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5 **UNITED STATES DISTRICT COURT**
6 **CENTRAL DISTRICT OF CALIFORNIA**

7)
8) **Case No.: CV 07-1618 - DDP (RNB)**
9)
10 **BARBARA PECK,**) **PLAINTIFF’S OBJECTIONS TO**
11 **Plaintiff,**) **THE HONORABLE JUDGE**
12 **vs.**) **ROBERT N. BLOCK’S REPORT**
13) **AND RECOMMENDATION OF**
14 **CITY OF LOS ANGELES,**) **UNITED STATES MAGISTRATE**
15 **Defendant**) **JUDGE**
16)

17
18 **TO THE HONORABLE JUDGE ROBERT N. BLOCK**

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20 **COMES NOW** Plaintiff, Barbara Peck ("Plaintiff") and submits the
21 following **PLAINTIFF'S OBJECTIONS TO THE HONORABLE JUDGE ROBERT N.**
22 **BLOCK’S REPORT AND RECOMMENDATION OF UNITED STATES**
23 **MAGISTRATE JUDGE:**

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27 **I.**
28 **INTRODUCTION**

PLAINTIFF'S OBJECTIONS TO THE HON. JUDGE BLOCK’S REPORT

1 This action was originally filed on March 12, 2007. Plaintiff's First
2 Amended Complaint ("FAC") was filed on October 29, 2007. Defendant filed its
3 answer to Plaintiff's FAC on November 19, 2007 ("Answer"). Plaintiff filed for
4 summary judgment ("MSJ") on March 6, 2008, and Defendant filed its opposition
5 to Plaintiff's MSJ and cross-motion for summary judgment on March 30, 2008
6 ("CMSJ"). Plaintiff filed **PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF**
7 **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO**
8 **DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT; DECLARATION**
9 **OF BARBARA PECK ("Reply CMSJ")** on April 28, 2008. In response to the
10 aforementioned the Honorable Judge Robert N. Block ("Hon. Judge Block") filed
11 his **REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE**
12 **JUDGE ("Report")** on May 9, 2008 which was served on Plaintiff on May 12,
13 2008.

14 In his Report to the District Court, the Hon. Judge Block recommends:

- 15 (1) "approving and adopting this Report and Recommendation;
- 16 (2) denying plaintiff's motion for summary Judgment;
- 17 (3) granting defendant's cross-motion for summary judgment with
18 respect to plaintiff's claims for declaratory relief and punitive
19 damages;
- 20 (4) denying defendant's cross-motion for summary judgment with
21 respect to plaintiff's other claims for damages arising from the
22 City's past enforcement of LAMC §§ 42.15 and 63.44(b)(7)."
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II

PLAINTIFF'S OBJECTIONS TO THE HON. JUDGE BLOCK'S REPORT

1 **POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S OBJECTIONS TO THE**
2 **HONORABLE JUDGE ROBERT N. BLOCK'S REPORT AND RECOMMENDATION**

3 **(A) Responding to the Hon. Judge Block's Report, paragraph A.**

4 **"Plaintiff's Motion Should Be Denied"** (p.8, lines 5-7):

5 The Hon. Judge states: "Despite the Court's instructions and
6 admonishments, plaintiff's attempt to comply with Local Rule 56-1
7 was wholly inadequate and did not comport with the sample form to
8 which the Court directed her".

9 Plaintiff objects as follows, with all due respect to the Hon. Judge Block:
10 Plaintiff mistook the reference to Schwarzer, Tashima & Wagstaffe ("S.T.W.")
11 in the Hon. Judge's Minute Order, issued on February 27, 2008 ("Minutes
12 2/27/08"), to be a reference related to the "lodge" and "file" matter under
13 discussion in the third paragraph of the Minutes 2/27/08, where it was
14 sandwiched between two sentences specifically addressing the "lodge" and
15 "file" explanation. Because Plaintiff's attention was occupied with this and
16 other matters referring to Plaintiff's first attempt at filing her MSJ she failed to
17 grasp the full significance of the Hon. Judge's instructions. Plaintiff asserts that
18 she was very confused and somewhat stressed, during that period of time, owing
19 to her lack of legal knowledge and pressures in her personal life. Plaintiff did
20 not intentionally ignore the Hon. Judge's instructions and regrets the fact that she
21 failed to follow up on the S.T.W. reference.

22
23 On the other hand, Plaintiff would have found it very helpful if the Hon. Judge
24 had given more detailed instructions, as demonstrated, for example, in Judge
25 Kenton's Standing Order, (which Plaintiff has since discovered following the
26 Hon. Judge Block's Report), in which case, Plaintiff believes she would have been
27 in a far better position to comply with Local Rule 56-1. As follows:
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1 "Before filing a motion for summary judgment, counsel are strongly
2 encouraged to review Chapter 14 of Schwarzer, Tashima &
3 Wagstaffe, California Practice Guide: Federal Civil Procedure Before
4 Trial (1998). To assist the Court, the moving party shall submit the
5 required Statement of Uncontroverted Facts and Conclusions of Law
6 as set forth in Form 14:C." (Standing Order by U.S. District
7 Magistrates Judge Victor B. Kenton). (See *Fonseca v. Sysco Food*
8 *Services of Ariz., Inc.* (9th Cir. 2004) 374 F3d 840, 846: "district court
9 must notify pro se parties of "complex procedural issues involved in
10 summary judgment proceedings." (See also hereto attached:
11 Declaration of Barbara Peck ("Peck Decl."), p.2, lines 6-22).

12 While Plaintiff does not expect to circumnavigate the rules (Local or
13 Federal), as a 'pro se litigant', she understands that she is entitled to flexibility
14 from the Court and would appreciate this Court's leniency in this matter, to the
15 extent that is admissible under the law. [See *Haines v Kerner* (1972) 404
16 U.S.519, 520, 92 S.Ct.594, 596; *Zichko v. Idaho* (9th Cir. 2001) 247 F 3d 1015,
17 1020 "Pleadings of pro se litigants are held to even less rigid standards than those
18 drafted by attorneys; "Courts do and should show a leniency to pro se litigants,
19 not enjoyed by those with the benefit of a legal education." [*GJR Investments, Inc*
20 *v. County of Escambia, Fla.* (11th Cir. 1998) 132 F3d 1359, 1369; see also
21 *Boguslavsky v. Kaplan* (2nd Cir. 1998) 159 F 3d 715, 719; *Erikson v. Pardue*
22 (2007) U.S.127 S.Ct. 2197, 2200; *Glendora v. Cablevision Systems Corp.* (2nd
23 Cir.1995) 45 3d 36, 37; *Thompson v. Davis* (9th Cir. 2002) 295 F 3d 890, 895.]

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26 **(B) Responding to the Hon. Judge Block's Report, paragraph A, p.9, lines**
27 **8-17: "there exist triable issues of material fact including, but not limited to:**
28

1 (1) Whether plaintiff has [i] engaged in vending activity on the Venice
2 Beach Boardwalk that is fully protected by the First Amendment and whether
3 plaintiff was [ii] cited on March 13, 2005 for protected activity...”

4 Plaintiff objects as follows:

5 (i) With reference to [i] above Plaintiff asserts that her vending activity on
6 the Venice Beach Boardwalk is fully protected by the First Amendment, as
7 evidenced in her pleadings and exhibits (see: Plaintiff’s FAC, p.2, paragraphs 2-
8 4; Plaintiff’s Reply CMSJ: p.20, lines 1-28, p.21, lines 1-27; p.22, lines 10-26,
9 Exhibit B, CD ROM - (ii) PEACE SHIRTS and (iii) TBN BOOTH, Exhibit C,
10 Affidavits - (v) Wyszeccki and (vi) Hasty, Decl. of Barbara Peck (“Plaintiff’s
11 First Decl.”), p.1, lines 17-27, p.2, lines 1-28, p.3, lines 1-3; see also: *Gaudiya*,
12 952 F.2d at 1066; *Riley v. Nat’l Fed’n of the Blind of N. C.*, 487 U.S. 781, 801
13 (1988); *Village of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 633
14 (1980); *City of Lakewood v. Plain Dealer Pub. Co.*, 486 U.S. 750, 756 n.5
15 (1988)). Plaintiff asserts that Defendant fails to controvert the aforesaid fact
16 when it relies for its evidence solely on the subjective opinions of two (2) of its
17 employees, and an ambiguous photograph (see Haskins Decl., p.4, lines 12-19,
18 and Exhibit A: Photograph; Thusing Decl., p.4, lines 24-25, p.5, lines 1-2).
19 Defendant’s failure to controvert the aforesaid fact deems it admitted, if it is
20 supported by the evidence provided by Plaintiff. The opponent of the motion
21 "may not rest upon the mere allegations or denials of [its] pleading, but [its]
22 response . . . must set forth specific facts showing that there is a genuine issue for
23 trial," and if it "does not so respond, summary judgment, if appropriate, shall be
24 entered against [it]." Fed. R. Civ. Proc. 56(e).

25 The requirement that there be “no genuine dispute” about a material fact is
26 determined under Fed. Rule 56 standards. The Federal judge must determine
27 whether a reasonable jury could return a verdict for the non-moving party (see
28 Schwarzer, Tashima & Wagstaffe (2008) [14:52]: *Anderson v. Liberty Lobby*,

1 *Inc.*, 477 U.S. 242 (1986) - “At the summary judgment stage, the trial judge's
2 function is not himself to weigh the evidence and determine the truth of the
3 matter, but to determine whether there is a genuine issue for trial. There is no
4 such issue unless there is sufficient evidence favoring the nonmoving party for a
5 jury to return a verdict for that party. In essence, the inquiry is whether the
6 evidence presents a sufficient disagreement to require submission to a jury, or
7 whether it is so one-sided that one party must prevail as a matter of law. Pp. 477
8 U. S. 247-252.” “The adverse party may not rest upon mere allegations or denials
9 for his or her pleadings. Rather, the party must present admissible evidence
10 showing there is a genuine issue for trial.” (See *Brinson v. Linda Rose Joint*
11 *Venture* (9th Cir. 1995) 53 F3d 1044, 1049.)

12 (ii) With reference to [ii] above, Plaintiff has supplied evidentiary support
13 for the fact, and contends that Defendant does not controvert the fact, that she
14 was exercising her “protected rights” on March 13, 2005 when she was
15 arrested/cited by Defendant. Which aforesaid uncontroverted fact should be
16 deemed admitted by Defendant pursuant to Rule 56(e) of the Federal Rules of
17 Civil Procedure. (see Plaintiff’s MSJ, Declaration of Barbara Peck (“Plaintiff’s
18 First Decl.”) pp.12-14; Plaintiff’s MSJ: p.3, lines 17-23, p.4, lines 1-18; Exhibit
19 D, Affidavits: (ii) Michel, pp.1-2, third paragraph “On Sunday March 13, 2005
20 ...the tickets were dismissed on August 16, 2005”; see Plaintiff’s FAC: p.7,
21 paragraph 21, p.13, lines 21-26, p.14, lines 1-2; and p.16, paragraphs 52-53; see
22 also PLAINTIFF’S “STATEMENT OF UNCONTROVERTED FACTS AND
23 CONCLUSIONS OF LAW IN SUPPORT OF PLAINTIFF’S MOTION FOR
24 SUMMARY JUDGMENT” (“Statement”) p.2, lines 3-13;)

25 Defendant’s failure to set “forth such facts
26 [showing there is a genuine issue for trial] as would
27 be admissible in evidence” makes summary judgment
28

1 appropriate. Defendant's failure to controvert
2 Plaintiff's Statement deems it admitted if it is
3 supported by the evidence. Plaintiff asserts that she
4 has provided adequate evidence to establish the
5 constitutionality of her activity on March 13, 2005,
6 when she was arrested/cited by Defendant. (See
7 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986);
8 *Brinson v. Linda Rose Joint Venture* (9th Cir. 1995) 53
9 F3d 1044, 1049; see also [i] above.)

10
11 **(C) Responding to the Hon. Judge Block's Report,**
12 **paragraph B. (a) "Defendant's Cross-Motion Should be**
13 **Granted in Part and Denied in Part":**

14 The Hon. Judge Block states "Plaintiff's claims for declaratory relief
15 with respect to LAMC §§ 42.15 (2004), 42.15 (2006), and 63.44(b)(7)
16 have been rendered moot by the City's subsequent amendments of the
17 statutes"

18 Plaintiff objects as follows: Mootness is a flexible justiciability doctrine
19 that allows review "if there are present effects that are legally significant."
20 *Jacobus v. Alaska*, 338 F.3d 1095, 1104 (9th Cir.2003); *see also U.S. Parole*
21 *Comm'n v. Geraghty*, 445 U.S. 388, 400, 100 S. Ct. 1202, 63 L.Ed.2d 479 (1980)
22 (explaining that the Court's "cases demonstrate the flexible character of the Art.
23 III mootness doctrine"). Where a court retains the ability to "fashion some form
24 of meaningful relief" between the parties, an appeal is not moot, and the court
25 retains jurisdiction. *Dream Palace v. County of Maricopa*, 384 F.3d 990, 1000
26 (9th Cir. 2004) (quoting *In re Pattullo*, 271 F.3d 898, 901 (9th Cir.2001) (order)).

27 Plaintiff contends that "there are present effects that are legally significant",
28 as follows: (a) the ability of plaintiff and/or any other individuals to exercise

PLAINTIFF'S OBJECTIONS TO THE HON. JUDGE BLOCK'S REPORT

1 their protected rights in a public forum i.e. the FSZ without interference from
2 Defendant; and (b) "meaningful relief" (declaratory relief, in this case) would
3 deter Defendant from such future unlawful interference. Declaratory relief would
4 bring about reconciliation between the parties in this case that would, ultimately,
5 reduce the likelihood of future costly lawsuits tying up the courts.

6 The courts have recognized several major exceptions to mootness, including
7 for (1) "collateral legal consequences," (2) "wrongs capable of repetition yet
8 evading review," and (3) "voluntary cessation." *In re Burrell*, 415 F.3d 994, 998
9 (9th Cir. 2005). Plaintiff claims that all of these exceptions fit this case:

10 (1) The first exception to the mootness doctrine applies where Plaintiff
11 "would suffer collateral legal consequences if the actions being [reviewed] were
12 allowed to stand." *Pub. Utilities Comm'n of the State of Cal. v. F.E.R.C.*, 100
13 F.3d 1451, 1460 (9th Cir.1996). Plaintiff asserts that the "collateral legal
14 consequences" exception applies because a substantial controversy continues to
15 exist between Plaintiff, other expressionists, and Defendant regarding LAMC §
16 42.15 2008, which Plaintiff, and others, believe infringes on their protected
17 rights. Plaintiff asserts that she, and other expressionists, are actively involved in
18 a controversy surrounding LAMC 42.15 2008, which went into effect on May 19,
19 2008:
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21 The fact that the City ("Defendant") has amended LAMC § 42.15
22 does not remove the very real probability of it restricting Plaintiff's
23 and others' protected rights, again, by arresting/citing them for
24 exercising said protected rights in the Free Speech Zone ("FSZ") on
25 Ocean Front Walk ("Venice Boardwalk"). (see hereto attached: Peck
26 Decl., p.2, lines 23-28, p.3, 1-25; Exhibit A: CD ROM – LAPD May
27 26, 08; Exhibit B, Dietlin Affidavit; see also Defendant's CMSJ,
28 Nagle Decl., Exhibit A: Ordinance No. 179807 ("LAMC § 42.15

1 2008”), section 1, B. P-Zones, and C. I-Zones; Plaintiff’s Reply
2 CMSJ, p.2, lines 25-27, p.3, lines 7-28, p.4, lines 1-25.)

3 The collateral legal consequences, should Defendant not be deterred from
4 restricting Plaintiff’s and others’ protected rights, as discussed above, would be
5 the very integrity of those same protected rights, as applied to Plaintiff and every
6 citizen in the United States. In other words, the First Amendment would be
7 undermined and lose much of its meaning if it could not afford Plaintiff, and
8 others, the protection to which they are entitled by constitutional statute.

9 "When a plaintiff seeks declaratory relief, as here, the "test for
10 mootness ... is `whether the facts alleged, under all the circumstances,
11 show that there is a substantial controversy, between parties having
12 adverse legal interests, of sufficient immediacy and reality to warrant
13 the issuance of a declaratory judgment.'" *Biodiversity Legal Found. v.*
14 *Badgley*, 309 F.3d 1166, 1174-75 (9th Cir. 2002) (quoting *Md. Cas.*
15 *Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273, 61 S. Ct. 510, 85
16 L.Ed. 826 (1941)). "Stated another way, the `central question' before
17 us is `whether changes in the circumstances that prevailed at the
18 beginning of litigation have forestalled any occasion for meaningful
19 relief.'" *Gator.Com Corp. v. L.L. Bean, Inc.*, 398 F.3d 1125, 1129 (9th
20 Cir.2005) (en banc) (quoting *West v. Sec'y of the Dep't of Transp.*, 206
21 F.3d 920, 925 n. 4 (9th Cir. 2000)). The [City] carries the burden of
22 establishing mootness. See *S. Or. Barter Fair v. Jackson County*, 372
23 F.3d 1128, 1134 (9th Cir.2004)..."[a] case or controversy exists
24 justifying declaratory relief only when `the challenged government
25 activity...is not contingent, has not evaporated or disappeared, and, by
26 its continuing and brooding presence, casts what may well be a
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1 substantial adverse effect on the interests of the petitioning parties"
2 (quoting *Super Tire Eng'g Co. v. McCorkle*, 416 U.S. 115, 122, 94 S.
3 Ct. 1694, 40 L.Ed.2d 1 (1974))."

4 Plaintiff contends that the "challenged government activity...has not
5 evaporated or disappeared," and "its continuing and brooding presence" threatens
6 to suppress Plaintiff's, and others', free expression in the FSZ, casting "what may
7 well be a substantial adverse effect on the interests of [Plaintiff]", and others.

8 Additionally, according to S.T.W (2008) [2:1269]:

9 "A declaratory relief suit is moot where plaintiff no longer wishes, or
10 is no longer able, to engage in the activity concerning which
11 declaratory relief was sought." [See *Golden v. Zwickler* (1969) 394
12 US 103, 108, 89 S. Ct. 956, 959. Plaintiff both wishes and is able to
13 engage in the said activity (see hereto attached: Peck Decl., p.2, lines
14 23-28, p.3, 1-25, and Exhibit A: CD ROM – LAPD May 26, 08).

15
16 (2) The exception for "wrongs capable of repetition yet evading review"
17 only applies when two criteria are met. *Native Vill. of Noatak v. Blatchford*, 38
18 F.3d 1505, 1509 (9th Cir.1994). "[i] there must be a 'reasonable expectation' that
19 the same complaining party will be subject to the same injury again. [ii] the
20 injury suffered must be of a type inherently limited in duration such that it is
21 likely always to become moot before federal court litigation is completed." *Id.* at
22 1509-10 (citations omitted).

23
24 Plaintiff asserts (i) there is a reasonable expectation that she will be subject
25 to the same purported injury again (see hereto attached: Peck Decl., p.2, lines 23-
26 28, p.3, 1-25 and Exhibit A: CD ROM, LAPD May 26, 08; Reply CMSJ, p.3,
27 lines 7-28, p.4, lines 1-25) and (ii) Defendant's unlawful restriction of Plaintiff's
28 and others' protected rights during a spontaneous, or planned, protest similar to

1 Plaintiff's activity on March 13, 2005 and May 26, 2008, is "a type inherently
2 limited in duration", as described above.

3 According to S.T.W. (2008) [2:1272]:

4 "If an issue is capable of repetition, yet evading review, "the litigation
5 may continue, notwithstanding the named Plaintiff's current lack of
6 personal stake." "This typically arises where the issues involve events
7 of such short duration that they are over by the time the matter gets to
8 court. [*Press-Enterprise Co. v. Sup. Ct.* (1986) 478 U.S.1, 6, 106 S.
9 Ct. 2735, 2739.]"

10 Accordingly, these exceptions to mootness apply in Plaintiff's case.

11
12 (3) The third exception to mootness: "[i]t is well settled that a defendant's
13 voluntary cessation of a challenged practice does not deprive a federal court of its
14 power to determine the legality of the practice." *City of Mesquite v. Aladdin's*
15 *Castle, Inc.*, 455 U.S. 283, 289, 102 S.Ct. 1070, 71 L.Ed.2d 152 (1982).
16 Statutory change represents one of the most important applications of voluntary
17 cessation. According to Erwin Chemerinsky's treatise, *Federal Jurisdiction*,
18 which includes a lengthy subsection on legislative changes within the voluntary
19 cessation section (§ 2.5.4):

20 "The key appears to be that cases will not be dismissed as moot if the
21 Court believes that there is a likelihood of reenactment of a
22 substantially similar law if the lawsuit is dismissed." (4th ed., p.139)

23 As one court put it, "[t]his exception [voluntary cessation] properly
24 applies only when a recalcitrant legislature clearly intends to reenact
25 the challenged regulation." *Kentucky Right to Life, Inc. v. Terry*, 108
26 F.3d 637, 645 (6th Cir. 1997). To be clear, legislative actors are not
27 given an absolute exemption from the voluntary cessation doctrine.
28

1 Notably, in *City of Mesquite v. Aladdin's Castle*, 455 U.S. 283 (1982)
2 and in *Northeastern Florida Contractors v. City of Jacksonville*, 508
3 U.S. 656 (1993), the Supreme Court declined to render the cases moot
4 when the legislative actors ceased the challenged conduct. If there is a
5 **reasonable possibility** that the government will reenact the law if the
6 court moots the case, then the legislative change will not moot the
7 case. In the *Northeastern Florida Contractors* case, the challenged
8 law was repealed and a slightly different version was immediately
9 passed to replace it, having substantially the same constitutional
10 problems, and this was not sufficient to moot the case.

11 According to S.T.W (2008) [2:1270]: "Voluntary cessation of
12 challenged conduct moots a case only if it is "absolutely clear that the
13 allegedly wrongful behavior could not reasonably be expected to
14 recur" [*Adaranda Constructors, Inc. v. Slater* (2000) 528 U.S. 216,
15 221, 120 S. Ct. 722, 723; *Parents Involved in Comm. Schools v.*
16 *Seattle School Dist. No. 1* (2007) U.S. , , 127 S. Ct. 2738, 2751];
17 Absent such a showing, federal courts will not permit "back sliding"
18 and may grant appropriate relief to prevent defendants from returning
19 to their old ways. [*Deakins v. Monaghan* (1988) 484 U.S. 193, 199,
20 108 S. Ct. 523, 528] (see *Cooper v. McBeath* (5th Cir. 1994) 114 3d
21 547, 551; *FTV v Affordable Media, LLC* (9th Cir. 1999) 179 F 3d
22 1228, 1238]"

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25 **(D) Responding to the Hon. Judge Block's Report,**
26 **paragraph B. (b) "Defendant's Cross-Motion Should be**
27 **Granted in Part and Denied in Part":**

28 The Hon. Judge Block states: "Plaintiff is not entitled to declaratory relief based on the City's failure to enforce provisions of LAMC §

1 42.15 or its alleged failure to prevent other vendors from occupying
2 space on the Venice Beach Boardwalk....Moreover, the City cannot be
3 held liable under California law for its failure to adopt or enforce a
4 ban against commercial vending." (See Report, p. 11, lines 1- 14)

5 The Hon. Judge refers to *DeShaney v. Winnebago County Department of*
6 *Social Servs.*, 489 U.S. 189, 195, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989) which
7 states: "But nothing in the language of the Due Process Clause itself requires the
8 State to protect the life, liberty, and property of its citizens against invasion by
9 private actors. The Clause is phrased as a limitation on the State's power to act,
10 not as a guarantee of certain minimal levels of safety and security; while it
11 forbids the State itself to deprive individuals of life, liberty, and property without
12 due process of law, its language cannot fairly be read to impose an affirmative
13 obligation on the State to ensure that those interests do not come to harm through
14 other means." Plaintiff contends that the harm sustained by herself, and others,
15 came about not through "private actors" or "other means" but by the City [of Los
16 Angeles] ("Defendant"), itself, who sold permits to commercial vendors (who are
17 not constitutionally protected), and allocated them a space in the FSZ, designated
18 for constitutionally protected activities that would otherwise be available to free
19 expressionists; thus, depriving Plaintiff and others of their protected rights. (See
20 Plaintiff's Reply to CMSJ, p.11, lines 18-27.)
21

22 In 1855, the Supreme Court explained that, in order to ascertain
23 whether a process is due process, the first step is to "examine the
24 constitution itself, to see whether this process be in conflict with any of
25 its provisions...." (*Murray v. Hoboken Land*, 59 U.S. 272 (1855)) In
26 case a person is deprived of liberty [of speech] by a process that
27 conflicts with some provision of the Constitution, then the Due Process
28

1 Clause normally prescribes the remedy: restoration of that person's
2 liberty [of speech]. The Supreme Court held in 1967 that "we cannot
3 leave to the States the formulation of the authoritative ... remedies
4 designed to protect people from infractions by the States of federally
5 guaranteed rights." (*Chapman v. California*, 386 U.S. 18, 22 (1967)).

6 With regard to the Hon. Judge Block's reference to Cal. Gov't Code § 818.2
7 ("Sec. 818.2"), which provides that a public entity "is not liable for an injury
8 caused by adopting or failing to adopt an enactment or by failing to enforce any
9 law", Plaintiff contends that Sec. 818.2 was intended to provide immunity for
10 legislative and quasi-legislative action and to protect the exercise of discretion by
11 law enforcement officers in carrying out their duties. (See Cal. Law Revision
12 Commission comment to Gov. Code, § 818.2.) To apply this section to
13 immunize Defendant from liability for breach of a mandatory duty "would
14 completely eviscerate Government Code section 815.6 which specifically
15 provides for liability of the public entity for injuries resulting from a failure to
16 carry out a mandatory duty imposed by a public enactment." (*Elton v. County of*
17 *Orange* (1970) 3 Cal.App.3d 1053, 1059; see also *Alejo, supra*, 75 Cal.App.4th at
18 p. 1194; see also *Guzman v. County of Monterey*, Monterey County Super. Ct.
19 No. M71543 (2007)).
20

21 Therefore, Plaintiff contends that Defendant has a "mandatory duty" to
22 uphold the "imposed" "public enactment" of the First Amendment to the U.S.
23 Constitution and Article 1, and section 2 of the California Constitution, by
24 ensuring that (a) non-protected commercial vendors were removed from permit
25 spaces designated for protected activities in the FSZ and (b) lawful provisions of
26 LAMC § 42.15 were properly enforced so as to regulate protected activities in the
27 FSZ, especially with regard to the use of multiple spaces by individual permit-
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1 holders which limited the number of spaces available to others for protected
2 activities.

3 **Wherefore**, for the foregoing reasons, Plaintiff requests that the Court:

4 (1) decline to approve and adopt the Hon. Judge Block's Report and
5 Recommendation; (2) sustain Plaintiffs' objections; (3) grant Plaintiff's motion
6 for summary judgment with respect to her claims for declaratory relief and "other
7 claims for damages arising from the City's past enforcement of LAMC §§ 42.15
8 and 63.44(b)(7); and (4) deny Defendant's cross-motion for summary judgment
9 with respect to Plaintiff's claims for declaratory relief (see Report p.15, lines 8-
10 10).
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12
13 Dated: Los Angeles, California

14 May 27, 2008
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16 Respectfully submitted

17 by pro per
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20 _____
21 Barbara Peck
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