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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

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| BUSHCO, a Utah Corp., and | : | |
| COMPANIONS, L.L.C., | : | |
| | : | |
| Plaintiffs, | : | COMPLAINT |
| | : | |
| vs. | : | |
| | : | |
| MARK SHURTLEFF, Attorney | : | |
| General of the State of Utah, | : | |
| and CHRIS BURBANK, Salt Lake | : | |
| City Chief of Police, | : | |
| | : | Civil No: |
| Defendants. | : | |
| | : | |

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COME NOW the Plaintiffs and complain of Defendants, and for causes of action allege as follows:

PARTIES

1. Bushco is a Utah Corporation doing business as Baby Dolls Escorts, with its principal place of business in Salt Lake County, State of Utah. Said Plaintiff operates an escort agency as defined elsewhere in this complaint, and is licensed by the City of Salt Lake as a "Sexually Oriented Business" (SOB). Such license

specifically regulates, but allows, certain behavior protected by the First Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment. Companions Escorts is a Utah Limited Liability Company with its principal place of business in Salt Lake County, State of Utah. Said Plaintiff operates an escort agency as defined elsewhere in this complaint, and is licensed by the City of Salt Lake as a "Sexually Oriented Business" (SOB). Such license specifically regulates, but allows, certain behavior protected by the First Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment.

2. Companions, L.L.C. is a Utah Limited Liability Company, with its principal place of business in Salt Lake County, State of Utah. Said Plaintiff operates an escort agency as defined elsewhere in this complaint, and is licensed by the City of Salt Lake as a "Sexually Oriented Business" (SOB). Such license specifically regulates, but allows, certain behavior protected by the First Amendment to the United States Constitution, as applied to the States through the Fourteenth Amendment.

3. Mark Shurtleff is the Attorney General of the State of Utah and is charged with defending the laws of the State of Utah. Defendant is sued in his official capacity, pursuant to Ex Parte

Young, 209 U.S. 123 (1908) and Elephant Butte v. Department of Interior, 160 F.3d 602 (10th Cir. 1998). This Court has the power to issue declaratory relief and to enjoin an ongoing violation of Federal law by Defendant.

4. Chris Burbank is the duly appointed Chief of the Salt Lake City Police Department. He has supervisory authority over all sworn officers and employees of the Salt Lake City Police Department. He is a proper defendant in this action seeking equitable relief in the form of an injunction against enforcement of an unconstitutional Utah State statute. Furthermore, Chief Burbank was a prime mover in the adoption of this statute, and testified before committees of both Houses of the Utah Legislature that such legislation was needed by his officers.

JURISDICTION & VENUE

5. This complaint seeks declaratory and injunctive relief to prevent violations of Plaintiffs' rights, privileges and immunities under the Constitution of the United States and 42 U.S.C. § 1983, specifically seeking redress for the deprivation under color of State statute, of rights, privileges and immunities secured by the Constitution and Laws of the United States. The rights sought to be protected in this action arise and are secured under the First, Fifth and Fourteenth Amendments to the United States Constitution.

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343 granting the District Court jurisdiction to award equitable and other relief under any act of Congress in providing for the protection of civil rights. The Court has jurisdiction and power to issue injunctions pursuant to Rule 65 F.R.C.P. This Court also has jurisdiction, pursuant to 28 U.S.C. § 2201 to declare the rights and obligations of any interested party seeking a declaration of rights pursuant to the Constitution and laws of the United States.

7. Venue is proper in the Central Division since all or most parties are residents of, or have their principal places of business in, or are doing business in Salt Lake County, State of Utah, located within the District of Utah, Central Division.

8. This action seeks a judicial determination of issues, rights and liabilities embodied in an actual and present controversy between the parties, involving the constitutional validity and application of certain State statutes, recently passed by the Utah Legislature and known as House Bill (HB) 121, redefining the elements of the crime of Sex Solicitation as previously defined and prohibited by Utah Code Ann. § 76-10-1313. There are substantial bona fide disputes and questions to be resolved concerning provisions of the Utah statute which allegedly

applies to Plaintiffs' businesses.

9. Plaintiffs seek to obtain preliminary and permanent injunctions enjoining Defendants from enforcing any portions of the Utah State statute against Plaintiffs, and their employees and agents.

10. Plaintiffs further seek a declaratory judgment specifically finding that the statute at issue is unconstitutional. The statute violates the due process clause of the Fourteenth Amendment of the United States Constitution in that it is overbroad, and is impermissibly vague. The statute denies Plaintiffs and others substantive and procedural due process in that it unduly causes deprivation of a protected use, and is arbitrary, capricious, unreasonable and unrelated to any legitimate State interest. Plaintiffs further seek relief based on the denial of equal protection of the law. The law also violates the First Amendment in that it infringes on the rights of free speech and free association.

STATEMENT OF FACTS

11. Plaintiffs are licensed and regulated by Salt Lake City to provide the services of an escort agency, which is a particular form of "Sexually Oriented Business" as defined in the Salt Lake City Sexually Oriented Business Ordinance. Plaintiffs provide

services, on an individual basis, of entertainers and escorts as defined by the Salt Lake City "Sexually Oriented Business "SOB" ordinance.

12. In March, 2011, the Utah Legislature passed House Bill 121 entitled "Sex Solicitation Amendments". A copy of the enrolled version of that act is attached hereto, labeled "Exhibit A", and by reference made a part hereof.

13. Subsequently, the Governor of the State of Utah signed the act into law, to be effective on May 10, 2011.

14. The crime of "Sex solicitation" was previously defined by Utah Code Ann. § 76-10-1313 as occurring when someone "offers or agrees to commit any sexual activity with another for a fee."

15. Pursuant to Utah Code Ann. § 76-10-1301, "Sexual activity" is defined as "acts of masturbation, sexual intercourse, or any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant".

16. Pursuant to the Amended provisions of Utah Code Ann. § 76-10-1313, a person may be arrested for "Sex solicitation", a Class B Misdemeanor, if a law enforcement officer believes that he or she has an "intent to engage in sexual activity for a fee" and that person exposes that "person's genitals, the buttocks, the

anus, the pubic area or the female breast below the top of the areola" or touches his or her own "genitals, the buttocks, the anus, the pubic area or the female breast".

17. The "intent to engage in sexual activity for a fee may be inferred from "a person's engaging in, offering to engage in, or requesting another to engage in any of the acts described" above "under the totality of the existing circumstances."

18. Plaintiff Bushco was previously a Plaintiff in the case of Bushco v. Utah State Tax Commission, Utah Third District Court No. 040911691, also seeking declaratory judgment involving a Utah statute passed in an effort to levy a "Sexually Explicit Business Tax" on this and other Plaintiffs. In that action, the Court ruled:

The escort service Plaintiffs are entitled to First Amendment protection because they incorporate dancing services; thus for purposes of these cross-motions [for Summary Judgment] all the Plaintiffs will be treated as if they are entitled to the same First Amendment protection.

19. This matter is now res judicata between these parties so far as whether escort agencies are entitled to First Amendment protection. The State of Utah and its legislature were effectively involved in both actions, and the Utah Attorney General represented all Defendants in the previous action.

20. The Utah legislature previously, in 1987, passed another

law redefining "sexual activity" for purposes of prostitution and sex solicitation, to include:

acts of masturbation, sexual intercourse, or any touching of any person's clothed or unclothed genitals, pubic area, buttocks, anus, or if the person is a female her breasts, alone or between members of the same or opposite sex, or between humans and animals, in an act of apparent or actual stimulation or gratification.

21. This Court, in the case of Guinther v. Wilkinson, 679 F.Supp. 1066, 1070 (D.Utah 1988) held, in reference to that statute:

that the underlined portion of the statute violates the due process clause of the Fourteenth Amendment of the United States Constitution in two particulars, i.e. that it is overbroad, and that it is impermissively vague.

22. In a footnote to that statement, the Court said:

Since this court regards the statute as unconstitutional under the Fourteenth Amendment, the Free Speech issues under the First Amendment are not reached.

23. Insofar as the language of the two statutes is virtually identical, this matter is also res judicata; and the State of Utah and its subdivisions and agents are bound by the previous decision of this Court.

24. Plaintiffs in this action employ or contract with licensed escorts who, as part of the entertainment and companionship services they are licenced to provide, may touch their own genitals, buttocks, anus, pubic area or breasts, or may

expose their genitals, buttocks, anus, pubic area or breast below the areola to consenting adults, in non-public settings.

FIRST CAUSE OF ACTION

25. Plaintiffs reallege and incorporate Paragraphs 1 through 24 above as though fully set forth herein.

26. Plaintiffs' rights under the United States Constitution have been violated in that the actions of the of the State of Utah and of Defendants:

- a. Abridge and restrain Plaintiffs' rights to free expression as guaranteed by the First and Fourteenth Amendments of the United States Constitution;
- b. Constitute a prior restraint on such expression;
- c. Constitute an impermissible "chilling effect" on constitutionally protected speech and expression;
- d. Deny Due Process and Equal Protection of the Law in that the legislation is arbitrary, oppressive and capricious and require Plaintiffs to submit to controls not imposed on other similarly situated businesses;
- e. Allow or encourage arbitrary and capricious enforcement against the individual businesses named above and other persons in similar circumstances;
- f. Deny Due Process and Equal Protection in that they single

out constitutionally protected businesses for disparate treatment based on an improper predicate;

g. Unconstitutionally infringe on Plaintiffs' rights to free association;

h. Manifest an improper purpose in that the law, rules and regulations are not content-neutral and are not unrelated to the suppression of free speech;

i. Restrict First Amendment freedoms by an overbroad law, far greater than is essential to the furtherance of any alleged governmental interest;

j. Are unconstitutionally vague in that the law sets out no guidelines for determining when the crime of sex solicitation has taken place or when the intent to engage in sex solicitation has been formed.

27. Plaintiffs have no adequate remedy at law. Plaintiffs, their agents, employees, patrons and the public at large will suffer irreparable injury if injunctive relief is not granted, and if Defendants are permitted to arbitrarily and capriciously enforce rules, regulations and statutes at issue herein. The loss of rights guaranteed by the First and Fourteenth Amendments is so serious that, as a matter of law, irreparable injury is presumed and, in such an instance involving the loss of First Amendment rights,

damages are both inadequate and unascertainable.

28. The public interest is best served by the granting of injunctive relief, and the public interest is disserved by permitting the enforcement of invalid rules, regulations and statutes which interfere with the public's rights under the First Amendment.

29. The entertainment services and companionship services provided by Plaintiffs herein are a form of expression, or are free association, as protected by the First Amendment to the Constitution of the United States.

30. Statutes, rules and regulations which restrict, regulate or otherwise burden activities protected by the First Amendment, carry the burden of presumed constitutional invalidity.

31. Plaintiffs clearly have the right to present presumptively protected expression for their patrons and the public in general, and have a clear right to use and operate their businesses without interference by Defendants, their agents, servants or employees, or without unlawfully burdensome and discriminatory taxes.

32. Plaintiffs are entitled to injunctive relief against Defendants, prohibiting them from enforcing the arbitrary and capricious criminal statute which gives law enforcement authorities the power to decide for themselves what activity evidences intent

to engage in sexual activity for a fee.

SECOND CAUSE OF ACTION

33. Plaintiffs reallege Paragraphs 1 through 32 above as if fully set forth herein.

34. Because the statute is designed to directly affect the message conveyed by the expressive activity of Plaintiffs, and because it is not directed at so-called "secondary effects", the validity of this Act is subject to strict scrutiny. Plaintiffs are entitled to a declaratory judgment that the Act is an unlawful attempt at censorship, and an unlawful burden on activities protected by the First Amendment to the United States Constitution.

35. The statutes and regulations at issue in this action are not unrelated to the suppression of free expression, and the effect on free expression is more than incidental.

36. The statute infringes on First Amendment freedoms in a manner "greater than essential to the furtherance of" valid State interests.

THIRD CAUSE OF ACTION

37. Plaintiffs reallege paragraphs 1 through 36 above as if fully set forth herein.

38. Use of the statute as set forth above constitute a constructive taking of the property interests of Plaintiffs in the

real and personal property of the business, which taking is predicated on the arbitrary and capricious characteristics of the statute.

39. The taking herein described infringes on the use and value of Plaintiffs' business properties to an extent that it is tantamount to a taking. The taking of the property is arbitrary and capricious and has no substantial relation to the public health, safety, morals or general welfare. The taking is without compensation and without due process of law.

40. Plaintiffs have each invested considerable sums of money to set up their businesses, prepare the properties, and engage in other endeavors in furtherance of the establishment of First Amendment protected businesses on the properties at issue.

41. The actions of Defendants are designed to, or will have the effect of, interfering with the continued business of Plaintiffs, and therefore constitutes a taking of the business properties without due process of law.

FOURTH CAUSE OF ACTION

42. Plaintiffs reallege paragraphs 1 through 41 as if fully set forth herein.

43. The statute, and the enforcement thereof by Defendants, single out businesses which deal with adult issues and expression

for special treatment, based on improper predicates.

44. The statute denies Plaintiffs, their employees, and the public at large equal protection of the law in violation of the Fourteenth Amendment to the United States Constitution.

45. Because of the violation of the constitutionally guaranteed rights of Plaintiffs, said Plaintiffs have found it necessary to retain attorneys to bring this action. Plaintiffs are entitled to an award of a reasonable attorneys fee pursuant to 42 U.S.C. § 1988.

WHEREFORE, Plaintiffs pray judgment against Defendants, and each of them, as follows:

1. That this Court grant temporary and permanent injunctive relief against Defendants from enforcing rules, regulations or statutes resulting in irreparable harm and damages, and violating constitutional rights as set forth above, all of which actions are under color of state law.

2. For a Declaratory Judgment that the amendments to Utah's Sex Solicitation law as alleged herein violate the First and Fourteenth Amendments to the U.S. Constitution in that they impose criminal penalties on acts of protected expression, that they deny Plaintiffs and others Due Process of Law, and that they also deny Plaintiffs and others Equal Protection of the Law.

3. For an award of attorneys fees as provided by 42 U.S.C. §
1988.

JURY DEMAND

Plaintiffs demand a jury trial on all issues so triable.

DATED this ____ day of May, 2011.

W. ANDREW MCCULLOUGH, L.L.C.

W. Andrew McCullough
Attorney for Plaintiffs