

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED COALITION OF REASON, INC.

PLAINTIFF

vs.

NO. 4-11-CV-0450JMM

**CENTRAL ARKANSAS TRANSIT AUTHORITY and
ON THE MOVE ADVERTISING, INC.**

DEFENDANTS

ANSWER

Separate Defendant, Central Arkansas Transit Authority (CATA), through its attorneys, Cross, Gunter, Witherspoon & Galchus, P.C., for its Answer, states:

1. CATA admits that Plaintiff, United Coalition of Reason Inc., seeks injunctive and declaratory relief under 42 U.S.C. § 1983. CATA denies that any such relief is necessary or appropriate. CATA denies that it refused to contract with Plaintiff to lease advertising space to Plaintiff on CATA's buses. CATA denies that it violated the Free Speech Clause of the First Amendment to the United States Constitution. CATA denies all allegations in paragraph 1 of Plaintiff's Complaint not specifically admitted.

2. CATA admits that jurisdiction is proper in this Court. CATA denies that the relief sought by Plaintiff is necessary or appropriate.

3. CATA admits that venue is proper in this Court.

4. CATA admits that Plaintiff is a Delaware non-profit corporation. CATA lacks sufficient knowledge regarding the actual location of Plaintiff and, therefore, denies that its principal office is located in Washington, D.C.

5. CATA lacks sufficient knowledge regarding the allegations in paragraph 5 of Plaintiff's Complaint and, therefore, denies same.

6. CATA admits the allegations in paragraph 6 of Plaintiff's Complaint.

7. CATA admits the allegations in paragraph 7 of Plaintiff's Complaint.

8. CATA admits that On The Move Advertising, Inc. (OTMA) is an Arkansas corporation residing within the Eastern District of Arkansas. CATA denies that OTMA is an agent of CATA. CATA affirmatively asserts that OTMA is an independent contractor who has contracted to lease advertising space on CATA's vehicles and leases that space to advertisers. CATA denies any allegations in paragraph 8 of Plaintiff's Complaint not specifically admitted.

9. CATA admits that OTMA refers to itself as "Agent for Authority" in parenthesis under its name in Advertising Lease Contracts entered into with advertisers. CATA affirmatively asserts that "Authority" is not defined in the Advertising Lease Contract. CATA admits that the Advertising Lease Contract provides that "this lease agreement is in fact a mere sublease by On the Move Advertising, Inc. who is leasing the Advertising Space from the Central Arkansas Transit Authority under and pursuant to the terms and provisions of that certain Advertising Space Rental Agreement 9. Advertiser further assumes and agrees to be bound by and fully perform the tenant's obligation and covenants contained in the Space Rental Agreement and acknowledges that the Advertiser's rights hereunder are conditioned upon prior written consent by Central Arkansas Transit Authority to this sublease." CATA affirmatively asserts that it provided such consent to OTMA regarding the advertisements allegedly proposed by Plaintiff's advertising agent.

10. CATA incorporates by reference paragraphs 1–9 above.

11. CATA lacks sufficient knowledge regarding when Plaintiff or its agent entered into negotiations with OTMA and, therefore, denies that it took place on or around February 25, 2011. CATA admits that Plaintiff or its agent proposed an advertisement consisting of a background of blue sky and white clouds with the following text: "Are you good without God? Millions are," and a website address. CATA affirmatively asserts that it did not reject the art work.

12. CATA lacks sufficient knowledge regarding whether Plaintiff or its agent advised OTMA about when it desired to run the advertisements and, therefore, denies same.

13. CATA admits the allegations in paragraph 13 of Plaintiff's Complaint. CATA affirmatively asserts that it did approve acceptance of Plaintiff's advertising.

14. CATA denies the allegations in paragraph 14 of Plaintiff's Complaint.

15. CATA admits the allegations in paragraph 15 of Plaintiff's Complaint.

16. CATA lacks sufficient knowledge regarding the allegations in paragraph 16 of Plaintiff's Complaint and, therefore, denies same.

17. CATA lacks sufficient knowledge regarding the allegations in paragraph 17 of Plaintiff's Complaint and, therefore, denies same.

18. CATA denies the allegations in paragraph 18 of Plaintiff's Complaint.

19. CATA denies that it made any refusal. CATA admits that it received a threatening email with several false statements from Plaintiff on March 10, 2011. CATA admits that it received an email message from OTMA on March 10, 2011 seeking approval to send a response to Plaintiff's threats and false statements. CATA admits that the email from OTMA suggested that it "take the heat for awhile" and "Leave CATA

out of it; CATA can say On the Move responded on our own.” CATA denies that it participated in this email in any way. CATA lacks sufficient knowledge regarding whether OTMA sent the proposed message to Plaintiff’s attorney and, therefore, denies same.

20. CATA admits the allegations in paragraph 20 of Plaintiff’s Complaint. CATA affirmatively asserts that it approved the Plaintiff’s proposed advertisements.

21. CATA denies the allegations in paragraph 21 of Plaintiff’s Complaint.

22. CATA lacks sufficient knowledge regarding the specific statements it is alleged to have made in paragraph 22 of Plaintiff’s Complaint and, therefore, denies it made such statements.

23. CATA admits the allegations in paragraph 23 of Plaintiff’s Complaint.

24. CATA denies the allegations in paragraph 24 of Plaintiff’s Complaint.

25. CATA denies the allegations in paragraph 25 of Plaintiff’s Complaint.

26. CATA admits the allegations in paragraph 26 of Plaintiff’s Complaint.

27. CATA denies the allegations in paragraph 27 of Plaintiff’s Complaint.

28. CATA admits the allegations in paragraph 28 of Plaintiff’s Complaint.

29. CATA admits the allegations in paragraph 29 of Plaintiff’s Complaint.

30. CATA denies the allegations in paragraph 30 of Plaintiff’s Complaint.

31. CATA incorporates by reference paragraphs 1–30 above.

32. CATA denies the allegations in paragraph 32 of Plaintiff’s Complaint.

33. CATA denies the allegations in paragraph 33 of Plaintiff’s Complaint.

34. CATA denies the allegations in paragraph 34 of Plaintiff’s Complaint.

35. CATA denies the allegations in paragraph 35 of Plaintiff’s Complaint.

36. CATA denies the allegations in paragraph 36 of Plaintiff's Complaint.

37. CATA denies that it violated the Free Speech Clause of the First Amendment to the United States Constitution. The declaratory relief sought by Plaintiff is, therefore, neither necessary nor appropriate.

38. CATA denies that it violated 42 U.S.C. § 1983. The declaratory relief sought by Plaintiff is, therefore, neither necessary nor appropriate.

39. CATA denies that it violated the First Amendment to the United States Constitution or 42 U.S.C. § 1983. The injunctive relief sought by Plaintiff is, therefore neither necessary nor appropriate.

40. CATA denies that the relief sought by Plaintiff pursuant to 42 U.S.C. § 1988 is necessary or appropriate.

41. CATA denies that any other relief is necessary or appropriate.

42. CATA denies each and every allegation in Plaintiff's Complaint not specifically admitted.

43. CATA specifically pleads and reserves all defenses and affirmative defenses contained in Fed. R. Civ. P. 8(c) and 12(b) and (h), including the defenses of statute of limitations, contributory negligence, estoppel, laches, waiver, and unclean hands.

44. CATA states that Plaintiff has failed to mitigate its damages, if any.

45. CATA states that Plaintiff has failed to state a claim upon which relief can be granted.

46. CATA reserves the right to amend its Answer and assert further affirmative defenses as they become evident through discovery or investigation.

Respectfully submitted,

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By: /s/ J. E. Jess Sweere
J. E. Jess Sweere

**ATTORNEYS FOR SEPARATE DEFENDANT
CENTRAL ARKANSAS TRANSIT AUTHORITY**

CERTIFICATE OF SERVICE

I, J. E. Jess Sweere, hereby certify that on July 11, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which shall send notification of such filing to the following:

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/s/ J. E. Jess Sweere
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