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

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

Plaintiffs, :

vs. :

Civil No. 02:05-CV-\_\_\_\_\_

**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, :

Defendants. :

**AFFIDAVIT OF  
TRUDY CHILDS**



UNITED STATES :  
OF AMERICA :  
STATE OF UTAH : SS.  
COUNTY OF SALT LAKE :

TRUDY CHILDS, having been duly sworn upon oath deposes and states as follows:

1. I am an adult citizen and resident of Utah County and the State of Utah. I make this affidavit based upon personal knowledge.

2. I am a beneficiary and trustee of the CHILDS' FAMILY TRUST (hereinafter "the Trust"). I have personal knowledge of the assets, management and operations of the Trust.

3. One of the assets of the Trust is three hundred and fifty (350) acres parcel of mostly undeveloped land in or near 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 "Childs' Smokey Mountain Ranch" or "the Ranch." I manage the Ranch on behalf of the Trust.

4. For the last three (3) years, during the summer months, certain 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.

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

6. I am aware of the Utah County Ordinance (§ 13-4-2-1) which provides that a license or permit must be sought and granted by the Utah County Commission for a "large public assembly" or 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."

7. The Trust informs promoters who use the Ranch for a concert or event that they must comply with Utah County Ordinances and Utah State law.

8. 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 and we do not seek such a permit.

9. 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 pm. On July 16<sup>th</sup> at about 11:15 pm and on August 20<sup>th</sup> at about 11:30 pm, 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 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 less than three (3) hours in duration. In each case, the officers ordered the music stopped and ordered people off the Ranch and an end to the concert. Despite being a representative of the Trust, the owner of the property, on both dates, I was ordered off the land by the officers. I was arrested on August 20<sup>th</sup> because I questioned the authority of the officers to stop the concert and to order me off the property.

10. I was told by the promoter of the August 20<sup>th</sup> concert that it would not last more than twelve (12) hours.

11. Sheriff James O. Tracy, Jr. was personally on the Ranch on the evening of August 20<sup>th</sup>. Sheriff Tracy personally ordered that concert to be stopped. I have been informed and believe that he personally ordered the July 16<sup>th</sup> and August 20<sup>th</sup> concerts to be stopped because he believed that the concerts *might* continue for more than twelve (12) consecutive hours.

12. No law enforcement officer, including Sheriff Tracy, ever asked me on behalf of the Trust how long the July 16<sup>th</sup> or August 20<sup>th</sup> concerts would last or were planned to last.

13. 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.

14. The Trust requests a judicial determination and order from the Court with regard to the application of the ordinance (§13-4-2-1). The Trust seeks a determination that if the Trust believes that an event will not last more than twelve (12) consecutive hours, that if the Trust does not reasonably expect an event to last more than twelve (12) consecutive hours and if the promoters have represented to the Trust that an event will not last more than twelve (12) consecutive hours, that the Trust need not seek nor secure a permit under §13-4-2-1.

15. The Trust is 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' "guess" or predication that an event may last more than twelve (12+) hours.

16. Because the matters raised in this case affect the First Amendment rights of the Trust, as well as people who want to promote or attend events at the Ranch, I would request immediate action by the Court. I request immediate protection by the Court.

17. I am confused by the provisions in §13-4-2-1. That section recites in part, for instance, that I can not make any plans to allow a concert on the Ranch until a permit or license has been issued but a permit can not be issued until solid detailed plans and an agreement have been entered into to allow the use of the Ranch. The ordinance requires that a bond be posted in an undetermined amount (§13-4-2-4) before a permit can issue and that I can not help or work with a promoter for a concert until the permit is issued.

DATED THIS \_\_\_\_\_ DAY OF AUGUST 2005.

\_\_\_\_\_  
TRUDY CHILDS

Affiant

VERIFICATION AND ACKNOWLEDGMENT

STATE OF UTAH :  
: SS.  
COUNTY OF SALT LAKE :

THE ABOVE NAMED PARTY, TRUDY CHILDS, personally appeared before me, a notary public, on the date above written, and having been duly sworn upon oath acknowledged to me that she was the person that had executed that above and foregoing document, having read and understood it, and knowing the contents thereof, swearing that the contents are true, and having voluntarily subscribed her name thereto intending to be bound thereby.

My Commission Expires:

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NOTARY PUBLIC  
State of Utah