

1 **PRO PER**

2 Barbara Peck
3 514 Westminster Avenue
4 Venice, CA 90291
5 310-840-5397
6 bmpeck@yahoo.com

7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**

9
10 **BARBARA PECK,**
11 **Plaintiff,**
12 **vs.**
13 **CITY OF LOS ANGELES,**
14 **Defendant**

15 **Case No.: CV 07-1618 - DDP (RNB)**

16 **PLAINTIFF'S NOTICE OF**
17 **MOTION AND MOTION FOR**
18 **SUMMARY JUDGMENT**

19 Date: April 1, 2008
20 Time: 9:30am
21 Place: Santa Ana Courthouse
22 Judge: Honorable Robert Block

23 **TO DEFENDANT AND ITS ATTORNEY OF RECORD**

24 PLEASE TAKE NOTICE that on Tuesday, April 1, 2008 at 9:30am, or
25 as soon thereafter as the matter can be heard, in courtroom 6D of the Santa
26 Ana Courthouse, located at 411 Fourth Street, Santa Ana, Plaintiff Barbara
27 Peck will move the court for an order for Summary Judgment pursuant to
28 F.R.Civ.P.56. This motion will be made on the grounds that there is no
genuine issue as to any material fact and that Plaintiff is entitled to judgment
on the issue as a matter of law.

The motion will be based on this notice of motion, on the attached
memorandum of points and authorities, on the attached declarations of Barbara

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

1 Peck, on the attached exhibits, and on all the papers, pleadings, and records on file
2 in this action. Pursuant to L.R. 56-1, a Statement of Uncontroverted Facts and
3 Conclusions of Law and Proposed Judgment are submitted herewith.

4 This motion is made following the conference of counsel pursuant to L.R.
5 7-3, which took place on January 16, 2008 (see attached DECLARATION BY
6 PLAINTIFF BARBARA PECK RE: CONFERENCE OF COUNSEL, pg. 15),
7

8 INTRODUCTION

9 This action was originally filed on March 12, 2007, and the First
10 Amended Complaint was filed on October 15, 2007 seeking declaratory relief and
11 damages pursuant to 42 U.S.C. § 1983. Plaintiff now moves for summary
12 judgment on the grounds set forth herein:
13

14 1. Plaintiff's protected rights ("Plaintiff's rights") were restricted by
15 Defendant in direct violation of the First and Fourteenth Amendments to the
16 United States Constitution and Article 1, § 2 of the California Constitution.

17 2. Defendant's elected officials violated their own sworn Oath of
18 Office when they violated Plaintiff's rights.

19 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT 20 OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

21 Plaintiff hereby respectfully submits the following legal authorities in
22 support of this motion for Summary Judgment:

23 1. A party claiming relief may move for summary judgment on all or
24 part of the claim. The motion may be filed at any time after 20 days have passed
25 from commencement of the action. F.R.Civ.P.56 (a)
26
27

28 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

1 2. The judgment sought should be rendered if the pleadings, the
2 discovery and disclosure materials on file, and any affidavits show that there is no
3 genuine issue as to any material fact and that the movant is entitled to judgment as
4 a matter of law.

5 STANDARD OF REVIEW

6 Legal Standard Governing Motions for Summary Judgment

7 A request for summary judgment must be granted when "the pleadings,
8 depositions, answers to interrogatories, and admissions on file, together with the
9 affidavits, if any, show that there is no genuine issue as to any material fact and
10 that the moving party is entitled to a judgment as a matter of law." Fed.R.Civ.P.
11 56(c). It is [nonetheless] appropriate to resolve the issue at the summary judgment
12 stage where the historical facts are undisputed and the only question is the proper
13 legal conclusion to be drawn from those facts. *Los Angeles New Serv. v. Tullo*,
14 973 F.2d 791, 796 (9th Cir. 1992).

15 ARGUMENT

16 I. Defendant violated the First and Fourteenth Amendments 17 to the United States Constitution and Article 1, § 2 of the 18 California Constitution as a Matter of Law.

19 Ordinary citizens are entitled to the protective mantle of the
20 First and Fourteenth Amendments to the United States Constitution
21 and Article 1, § 2 of the California Constitution.

22 Defendant restricted Plaintiff's rights when it arrested*/cited

23 * Plaintiff uses the term "arrest" according to the Nolo Legal Center definition, as
24 follows: "Arrest - a situation in which the police detain a person in a manner that, to any
25 reasonable person, makes it clear she is not free to leave. A person can be "under arrest"
26 even though the police have not announced it; nor are handcuffs or physical restraint
27 necessary.")

1 her on March 13, 2005 for exercising her protected right to freedom of
2 speech in a public forum, the Free Speech Zone (FSZ). Defendant
3 violates the principles in the First Amendment when it puts an
4 overbroad permit scheme in place to restrain free speech in a public
5 place. *Edwin Crayton v. City of Natchitoches et al*, Case No.
6 *1:06cv1945*. See also Exhibit B - Consent Judgment No. *1:06cv1945*.
7 The Louisiana U. S. District Court's interpretation of the First
8 Amendment to the United States Constitution, as quoted above,
9 demonstrates conclusively that the Federal statute creates a protected
10 right for citizens to freely express themselves in a public place.

11
12 Plaintiff Barbara Peck has, and had, on March 13, 2005,
13 therefore, a protected right to exercise her freedom of speech without
14 intervention by Defendant. By its illegal enforcement of LAMC 42
15 §15, Defendant violated Plaintiff's rights by restraining her from freely
16 expressing herself in the FSZ, on Ocean Front Walk. Additionally,
17 Defendant restricted, and restricts, Plaintiff's, and others', protected
18 rights when it:

19 **(a)** Illegally enforced unconstitutional sections of LAMC § 42.15
20 (2004) from March 1, 2005 to August 16, 2005; and of LAMC §
21 42.15 (2006) from March 25, 2006 until enforcement ceased during
22 2007, as admitted in Defendant's Answer page 5, paragraph 50.
23 "Defendant admits that it has ceased enforcement of certain portions
24 of LAMC 42.15 in regard to "nominal utility" and the "50 foot" sound
25 regulation."
26
27
28

1 (b) Sold, and continues to sell, permits to vendors, on a daily basis
2 without establishing the constitutionality of the products that said
3 vendors sell in the FSZ and, by so doing, allowed, and continues to
4 allow, said vendors to occupy spaces designated for protected
5 Expressive activities. See CD ROM hereto attached as Exhibit C –
6 **COMMERCIAL VENDING VIDEOS (i) - (v); and VIOLATIONS_VIDEOS:**
7 **PERFORMERS'_LOTTERY_07-17-07.**

8 (c) Failed, and fails, to remove, thus allowing, aforesaid commercial
9 vending, demonstrating that Defendant condoned, and condones, said
10 commercial vending, causing a shortage of spaces designated for
11 Expressive activity available to Plaintiff and other Expressionists.
12 Thus displacing Plaintiff, and other Expressionists, and restricting
13 their opportunity to exercise their protected right to Free Expression,
14 in violation of the First Amendment to the United States Constitution
15 and Article 1, §2 of the California Constitution. (See Complaint,
16 Exhibits 5 (i) Affidavit by David Bradt and 5 (ii) Affidavit by Therese
17 Dietlin). Additionally, hereto attached as Exhibit D: Affidavits:

18 (i) Kraft Deposition (copy)[see *CV 06-06560 SJO (Ex)*] (ii) Michel
19 (iii) Robinson (iv) Turner

20 (d) Operates a corrupt lottery system which routinely violates its
21 Public Expression Permit Program Rules (“Program Rules”) by:

22 (i) Allocating spaces in the Performers’ Lottery, designated for
23 First Amendment protected activities, to vendors, in the FSZ. See Exhibit
24 **C: VIOLATIONS_VIDEOS: VENDOR_ALLOCATED_PERFORMERS'_SPACE_7-17-07;**
25 **PERFORMERS'_LOTTERY_07-17-07; TONY_B_STATEMENT_07-17-07; and**
26

27
28 **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

1 HOMELESSMAN_ALLOCATED_PERFORMERS'_SPACE_07-17-07; VIOLATIONS_PHOTOS:
2 NON-PERFORMER_IN_PERFORMERS'_LOTTERY_07-22-07

3 (ii) Allowing a vendor to occupy a number of consecutively placed
4 (prime location) spaces in the FSZ for his commercial business activities
5 opposite his place of business, as in the case of a vendor known as
6 “German Mike”. See Exhibit C - GERMAN_MIKE_VIDEO;

7 (e) Fails to enforce violations in the Lottery and in the FSZ, such as:

8 (i) a vendor entering the lottery for other vendors not present (Program
9 Rules, Lottery Rule:1.). See Exhibit C: VIOLATIONS_VIDEOS:
10 VENDOR_ALLOCATED_MULTIPLE_SPACES_7-17-07.

11 (ii) a vendor occupying several spaces (Program Rules, Boardwalk
12 Regulations no.10). See Exhibit C: VIOLATIONS_PHOTOS: VIOLATION
13 _SEVERAL_SPACES.

14 (iii) setting up in undesignated spaces (Program Rules, Public Expression
15 Spaces on the Boardwalk) – See Exhibit C: VIOLATIONS_VIDEOS:
16 UNDESIGNATED_SPACES; and VIOLATIONS_PHOTOS: VIOLATIONS_UNDESIGNATED
17 _SPACES

18 (iv) extending over the line of a designated space (see LAMC § 42.15
19 (2006) – (e) page 4 “No person shall place or allow anything in the
20 permitted space that extends beyond the boundaries of the permitted
21 space, nor shall the permittee conduct any activities requiring a permit
22 outside the boundaries of the permitted space). See Exhibit C:
23 VIOLATIONS_PHOTOS: VIOLATIONS_OVER_LINE)

24 (v) blocking ingress and egress to trash cans, etc. See Exhibit C:
25 VIOLATIONS_PHOTOS: VIOLATIONS_BLOCKING_TRASHCAN, ETC.

26
27
28 **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

1 Defendant's obscuration in regard to repealing the unconstitutional
2 sections of LAMC § 42.15 (2006): "nominal utility" and the "50
3 foot" sound provision" (see Defendant's Answer page 2, paragraph 9),
4 together with its obfuscation surrounding enforcement of LAMC §
5 42.15 during 2007 (see Plaintiff's Complaint page 3, paragraph 10 and
6 Defendant's Answer page 3, paragraph 10), demonstrate that
7 Defendant seeks to evade the admission that it is responsible for said
8 constitutional violations.
9

10 Unconstitutional sections of LAMC § 42.15 (2004) and (2006)
11 and § 63.44, as written by the City attorney's office and voted into
12 law by City Council, spawned four civil rights actions (including this
13 case) against Defendant from March 1, 2005 to March 12, 2007,
14 averaging two lawsuits per year, causing said unconstitutional
15 sections to be suspended and/or amended.
16

17 **II. By restricting Plaintiff's rights Defendant's elected officials**
18 **violated both the Constitutions of the United States and the State**
19 **of California and, by so doing, they violated their Oath of Office**
20 **to support both the Constitutions of the United States and the**
21 **State of California.**

22 By virtue of the fact that Defendant violated Plaintiff's, and
23 others', rights in the Free Speech Zone, it failed to support both the
24 Constitutions of the United States and the State of California (see
25 Complaint, page 12, paragraph 38). By so doing, Defendant's City
26 Attorney and City Council members ("elected officials") violated their
27

1 own sworn, or affirmed, Oath of Office to support the aforesaid
2 constitutions.

3 Plaintiff therefore holds that, insofar as Plaintiff's claim is based
4 on the restriction of her protected rights by Defendant, it is an action
5 for not only a violation of said protected rights, but also a violation of
6 Oath of Office by Defendant's elected officials.
7

8 **III. Plaintiff Has Suffered Damages as a Result of Defendant's**
9 **violation of the First and Fourteenth Amendment to the U.S.**
10 **Constitution and Article 1, § 2 of the California Constitution.**

11 The benefit that Defendant acquired from the violation of
12 Plaintiff's protected rights was solely the Defendant's. By denying
13 Plaintiff's protected rights, Plaintiff was damaged to the extent that
14 she and others were intimidated and made fearful by Defendant's
15 illegal enforcement and malicious prosecutorial procedures; and that
16 Defendant's actions caused Plaintiff's enjoyment of her protected
17 rights to be "chilled" to the extent that she was actually deterred from
18 exercising those rights in the FSZ for a period of time.
19

20 Los Angeles Municipal Code § 42.15 (2004 & 2006) and §
21 63.44 (b) (7) violated Plaintiff's rights to freedom of speech protected
22 by the First Amendment and made applicable to the states and local
23 government by 42 U.S.C. §1983. The acts complained of in
24 Plaintiff's Complaint were directed towards intimidating Plaintiff,
25 chilling the exercise of these protected expressive rights by, among
26
27

1 other means, deterring Plaintiff and others from association in the
2 lawful exercise of their constitutional rights.

3 In 1974, the U.S. Supreme Court held that when a public
4 official acts under [local] law in a manner that violates the U.S.
5 Constitution, "he comes into conflict with the superior authority of
6 that constitution and is stripped of his official or representative
7 character and subjected in his person to consequences of his
8 individual conduct". The Court thus held that a public official is
9 personally liable for damages if he or she votes to have the city
10 perform an act that has the effect of depriving citizens of their
11 constitutional rights - even in cases where the public officials are
12 required by [local] law to perform the particular act. Civil rights
13 represent another area in which local officials can be held personally
14 liable for damages. Every public official needs to know the risks
15 expressly contained in Section 1983, Title 42, of the United States
16 Code:
17

18 "Every person who, under color of any statute, ordinance,
19 regulation, custom, or usage, of any state or territory, subjects, or
20 causes to be subjected, any citizen of the United States or other person
21 within the jurisdiction thereof to the deprivation of any rights,
22 privileges, or immunities secured by the Constitution and laws, shall
23 be liable to the party injured." The literal language of Section 1983
24 makes all public officials personally liable for damages if their acts
25 result in depriving others of their civil rights, regardless of whether
26
27

1 such acts were reasonable and made in good faith. Additionally, the
2 U.S. Supreme Court has held that Section 1983 does not require proof
3 that a defendant deliberately intended to deprive the plaintiff of his
4 legal rights; the mere deprivation is itself a violation. "Under the
5 criteria developed by precedents of this Court, 1983 would be drained
6 of meaning were we to hold that the acts of a governor or other high
7 executive officer have "the quality of a supreme and unchangeable
8 edict, overriding all conflicting rights of property and unreviewable
9 through the judicial power of the Federal Government." *Sterling v.*
10 *Constantin*, 287 U.S., at 397. [See U.S. Supreme Court *SCHEUER v.*
11 *RHODES*, 416 U.S. 232 (1974)]

12
13 An award of nominal damages is appropriate when there is a
14 legal right to be vindicated against an invasion that has produced no
15 actual, present loss of any kind of where, from the nature of the case,
16 some injury has been done but the proof fails to show the amount.

17 Although Plaintiff's proof of actual damages may be slight, in
18 *Provost v. City of Newburgh*, 262 F.3d 146 (2d Cir. 2001), the Second
19 Circuit upheld a nominal damages award of \$1.00 and a punitive
20 damages award of \$10,000. The Second Circuit has held on several
21 occasions that punitive damages may be awarded in a Section 1983
22 case, even if the compensatory damages are only nominal. See *King*
23 *v. Macri*, 993 F.2d 294, 297-98 (2d Cir. 1993).

24 The Supreme Court in *Farrar*, 506 U.S. at 112, ruled that trial
25 courts must award nominal damages when a plaintiff establishes a
26

1 violation of the right to due process but is unable to prove actual
2 injury. *Farrar* described the right to due process as "absolute," " and
3 said that an award of nominal damages to remedy its deprivation
4 "recognizes the importance to organized society that [the] righ[t] be
5 scrupulously observed," *id.*, quoting *Carey v. Piphus*, 435 U.S. 247,
6 266 (1978).

7 The protection of first amendment rights is central to
8 guaranteeing our capacity for democratic self-government, *see New*
9 *York Times Co. v. Sullivan*, 376 U.S. 254, 269-70 (1964), and the right
10 to free speech is as fundamental as the right to due process. We
11 therefore conclude that the rationale of *Farrar* requires an award of
12 nominal damages upon proof of an infringement of the first
13 amendment right to speak. *Risdal v. Halford, et al.* No. 99-2675 (8th
14 Cir. 2000). *See generally Yniguez v. Arizonans for Official English*,
15 69 F.3d 920, 949 (9th Cir. 1995) (*en banc*), *vacated on other grounds*,
16 520 U.S. 43 (1997)

17
18 WHEREFORE, for the aforementioned reasons, Plaintiff prays that this
19 Honorable Court enter judgment for Plaintiff on Counts I, II and III.

20 Los Angeles, California
21 Dated: February 29, 2008

22 Respectfully submitted,
23 By Pro Per

24 _____
25 Barbara Peck
26 514 Westminster Avenue
27 Venice, CA 90291

28 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

1 **DECLARATION BY PLAINTIFF, BARBARA PECK,**
2 **IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

3 I, Barbara Peck, hereby declare under penalty of perjury that the following
4 is true and correct to the best of my knowledge and understanding:

5 On March 13, 2005 when I stood in a space, designated for free expression
6 activities in the Free Speech Zone (“FSZ”), with my sign protesting the lottery and
7 witnessing the questioning of John Michel by Officer Putnam, I was not vending,
8 hawking or selling, I was merely exercising my protected rights to free expression.
9 The arrest, and malicious prosecution that ensued from April 27 to August 16,
10 2005, by Defendant, set in motion a chain of events that was unlawful,
11 unwarranted, time consuming, costly to the taxpayers of the City of Los Angeles,
12 and detrimental to my well-being and protected rights. Whether or not damages
13 are due me, the fact remains that Defendant unlawfully interfered with my
14 enjoyment of said protected rights, which I regard as priceless, causing me
15 unnecessary emotional, mental and physical distress when it violated those rights.
16 Defendant does not consider my arrest and malicious prosecution to be significant
17 (see Defendant's Answer page 9 paragraph 87) but, in light of my inherent trust in,
18 and dependence on, the sanctity of the United States Constitution and the
19 California Constitution which protect rights to freedom of expression and due
20 process, Defendant has caused me significant hardship.
21

22 From March 1 to August 16, 2005 and from March 25, 2006 until
23 enforcement of LAMC § 42.15 unofficially ceased during 2007, Defendant
24 criminalized myself and others for exercising our protected rights in the FSZ.
25 Defendant’s illegal enforcement and recent LACK of enforcement, in regulating:
26
27

28 **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

1 a) the lottery b) use of space c) commercial vending d) Program Rules, has
2 caused damage to myself, other Expressionists, the First Amendment to the United
3 States Constitution and Article 1 § 2 of the California Constitution. Given
4 Defendant's past actions, the likelihood exists that Defendant will cause
5 irreparable harm in the future, unless it is held to account by this Honorable Court.

6 Defendant has failed to remove commercial vending in the FSZ, as
7 promised by Councilman Rosendahl on January 31, 2006: "This is a great day for
8 Venice Beach," Rosendahl said. "Today's vote will end the illegal commercial
9 vending that has threatened the street performers and free expressionists, harmed
10 local merchants, and made life unbearable for local residents." Hereto attached as
11 Exhibit E – W.L.A. ONLINE NEWS 1/31/06.
12

13 When questioned as to why commercial vending has not been removed
14 from the FSZ, Defendant's Counsel, Michael Nagle, has stated to Plaintiff on
15 more than one occasion that when the City attempts to remove commercial
16 vending they are sued in court. Upon information and belief, the four lawsuits
17 stemming from the FSZ since March 1, 2005 have been brought for civil rights
18 violations related to illegal enforcement of unconstitutional sections of LAMC §
19 42.15 by activists and artists, not commercial vendors. In fact, Defendant has
20 instructed sellers of jewelry to attach a cross or other religious symbols to their
21 jewelry in order to comply with constitutional standards. See Exhibit D –
22 Affidavit (i) Robinson.

23 In Paragraph 51 of Defendant's Answer, Defendant admits that "unlawful
24 vending can interfere with those engaging in First Amendment activity", yet
25 "unlawful vending" predominates in the FSZ as a direct result of Defendant's lack
26

27
28 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

1 of enforcement of LAMC § 42.15. See Exhibit C - **COMMERCIAL VENDING VIDEOS**
2 **(i) - (v)**.

3 Despite the Permit/Lottery system, which is the only section of LAMC §
4 42.15 apparently currently enforced by Defendant, the FSZ has become a “lawless
5 area”, (see Defendant's Answer page 8, paragraph 83) as a result of Defendant’s
6 lack of enforcement of the remaining sections of LAMC § 42.15. A situation that
7 has existed, upon Plaintiff’s information and belief, since approximately April
8 2007. (See Complaint: Exhibit 7 – Commercial Vending Photos). See also
9 Exhibit C - **COMMERCIAL VENDING VIDEOS (i) - (v)** and **VIOLATIONS_VIDEOS**; and
10 **VIOLATIONS_PHOTOS**

11 For the sake of convenience and for the purpose of this Motion for
12 Summary Judgment, I have provided photographic evidence of Defendants’
13 aforesaid violations on the attached CD ROM entitled Exhibit C. I affirm that I
14 photographed and video taped the aforesaid photographic evidence and the dates
15 ascribed to the images therein are accurate. I can present the original video
16 footage with proof of date created, if required by this Court.
17

18 Los Angeles, California
19 Dated: February 29, 2008

20 Respectfully submitted,
21 By Pro Per

22
23 _____
24 Barbara Peck
25 514 Westminster Avenue
26 Venice, CA 90291
27

28 **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

**DECLARATION BY PLAINTIFF BARBARA PECK
RE: CONFERENCE OF COUNSEL**

1
2
3 I, Barbara Peck, hereby declare under penalty of perjury that the following
4 is true and correct to the best of my knowledge and understanding:

5 1. I am Plaintiff Barbara Peck

6 2. On February 16, 2008 I served upon Defendant PLAINTIFF'S REQUEST
7 FOR SUMMARY JUDGMENT that was rejected by this Court on February 21, 2008.

8 3. On February 25, 2008 I served upon Defendant PLAINTIFF BARBARA
9 PECK'S REQUEST FOR EXTENSION OF TIME TO FILE FOR SUMMARY JUDGMENT.

10 4. On February 25, 2008 I contacted Defendant by email to confer on the
11 proposed motion for Summary Judgment. Later that same day, Defendant's
12 counsel, Michael Nagle ("Nagle"), responded to my email informing me that "we
13 had a telephonic conference in January regarding the intention to file summary
14 judgment motions in this case. Check your phone records regarding the date that
15 you telephoned me on this matter." Hereto attached as Exhibit F: Email 2/25/08.

16 5. It appears I had a telephone conversation with Nagle on January 16,
17 2008, according to the telephone records. I recalled having this conversation
18 after Nagle reminded me, in the aforesaid email, and I can only conclude that I
19 did not remember this conversation, previously, as it specifically related to
20 Summary Judgment because, as I recollect, we discussed a number of matters
21 related to this case, and I was distracted by those issues and other information
22 that I received from Nagle on that occasion.

23 6. On February 29, 2008, I visited the Santa Ana Courthouse with the
24 intention of filing this motion for Summary Judgment, prior to the March 1, 2008
25
26

27
28 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

1 cut-off date, having not yet received this Court's approval for the requested
2 extension of time to file for Summary Judgment, in the mail. I was informed by
3 the clerk at the filing window that I would need to file a Proposed Judgment, to
4 be in full compliance with F.R.Civ.P.56-1. While at the courthouse, I took the
5 opportunity to view the Court records and discovered that this Court had
6 approved my request for extension of time to file for Summary Judgment on
7 February 27, 2008, which notice I received in the mail when I returned home.
8

9 6. I am, therefore, re-submitting this PLAINTIFF'S NOTICE OF MOTION
10 AND MOTION FOR SUMMARY JUDGMENT, etc. on the understanding and belief that
11 I have complied fully with Local Rule 7-3, Local Rule 7-4, and Local Rule 56-1.

12 7. I apologize for the aforesaid confusion and I hereby declare that I did
13 not intentionally commit mistakes to gain advantage in this case, or for any other
14 reason. I would like to thank this Honorable Court for allowing me this
15 opportunity to re-submit this motion for Summary Judgment, and I trust that I
16 have fulfilled my obligations, in this matter, to this Honorable Court's satisfaction.
17

18 Los Angeles, California
19 Dated: March 4, 2008

20 Respectfully submitted,

21 By Pro Per

22
23 _____
24 Barbara Peck
25 514 Westminster Avenue
26 Venice, CA 90291
27

28 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

1 **LIST OF EXHIBITS IN SUPPORT OF**
2 **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

3
4 EXHIBIT A - FILE NO. 07-2112

5
6 EXHIBIT B - Consent Judgment No. *1:06cv1945*

7
8 EXHIBIT C - CD ROM containing the following photographic exhibits:

9 COMMERCIAL_VENDING_PHOTOS

10 COMMERCIAL VENDING VIDEOS (i) - (v)

11 VIOLATIONS_PHOTOS

12 VIOLATIONS_VIDEOS

13 GERMAN_MIKE_VIDEO

14 TONY_B_STATEMENT_07-17-07 (video)

15
16 EXHIBIT D - Affidavits: (i) Kraft Declaration (copy) [CV 06-06560 SJO
17 (Ex)] (ii) Michel (iii) Robinson (iv) Turner

18
19 EXHIBIT E – W.L.A. ONLINE NEWS

20
21 EXHIBIT F – Email 2/25/08

22
23
24
25
26
27
28 **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

1
2
3 **JUDICIAL NOTICE**

4 All officers of the US District Court for Los Angeles and Orange Counties,
5 California, are hereby placed on notice under authority of the supremacy and
6 equal protection clauses of the United States Constitution and the common law
7 authorities of Haines v Kerner, 404 U.S. 519, Platsky v. C.I.A. 953 F.2d. 25, and
8 Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000) relying on Willy v.
9 Coastal Corp., 503 U.S. 131, 135 (1992), “United States v. International Business
10 Machines Corp., 517 U.S. 843, 856 (1996), quoting Payne v. Tennessee, 501 U.S.
11 808, 842 (1991) (Souter, J., concurring). Trinsey v. Pagliaro, D.C. Pa. 1964, 229
12 F. Supp. 647, American Red Cross v. Community Blood Center of the Ozarks,
13 257 F.3d 859 (8th Cir. 07/25/2001).

14 In re Haines: pro se litigants (Plaintiff is a pro se litigant) are held to less
15 stringent pleading standards than BAR registered attorneys. Regardless of the
16 deficiencies in their pleadings, pro se litigants are entitled to the opportunity to
17 submit evidence in support of their claims. In re Platsky: court errs if court
18 dismisses the pro se litigant (Plaintiff is a pro se litigant) without instruction of
19 how pleadings are deficient and how to repair pleadings. In re Anastasoff:
20 litigants’ constitutional rights are violated when courts depart from precedent
21 where parties are similarly situated.

22
23 All litigants have a constitutional right to have their claims adjudicated
24 according the rule of precedent. See Anastasoff v. United States, 223 F.3d 898
25 (8th Cir. 2000). Statements of counsel, in their briefs or their arguments are not
26 sufficient for a REQUEST to dismiss or for summary judgment, Trinsey v.
27 Pagliaro, D.C. Pa. 1964, 229 F. Supp. 647.

28 **PLAINTIFF’S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

On March _____, 2008, I caused a copy of the accompanying:

**PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT**

to be served upon the office of the Los Angeles City Attorney at 200 North Main Street, 9th Floor, Room 900, Los Angeles, CA 90012 by first class U.S. mail.

Respectfully submitted this _____ day of March, 2008

Barbara Peck
514 Westminster Avenue
Venice, CA 90291

PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT