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**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

**GREGG SCHUMACHER and LINDA
SCHUMACHER**, individually and as
husband and wife, and **GREGG
SCHUMACHER FURS LLC dba
SCHUMACHER FURS & OUTERWEAR**,

Plaintiffs,

v.

**DEFENDANT CITY OF PORTLAND'S
ANSWER AND AFFIRMATIVE
DEFENSES**

(Filed by Defendant City of Portland)

CV 07-601 HU

CITY OF PORTLAND, a municipal
corporation, **IN DEFENSE OF ANIMALS**, a
foreign nonprofit corporation; **ANIMAL
LIBERATION FRONT**, an unincorporated
association; **PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.**, a
foreign nonprofit corporation; **MATT
ROSSELL; KEVIN MEIRAS aka
"BLUEJAY"; CONNIE DURKEY; ALEX
LILLI; JOHN DOES 1-10; and JANE
DOES 1-10**,

Defendants.

Defendant City of Portland ("City") answers plaintiffs' Complaint in correspondingly
numbered paragraphs as follows:

1. City admits that beginning from November 26, 2005 and continuing into at least
March 17, 2007, persons have gathered on the public sidewalk at 9th and SW Morrison near the

Schumacher store, mostly on Saturday afternoons, to engage in protest activities, apparently related to the killing of animals for use as clothing and clothing accessories. Otherwise, City lacks information sufficient at this time to admit or deny the remainder of the allegations contained in paragraph 1, and therefore denies those allegations.

2. The allegations in paragraph 2 do not require a response from City.

3. City acknowledges the Court likely has jurisdiction over plaintiffs' federal claims under 28 U.S.C. §§ 1331 and 1343.

4. City acknowledges the Court likely has supplemental jurisdiction over plaintiffs' state law claims.

5. City acknowledges plaintiffs have likely laid proper venue.

6-7. City lacks information sufficient at this time to admit or deny the allegations contained in paragraphs 6-7, and therefore denies those allegations.

8. City admits it is a municipal corporation formed under its Charter and the laws of the State of Oregon. City admits that many of the events that are subject to this action occurred on the public sidewalk near and around plaintiffs' store at 9th and SW Morrison in Portland, Oregon. Otherwise, City denies the allegations contained in paragraph 8.

9-15. City lacks information sufficient at this time to admit or deny the allegations contained in paragraphs 9-15, and therefore denies those allegations.

16. City admits that beginning from November 26, 2005 and continuing to at least March 17, 2007, persons have gathered on the public sidewalk at 9th and SW Morrison near the Schumacher store, almost always on Saturday afternoons for two to five hours, to engage in protest activities, apparently related to the killing of animals for use as clothing and clothing accessories. City denies that "scores" of people have been involved, or that the protests have occurred on a "daily" basis. Otherwise, City lacks information sufficient at this time to admit or deny the allegations contained in paragraph 16, and therefore denies those allegations.

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17. City admits the protests have involved (at times) female protestors exposing their breasts, a person exposing (once) bare buttocks, picketing, posting signs, playing videotapes, chanting, words apparently intended to insult, sometimes involving profanity, and that this activity has (at times) been directed at plaintiff Greg and Linda Schumacher, and at least one of their employees. City admits persons apparently associated with the protests have written in chalk on the sidewalk in front of plaintiffs' store. City admits a person apparently associated with the protests threw paint at plaintiffs' store, and City affirmatively alleges employees of its Bureau of Police investigated that incident, made an arrest of the person, and that person was subsequently charged. In fact, City affirmatively alleges that person is co-defendant Lilli. Further, City affirmatively alleges that on several other occasions its police officers investigated and arrested persons when probable cause existed to reasonably believe persons had committed crimes. City denies that the protestors, after receiving a warning and explanation from the City's police officers about where they could physically be, ever blocked egress along the public sidewalk, vehicular traffic in the street, or pedestrian access to plaintiffs' store while the City's police officers were present. Otherwise, City lacks information sufficient at this time to admit or deny the allegations contained in paragraph 17, and therefore denies those allegations.

18. City denies the allegations contained in paragraph 18.

19. City denies the allegations contained in paragraph 19.

20. City denies the allegations contained in paragraph 20 and all its subparts.

21. City denies the allegations contained in paragraph 21.

22. City denies it as ever expressed any intent that it would not respond to plaintiffs' request for assistance to its Bureau of Police. City denies that it has caused any deprivation of any of plaintiffs' federally protected rights or any of plaintiffs' rights under state law. Otherwise, City lacks information sufficient at this time to admit or deny the allegations contained in paragraph 22, and therefore denies those allegations.

23. City denies the allegations contained in paragraph 23.

24. City denies the allegations contained in paragraph 24.
25. City denies the allegations contained in paragraph 25.
26. City denies plaintiffs are entitled to any relief in any form from defendant City.
27. City denies plaintiffs are entitled to an award of any fees, costs or expenses against defendant City.
28. City reincorporates its responses contained in paragraphs 6-22 above.
29. The allegations contained in paragraph 29 are not directed at defendant City. In any event, given the breadth of the allegation, City denies the allegation contained in paragraph 29.
30. City lacks information sufficient at this time to admit or deny the allegations contained in paragraph 30, and therefore denies those allegations.
31. City denies the allegations contained in paragraph 31.
32. City denies the allegations contained in paragraph 32.
33. City reincorporates its responses contained in paragraphs 6-22 above.
34. City lacks information sufficient at this time to admit or deny the allegations contained in paragraph 34, and therefore denies those allegations.
35. City denies the allegations contained in paragraph 35 and all its subparts.
36. The allegations contained in paragraph 36 are not directed at defendant City.
37. City lacks information sufficient at this time to admit or deny the allegations contained in paragraph 37, and therefore denies those allegations. Regardless, City denies it is liable for any alleged damages to plaintiffs.
38. City reincorporates its responses contained in paragraphs 6-22 above.
39. City lacks information sufficient at this time to admit or deny the allegations contained in paragraph 39, and therefore denies those allegations.
40. City denies the allegations contained in paragraph 40 and all its subparts.
41. The allegations contained in paragraph 41 are not directed at defendant City.

42. City lacks information sufficient at this time to admit or deny the allegations contained in paragraph 42, and therefore denies those allegations. Regardless, City denies it is liable for any alleged damages to plaintiffs.

43-45. The allegations contained in paragraphs 43-45 are not directed at defendant City.

46. City reincorporates its responses contained in paragraphs 6-22 above.

47. City denies the allegations contained in paragraph 47 and all its subparts.

48. City lacks information sufficient at this time to admit or deny the allegations contained in paragraph 48, and therefore denies those allegations. Regardless, City denies it is liable for any alleged damages to plaintiffs.

49. Except as expressly admitted above, City denies each and every remaining allegation of plaintiffs' Complaint, either because those allegations are untrue, or because defendant City is without knowledge or information sufficient to form a belief as to the truth of those allegations at the present time, or those allegations are not directed to defendant City. Defendant City specifically denies that its actions were unreasonable or unlawful in any manner.

BY WAY OF FURTHER ANSWER AND AFFIRMATIVE DEFENSES, City alleges as follows:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

50. Plaintiffs have failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

(Discretionary Function Immunity)

51. Plaintiffs' federal claims arise from discretionary functions of the City's Bureau of Police, which entitle the City to immunity from suit and damages.

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THIRD AFFIRMATIVE DEFENSE

(Legislative Immunity)

52. To the extent any of plaintiffs’ claims arise from statements made by City officials at City Council meetings, those statements are absolutely privileged, and the City is entitled to immunity from suit and damages.

FOURTH AFFIRMATIVE DEFENSE

(Public Official Privilege)

53. To the extent any of plaintiffs’ claims arise from statements made by City officials occurring within the performance of those persons’ official duties, those statements are absolutely or conditionally privileged, and the City is entitled to immunity from suit and damages.

FIFTH AFFIRMATIVE DEFENSE

(Discretionary Immunity –ORS 30.265(3)(c))

54. Plaintiffs’ state law claims arise from discretionary functions of the City’s Bureau of Police, which entitle the City to immunity from suit and damages.

SIXTH AFFIRMATIVE DEFENSE

(Apparent Authority of Law – ORS 30.265(3)(f))

55. Plaintiffs’ state law claims arise out of acts by defendant City done or omitted under apparent authority of law. Therefore, the City is entitled to immunity from suit and damages.

SEVENTH AFFIRMATIVE DEFENSE

(Privilege for Equal or Superior Social Values)

56. The City’s actions are privileged because it acted to protect the First Amendment rights of persons engaging in legitimate, protected speech in a public fora.

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EIGHTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages/Comparative Fault)

57. Plaintiffs failed to mitigate their alleged damages by engaging in actions that they knew, or reasonably should have known, would prolong and exacerbate the intensity and duration of the protests and the associated protest-related activity.

NINTH AFFIRMATIVE DEFENSE

(Limitation on Damages – ORS 30.270)

58. Any state law claim is subject to all the limitations, conditions, and immunities contained in Oregon’s Tort Claims Act, ORS 30.265 et seq., including but not limited to the limitation on damages found at ORS 30.270.

TENTH AFFIRMATIVE DEFENSE

(Attorney Fees – 42 U.S.C. § 1988)

59. Plaintiffs’ claims are unreasonable, frivolous, meritless and vexatious. Defendant City is entitled to its attorney fees under 42 U.S.C. § 1988.

WHEREFORE, having fully answered plaintiffs’ Complaint, defendant City asks for the following relief:

- A. That judgment be entered in favor of defendant City and against plaintiffs;
- B. That defendant City be awarded its reasonable costs incurred herein;
- C. That defendant City be awarded its reasonable attorneys fees incurred herein; and
- D. That defendant City be awarded such other relief as the Court deems just and equitable.

Dated this 14th day of May, 2007.

Respectfully submitted,

s/ William W. Manlove
WILLIAM W. MANLOVE, OSB #89160
Senior Deputy City Attorney
Of Attorneys for Defendant City of Portland