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Of Attorneys for Defendant The City of Ashland

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

AMERICAN BUDDHA, an Oregon Nonprofit Corporation,	)	No. 06-CV-3054-PA
	)	
Plaintiff,	)	ANSWER OF DEFENDANT
	)	THE CITY OF ASHLAND
v.	)	
	)	
THE CITY OF ASHLAND AND THE WASHINGTON POST COMPANY,	)	
	)	
Defendants.	)	

In response to plaintiff’s complaint, defendant The City of Ashland (“the City”) herein alleges, denies and admits as follows:

1. Admit that The City of Ashland is an municipal corporation existing under the laws of the state of Oregon in Jackson County, Oregon. Admit that the City owns the Ashland Fiber Network (“AFN”).
2. Admit that this court has jurisdiction, as plaintiff alleges claims under federal law.
3. Except as specifically admitted herein, defendant City denies each and every remaining allegation of plaintiff’s complaint and the whole thereof.

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FIRST DEFENSE

(Failure to State a Claim)

4. Plaintiff fails to state a claim for any violation of the First or Fourteenth Amendments, as plaintiff has failed to allege any constitutionally protected property interest.

SECOND DEFENSE

(Failure to State a Claim for First Amendment Violation)

5. Plaintiff has failed to state a claim for any First Amendment violation as AFN is not a public forum and plaintiff has no constitutionally protected right to violate copyright laws.

THIRD DEFENSE

(Failure to State a Claim for Declaratory Relief)

6. Plaintiff fails to state a claim for declaratory relief because his service has been reconnected and there is currently no justiciable claim or controversy.

FOURTH DEFENSE

(Failure to State a Claim for Municipal Liability)

7. Plaintiff fails to state a claim under 42 U.S.C. Section 1983 under any theory of municipal liability.

FIFTH DEFENSE

(Mootness)

8. As plaintiff's modem was reconnected within one hour of being disconnected, this case is moot and there is no justiciable case or controversy.

SIXTH DEFENSE

(Proper Party)

9. Defendant The City of Ashland is an improper party for purposes of plaintiff's claims, as it does not provide internet service to plaintiff.

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SEVENTH DEFENSE

(Additional Defenses)

Defendant reserves the right to raise additional defenses that may become apparent during the course of discovery.

EIGHTH DEFENSE

AND BY WAY OF COUNTERCLAIM

(Attorneys' Fees)

Pursuant to 42 U.S.C. Section 1988, if defendant prevails on this matter, it should be awarded its reasonable attorneys' fees and costs in defending this action.

WHEREFORE, having fully answered plaintiff's complaint on file herein, defendant The City of Ashland prays that the complaint be dismissed with prejudice and that judgment be entered for defendant, including its costs, disbursements and reasonable attorneys' fees incurred herein, and for such other and further relief as the court may deem just and equitable.

DATED this 22nd day of August, 2006.

HOFFMAN, HART & WAGNER, LLP

By: /s/ Karen O'Kasey  
Karen O'Kasey, OSB No. 87069  
Of Attorneys for Defendant The City of Ashland  
(503)222-4499

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of August, 2006, I served the foregoing ANSWER  
OF DEFENDANT THE CITY OF ASHLAND on the following party:

Charles Carreon  
Online Media Law, PLLC  
1131 Barrington Circle  
Ashland, OR 97520

by electronic means through the Court's Case Management/Electronic Case File system.

/s/ Karen O'Kasey  
Karen O'Kasey