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**IN THE SECOND DISTRICT COURT- OGDEN, WEBER COUNTY,
STATE OF UTAH**

LELAND KIM MCCUBBIN, Jr.,

Petitioner,

vs.

STATE OF UTAH and OGDEN CITY,

Respondents.

**Petition for Relief Under the
Post-Conviction Remedies Act
Utah Code Section 78B-9-101, et seq.
Utah Rules of Civil Procedure 65C**

Case No. _____
Judge _____

Pursuant to the Post-Conviction Remedies Act, Utah Code Section 78B-9-101, *et seq.* and Utah Rule of Civil Procedure 65(C)(d), Leland Kim McCubbin Jr., through his attorneys, petitions this Court to set aside two class B misdemeanor convictions under Utah Code § 76-10-807, primarily on the grounds that these convictions were obtained in violation of the Utah and United States Constitutions, and on other alternative grounds as specified in his attached memorandum of authorities. In support, he states as follows:

(1) Mr. McCubbin is presently incarcerated at the Central Utah Correctional Facility. He is currently serving sentences on convictions not at issue in this Petition, but has also served 60 days concurrently for one of the convictions at issue here.

(2) On December 5, 2011, in Case Number 111803730, Ogden City charged Mr. McCubbin charged with violating Utah Code Section 76-10-807, violation of an order enjoining a public nuisance, a class B misdemeanor. The injunction he was charged with violating was the so-called Ogden Gang Injunction (the “Injunction”), which was vacated by the Supreme Court of the State of Utah in the case of *Weber County. v. Ogden Trece*, 2013 UT 62, 321 P.3d 1067. The alleged violation stemmed from Mr. McCubbin being in public in Ogden after 11 p.m. In the same case, Mr. McCubbin was also charged with violating Utah Code Section 76-9-701(1), intoxication, a class C misdemeanor.

(3) On January 4, 2012, Mr. McCubbin pleaded no contest to the charge of violating the Injunction in Case Number 11803730. Pursuant to a plea agreement, Ogden City dismissed the class C misdemeanor charge for intoxication against Mr. McCubbin.

(4) Mr. McCubbin received a 60-day sentence suspended in lieu of a \$500 fine on the violation of the Injunction in Case No. 11803730. Mr. McCubbin later went into arrears in paying that fine, and on July 20, 2012, he was sentenced to 60 days in jail or a fine of about \$250. The 60-day sentence imposed in that case has run concurrently with his present prison sentence on unrelated charges.

(5) On December 27, 2011, in Case Number 111902997, the State of Utah charged Mr. McCubbin with violating Utah Code Section 76-10-807, violation of an order enjoining a public nuisance, a class B misdemeanor. Again, the injunction at issue was the Injunction and the charge was related to Mr. McCubbin being in public in Ogden past

11 p.m. The State of Utah also charged Mr. McCubbin in that case with violations of Utah Code 76-5-102.4(2)(A)(I), assault against a police officer, a class A misdemeanor, Utah Code Section 76-8-305, interfering with arresting officer, a class B misdemeanor, and Utah Code Section 76-6-206(2)(A), attempted criminal trespass, a class B misdemeanor.

(6) On January 4, 2012, Mr. McCubbin pleaded no contest to violating the Injunction in Case Number 111902997. He also pleaded no contest to the interference and attempted criminal trespass charges. Pursuant to a plea agreement, the State of Utah dismissed the charge of the assault against a police officer against Mr. McCubbin.

(7) Mr. McCubbin was sentenced to 180 days in jail on each charge in Case Number 111902997, to run concurrently with each other. On April 18, 2012, on Mr. McCubbin's motion to reduce the sentence for violating the Injunction, the court suspended 60 days from Mr. McCubbin's overall sentence. In support, the court stated that Mr. McCubbin had been determined not to be a gang member and ordered him released.

(8) Mr. McCubbin is entitled to an order vacating his two class B misdemeanor convictions for violating the Injunction because the Injunction was held to be void by the Utah Supreme Court on October 18, 2013. In particular, the Court found that County had not properly served the gang, an unincorporated association, with the process initiating the suit. Accordingly, the district court had no jurisdiction over the unincorporated association that was allegedly creating the enjoined public nuisance and the injunction was therefore void. It is a due process violation to punish a person for contempt of an injunction that the issuing court lacked jurisdiction to issue. A memorandum of law,

attached, will further explain this ground for relief, as well as other alternative grounds for the requested relief.

(9) Neither the judgments of conviction against Mr. McCubbin nor his sentences for those convictions have been reviewed on appeal.

(10) The legality of Mr. McCubbin's convictions or sentences has not been adjudicated in any prior post-conviction or other civil proceeding.

(11) Mr. McCubbin does not claim entitlement to relief due to newly discovered evidence in either of his cases.

(12) Mr. McCubbin has attached all documents listed in Rule 65(C) to which he has access, including copies of relevant records and a copy of the relevant Utah Supreme Court opinion, as exhibits to his memorandum in support of this Petition.

(13) Mr. McCubbin attaches a memorandum of authorities to his electronic filing.

Respectfully submitted this 19th day of September, 2014.

SIGNED

/s/ John Mejia

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