the reasoned application of an objective, workable, viewpoint-neutral policy. Rather, it was based on SWRA and Mr. Brubaker’s (together, “Defendants”) own disapproval of PETA’s viewpoint.

6. In an effort to obscure this unconstitutional viewpoint discrimination, Mr. Brubaker set out to create an advertising “policy” that might provide a pretext for his rejection of PETA’s ad. Shortly after receiving PETA’s submission, Mr. Brubaker contacted two fellow Wyoming airport directors and asked that they send him their airport’s respective advertising policies. He then affixed SWRA’s logo onto one of them to try to create the fiction of a bona fide SWRA “advertising policy” (the “Purported Policy”).

7. However, as revealed by the July 13, 2022 SWRA Board of Directors Meeting Agenda, as well as an audio recording of the meeting, the Purported Policy was not effective as of the time of this rejection, as it had yet to be presented to or approved by the Board. When Mr. Brubaker finally told the Board about PETA's proposed ad and his ad hoc rejection at the July 13, 2022 meeting, the Board similarly disapproved of PETA's viewpoint, praised Mr. Brubaker's response, and then voted unanimously to approve the Purported Policy.

8. Defendants' denial of PETA's advertisement—based on no legitimate policy and nothing more than Defendants' disapproval of PETA's viewpoint—violated PETA's rights under the First and Fourteenth Amendments to the United States Constitution.

9. PETA still wishes to purchase advertising space at SWRA to display its proposed advertisement and similar advertisements. But SWRA's Purported Policy contains sweeping prohibitions that afford Defendants unfettered discretion and allow for erratic and arbitrary application. The policy is incapable of reasoned application, discriminates on the basis of viewpoint, and is unconstitutionally vague. For these reasons, the Purported Policy is facially unconstitutional. A true and correct copy of the Purported Policy is attached hereto as **Exhibit A**.

10. Accordingly, PETA brings this action for declaratory and injunctive relief, seeking an order requiring SWRA to run PETA's ad on the same terms offered to other advertisers at SWRA. In addition, PETA seeks an order enjoining SWRA from enforcing its unconstitutional Purported Policy.

JURISDICTION AND VENUE

11. This Court has original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 as this is an action to redress the deprivation, under color of state law, of rights secured by the Constitution and laws of the United States. PETA seeks remedies under 42 U.S.C. §§ 1983 and 1988 (protection

of constitutional rights), Fed R. Civ. P. 65 (injunctive relief), and 28 U.S.C. §§ 2201 and 2202 and Fed. R. Civ. P. 57 (declaratory relief).

12. Venue is proper under 28 U.S.C. § 1391 because Defendants' acts in violation of the United States Constitution have arisen and continue to arise in the District of Wyoming.

PARTIES

13. Plaintiff PETA is a section 501(c)(3) advocacy organization and charity located in Norfolk, Virginia. It is the largest animal rights organization in the world, with more than 6.5 million members and supporters. Founded in 1980, PETA aims to protect animals from abuse, neglect, and cruelty. It undertakes these efforts through public education, cruelty investigations, research, animal rescue, legislation, protest campaigns, and administrative petitions.

14. Defendant SWRA is a public airport in Rock Springs, Wyoming, owned by Sweetwater County and the City of Rock Springs. The Airport is operated by a five-member board. Three of the board's members are appointed by the Board of Sweetwater County Commissioners and two are appointed by the City of Rock Springs.

15. Defendant Devon Brubaker is the Airport Director at SWRA. PETA brings this action against him in his official capacity.

STATEMENT OF FACTS

I. SWRA PROFITS BY SELLING ADVERTISING SPACE THROUGHOUT ITS TERMINAL

16. SWRA generates revenue by selling advertising space in its commercial airport terminal, which serves tens of thousands of travelers annually. SWRA's website promotes advertising at the Airport as "a great way" to "[r]each and move [] audiences," given that "[a]lmost everyone who lives in this part of the state passes through [SWRA's] commercial terminal." SWRA, *Advertising*, <https://flyrks.com/doing-business> (last accessed June 4, 2024).

17. The Airport’s website, which contains no mention of an advertising policy, highlights the Airport’s unique opportunities for advertisers: “90 minutes or more . . . That’s how much time travelers are advised to arrive at the airport before a flight. Studies show air travelers spend significant time viewing advertising while waiting for flights or bags—more attention than is typically given to other media outside of airports.” *Id.*

18. SWRA contracts with a local advertising agency, Royal Flush Advertising (“Royal Flush”) to manage its advertising program. Prospective advertisers that want to run ads at the Airport submit proposed advertisements to Royal Flush’s owner and operator, Jessica Evans; SWRA (and specifically, Mr. Brubaker) then decides whether to approve a proposed advertisement.

19. Royal Flush highlights advertisers’ ability to “target decision makers” and “reach business opinion leaders”—and to connect with a “regional” and “international audience”—when touting the value of placing ads in SWRA’s terminal.



20. According to Royal Flush’s website, advertising at the Airport is available in three formats: (i) LED backlit display boxes at the baggage claim, (ii) “[o]versized and attention grabbing” billboards which “can be seen from anywhere within the terminal,” and (iii) table top advertisements which, due to “limited places to sit and work” in the terminal, “get seen for long periods of time.” Royal Flush Advertising, *Southwest Wyoming Regional Airport*, <https://www.royalflushadvertising.com/southwest-wy-regional-airport> (last accessed June 4, 2024).

II. PETA’S ATTEMPT TO ADVERTISE AT SWRA PROMPTS MR. BRUBAKER TO CREATE SWRA’S PURPORTED POLICY

21. Public advertising is one of the major ways in which PETA carries out its advocacy campaigns.

22. In furtherance of PETA’s mission, on June 21, 2022, Lex Smith, Media Buyer for PETA, emailed Ms. Evans, to inquire about purchasing advertising space at SWRA for four weeks beginning in July 2022. PETA asked Ms. Evans to submit the proposed advertisement for approval and to inform PETA of available advertising options and rates. PETA’s proposed advertisement was as follows:



23. The advertisement presents travelers with an image of an individual cow. PETA believes that like humans, cows are intelligent, sensitive, and social individuals with distinct personalities who crave companionship and play. By presenting this image, PETA seeks to prompt travelers to consider the conscious animals who suffer as a result of leather production and encourages them to refrain from purchasing luggage derived from the cruel treatment of animals.

24. At the time of PETA's submission, SWRA's consideration of advertisement submissions was not constrained or guided by any written policy. In its Concession Agreement with Royal Flush, however, the Airport "reserve[d] the right to reject any copy, pictorial, or otherwise which, in [SWRA's] sole judgment, is offensive to the moral standards of the community; [...]; which in [SWRA's] sole judgment, has a tendency to induce or may result in the creation of new laws or regulations designed [sic] reflect on the character, integrity or standard of any individual firm or corporation; or which is not acceptable to [SWRA]." Terminal Advertising Concession Agreement § 5.5. That Agreement—which the parties formalized in June 2018 and extended in 2021—specifies that "[t]he Airport Director is the official representative of [SWRA] for the administration and enforcement of this Agreement." *Id.* § 13.

25. The Concession Agreement's terms—empowering Mr. Brubaker to reject advertisements based on his "sole judgment" about whether content is "offensive to the moral standards of the community"—comes as no surprise, given Mr. Brubaker's belief that an airport "must mirror its community." Wyo4News, *5 Questions With: Devon Brubaker, Airport Director, Southwest Wyoming Regional Airport*, <https://wyo4news.com/news/5-questions-with-devon-brubaker-airport-director-rks/> (last accessed June 4, 2024).

26. Upon information and belief, shortly after receiving PETA's submission, Ms. Evans informed Mr. Brubaker of PETA's proposed ad. Upon learning of the ad, and before

notifying PETA of any decision on its proposal, Mr. Brubaker sought to create an airport advertising “policy” that he could use as a pretext to justify what was, in actuality, a viewpoint-based rejection. To that end, he asked two fellow Wyoming airport directors to send him their airports’ respective written advertising policies. He then created SWRA’s Purported Policy by—in his own words—copying terms “word for word from Casper” Airport. Indeed, upon receiving the Casper/Natrona County International Airport (“Casper”) advertising policy, Mr. Brubaker merely replaced Casper’s name with SWRA’s.

27. At that point, Mr. Brubaker worked with Ms. Evans to create a paper trail documenting his rejection of PETA’s ad based upon his “application” of the “policy” he had just created. Specifically, on June 24, 2022, three days after receiving PETA’s proposed ad, Ms. Evans emailed Mr. Brubaker and asked, “Does this ad go against any current policies regarding advertising?” Less than an hour later, Mr. Brubaker responded: “Pursuant to Sections 3.2 and 5.7 of the Southwest Wyoming Regional Airport Advertising Policy (Attached), I do not approve of this artwork for advertising within the Southwest Wyoming Regional Airport.” A true and correct copy of the June 24, 2022 email is attached hereto as **Exhibit B**.

28. The document that Mr. Brubaker attached and referenced as the “Southwest Wyoming Regional Airport Advertising Policy” was the Casper policy he received just days prior, which now bore the SWRA logo. As of that time, it had not been submitted to the SWRA Board of Directors, let alone approved by the Board as the “Airport Advertising Policy.”

29. In response to Mr. Brubaker’s email, Ms. Evans replied: “Perfect, thank you!”

30. That same day, Ms. Evans forwarded Mr. Brubaker’s response directly to PETA, writing: “I apologize but [a]t this time we are unable to promote this. Please keep me in mind for future opportunities.”

31. The following month, on July 13, 2022, the Airport Board of Directors held its monthly meeting. In advance of the meeting, Mr. Brubaker circulated an agenda which included the following item:

Terminal Advertising Policy - The Board will be asked to consider approval of the attached Terminal Advertising Policy. Our terminal advertising concessionaire has received an inquiry from PETA wanting to place an ad in the terminal that was deemed to be inappropriate. This brought forth the importance of having a written policy on what type of advertisements will be allowed going forward.

32. As documented by an [audio recording](#)¹ of the July 13, 2022 Board meeting, Mr. Brubaker elaborated on the above agenda item, laying bare the pretextual origin of the new advertising policy and explaining that his hasty denial of PETA's submission was premised *solely* on his view that PETA's ad was "less than appropriate":

I would just quickly add the reason this came about is we had a request from PETA to advertise in the terminal and their requested ad was [] less than appropriate for family environment and so I quickly reached out to [] my fellow airport directors and [] I can't take too much credit for writing this, this is largely word for word from Casper and Jackson, [] and we quickly denied their request. As much as I would love to have the revenue it's just not something we need to have in our terminal.

33. At the meeting, the Chairman of the Airport Board, Chief James Wamsley added:

I read through it, I was happy to see that there were some restrictions on content, that it must be approved by the airport director.

34. The Airport Board then unanimously approved the new advertising policy.

35. On December 28, 2022, PETA sent an email to Mr. Brubaker restating PETA's desire to purchase advertising space at the Airport and asking that he reconsider his decision to deny PETA's proposed ad, or, in the alternative, advise PETA as to how it might raise the issue with the Airport's Board.

¹ Audio recording available at: <https://youtu.be/wQH1rPm23mw>. USB drive containing audio recording to be lodged with the Court as **Exhibit C**.

36. On January 5, 2023, Mr. Brubaker responded, “At this time, all of our available ad space is under contract. Therefore, any reconsideration of my rejection of the requested artwork, would be moot at this point.”

37. On January 24, 2023, PETA responded, reiterating PETA’s desire to run the ad on “any subsequent dates” and requesting confirmation that the appeals process detailed in Section 6.2 of the Purported Policy was not available to PETA.

38. On January 31, 2023, Mr. Brubaker responded and made clear that any effort by PETA to appeal his decision would be futile. He stated, “PETA is free to appeal the decision to the Airport Board . . . however, even if successful in your efforts there would still not be any available space for it to be displayed at this time.” Mr. Brubaker asked that any further communication about the matter be sent directly to the Airport’s legal counsel, George Lemich.

39. On March 14, 2023, PETA emailed Mr. Lemich, again reiterating its desire to “purchase advertising space at the airport whenever it becomes available” and to appeal the rejection of PETA’s proposed ad to the Board. PETA asked that Mr. Lemich explain whether the Purported Policy’s appeals process, or any other remedy, was available to PETA.

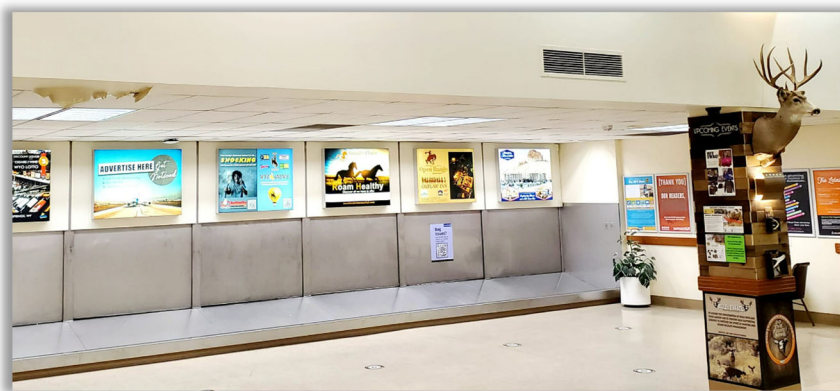
40. As of the date of this filing, Mr. Lemich has not responded to PETA’s March 14, 2023 email.

41. On May 13, 2024, PETA sent an email to the SWRA Board of Directors, via Mr. Lemich, explaining that it had attempted to appeal SWRA’s rejection of the proposed ad via its March 14, 2023 correspondence and that Mr. Lemich’s failure to respond was an effective denial of that appeal. PETA then asked the Board to reconsider SWRA’s rejection of PETA’s proposed ad. On May 30, 2024, Mr. Lemich sent a reply email that did not respond to the substance of PETA’s correspondence, failed to express any disagreement with PETA’s characterization of the

record or appeal process, and declined the opportunity to reconsider the prior denial of PETA’s appeal.

III. DEFENDANTS HAVE LONG DEMONSTRATED AN ANTI-ANIMAL RIGHTS BIAS

42. Defendants’ disapproval of PETA’s anti-leather message is unsurprising in light of SWRA’s repeated promotion of anti-animal rights messages. Indeed, the Airport’s décor—a collection of taxidermy moose, elk, and other animals—evidences its eagerness to promote the practice of killing animals for sport:



43. SWRA’s anti-animal rights bias pervades its own messaging about the Airport and its place in the local community. When the Airport created a custom song “celebrating Wyoming,”

which it promoted on its official Facebook page, the Airport once again endorsed hunting animals, explaining that in Wyoming, “we don’t buy our meat, we just let it thaw.”

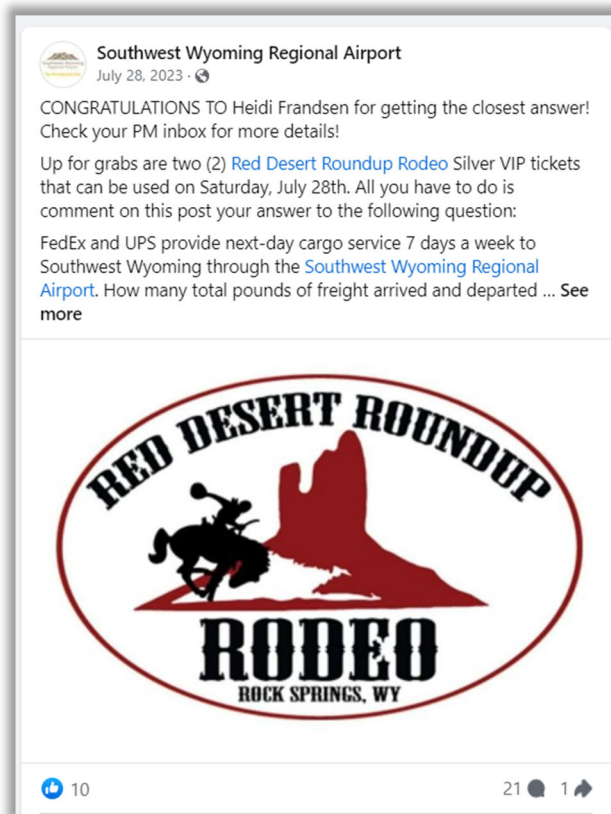
44. A scene from the song’s animated music video shows a horse being slapped and rearing up in response. This image also forms the basis of the below SWRA advertising campaign:



45. In another Facebook post, the Airport directs travelers to the 2022 National Finals Rodeo, explaining: “Few things are more Wyoming than rodeo.” PETA, along with other animal rights groups, has long denounced rodeos as inherently cruel.



46. In yet another Facebook post, the Airport hosts a giveaway, offering the winner VIP tickets to the 2023 Red Desert Roundup Rodeo.



47. PETA’s proposed advertisement is intended to raise viewers’ awareness that animals are valuable as individuals and should not be used to manufacture commercial products like leather luggage, contrary to the views promoted by SWRA.

48. When Defendants rejected PETA’s proposed ad, they silenced one side of a critical debate about humans’ proper relationship with animals—even as the Airport continued to amplify views on the opposite side of that debate.

49. SWRA’s history of promoting anti-animal views—along with the plainly pretextual creation of the Airport’s Purported Policy—confirms that Defendants denied PETA’s proposed ad because they are biased against the views it espouses.

IV. SWRA'S ADVERTISING PRACTICES HAVE REPEATEDLY CONTRAVENED ITS PURPORTED POLICY

50. That Defendants' rejection of PETA's ad was a pretext for viewpoint discrimination is clear given SWRA's past approval and display of ads that plainly violate the Purported Policy's terms.

51. For example, Section 5.5 of the Purported Policy explicitly prohibits the display of ads for "tobacco" or "nicotine-based products." Yet the Airport has approved and displayed advertisements for cigars.

52. Similarly, Section 4 of the Purported Policy limits ads to those concerning "commercial transactions." But SWRA has approved and displayed advertisements from non-profit organizations, including Memorial Hospital of Sweetwater County, a "charitable corporation operated for the sole purpose of promoting the health of the people in its service area."

53. The Purported Policy allows only "innocuous and less controversial commercial and service oriented advertising," *see* § 3.2, and forbids ads that "[c]ontain commentary, advocacy of, or promotion of social, political, religious, or rhetorical issues," *see* § 5.7. Nonetheless, Defendants accepted and displayed the following advertisement for "Elk Bomb"—a shooting supplies store—with the silhouette of an elk in the gun's crosshairs:



54. In addition, SWRA has displayed ads for steakhouses and sushi bars, allowing those advertisers to similarly promote pro-meat eating, anti-animal rights viewpoints.

55. Moreover, Section 5.11 of the Purported Policy states that SWRA aims to curate a “comfortable” and “pleasant” environment by prohibiting “controversial material.” In reality, however, the Airport exposes travelers to a broad range of media content through its displays, including news coverage of war and distressing and contentious political and social issues. For example, the Fox News ticker seen below warns of erupting protests in Gaza.



56. Recent events following the Board’s approval of the Purported Policy similarly cast doubt on its implementation—or lack thereof—and on the likelihood that Defendants will ever, absent injunctive relief, use their discretion to implement even facially neutral provisions of the Purported Policy in a non-discriminatory manner. While Section 6.2 of the Purported Policy provides that “an advertising contractor” may “appeal” an adverse decision “to the Airport Board of Directors,” Defendants have simply ignored PETA’s requests to invoke this appeals process.

57. In short, Defendants’ past advertising practices have repeatedly contravened its Purported Policy. This history of arbitrary and unprincipled decision-making supports the

conclusion that Defendants' denial of PETA's proposed ad was motivated by nothing more than unconstitutional viewpoint discrimination.

V. SWRA'S PURPORTED POLICY CONTAINS NUMEROUS CONSTITUTIONAL DEFECTS

58. PETA still wishes to purchase advertising space at SWRA in order to display its proposed advertisement and similar advertisements. The Airport is currently under renovation and "when completed, will offer even more all-inclusive advertising options." Royal Flush Advertising, *Southwest Wyoming Regional Airport*, <https://www.royalflushadvertising.com/southwest-wy-regional-airport> (last accessed June 4, 2024).

59. However, SWRA's Purported Policy contains several sections that are viewpoint discriminatory and incapable of reasoned application. These sections also invite discriminatory enforcement against disfavored or unpopular viewpoints.

60. Section 3.2 of the Purported Policy, which limits advertisements to "innocuous and less controversial commercial and service oriented advertising," provides no workable standards that distinguish unacceptable from acceptable advertisements. This Section in no way constrains Defendants' decision-making, given the use of vague terms like "innocuous" and "less controversial." It invites arbitrary and viewpoint discriminatory enforcement: for example, Defendants might (and in fact, have) run an advertisement for hunting goods given their view that hunting is "innocuous" or not "controversial," even as they reject a PETA advertisement that opposes animal exploitation. The Section is also viewpoint discriminatory because it allows "commercial" and "service oriented advertising" but censors the same viewpoint if an advertisement does not promote a commercial or service oriented enterprise.

61. Section 4 of the Purported Policy, which limits advertisements to those that “propos[e] commercial transactions,” is viewpoint discriminatory for the same reason.

62. Further, Section 5.7 of the Purported Policy, which forbids advertisements that “[c]ontain commentary, advocacy of, or promotion of social, political, religious, or rhetorical issues,” is incapable of reasoned application and is viewpoint discriminatory. The Section provides no guidance as to what constitutes a “social” or “rhetorical issue,” inviting arbitrary and viewpoint discriminatory enforcement.

63. On its face, Section 5.7 would seem to prohibit vast swaths of advertising, which often concern “issues” with “social” or “political” implications—for example, by “advoca[ting]” or “promot[ing]” the consumption of animal-derived products. Alternatively, this Section would allow, for example, a restaurant chain to promote consumption of animal-derived products (like steak or sushi) while prohibiting an advertisement that opposes the consumption of animal-derived products, should Defendants erroneously determine that only the latter advertisement implicates a “social, political,” or “rhetorical issue[.]”

64. Section 5.11 of the Purported Policy, which forbids advertisements that “[c]ontain controversial material such that the advertisement would detract from the mission of the Airport to provide a comfortable, pleasant passenger experience,” provides no workable standards that distinguish unacceptable from acceptable advertisements. Like Section 3.2, this Section in no way constrains Defendants’ decision-making, given the use of vague terms like “controversial” and “pleasant passenger experience.” It similarly invites arbitrary and viewpoint discriminatory enforcement, allowing Defendants to run ads that are not, in their view, “controversial,” while suppressing advertisements that promote disfavored or unpopular viewpoints.

65. Plaintiff incorporates by reference each and every allegation contained in paragraphs 1-64 of the Complaint as if set forth in full for all causes of action below.

CAUSES OF ACTION

Count I – 42 U.S.C. § 1983

Violation of First and Fourteenth Amendments

66. The First Amendment to the United States Constitution is incorporated against the States by the Fourteenth Amendment to the United States Constitution.

67. By offering advertising space on its property for lease, Defendants have created a designated public forum, or, in the alternative, a limited public forum.

68. Defendants did not have a legitimate advertising policy (written or otherwise) in place at the time PETA submitted its proposed ad for approval. Defendants' rejection of PETA's proposed ad was not reasonable and amounted to discrimination based on viewpoint, in violation of the First and Fourteenth Amendment to the United States Constitution.

Count II – 42 U.S.C. § 1983

Violation of First and Fourteenth Amendments

69. Sections 3.2, 4, 5.7, and 5.11 of the Purported Policy, and/or Defendants' interpretation and implementation of those Sections, are not capable of reasoned application, in violation of the First Amendment to the United States Constitution.

70. Sections 3.2, 4, 5.7, and 5.11 of the Purported Policy, and/or Defendants' interpretation and implementation of those Sections, give Defendants unfettered enforcement discretion, in violation of the First Amendment to the United States Constitution.

71. Sections 3.2, 4, 5.7, and 5.11 of the Purported Policy, and/or Defendants' interpretation and implementation of those Sections, are viewpoint-based, facially and as applied,

and not narrowly tailored to promote a compelling government interest, in violation of the First Amendment to the United States Constitution.

72. Defendants have interpreted and implemented Section 6.2 of the Purported Policy in a viewpoint discriminatory fashion, in violation of the First Amendment of the United States Constitution.

73. PETA has suffered and will continue to suffer irreparable harm because of Defendants' unconstitutional acts and practices.

Count III – 42 U.S.C. § 1983

Violation of Fourteenth Amendment

74. Defendants' Purported Policy is impermissibly vague in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution because it does not provide adequate notice about what speech is prohibited and invites arbitrary and/or selective enforcement.

Prayer For Relief

WHEREFORE, Plaintiff asks that the Court enter judgement in its favor and against Defendants, and award relief as follows:

- a. A declaration that Defendants' rejection of PETA's proposed ad violated the First and Fourteenth Amendments to the United States Constitution;
- b. A declaration that Defendants' purported advertising policy and/or Defendants' interpretation and implementation of that policy, violates the First and Fourteenth Amendments to the United States Constitution, both on its face and as applied to PETA;
- c. A permanent injunction prohibiting Defendants from rejecting PETA's proposed ad, and requiring Defendants to run it on the same terms offered to other advertisers at SWRA;
- d. An award of nominal damages;
- e. An award of costs and attorneys' fees; and

f. Any other relief that this Court deems just and proper.

Respectfully submitted,

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