S127904

G031636

Case Number

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT

BALBOA VILLAGE INN, INC., a California corporation
Plaintiff and Respondent

Vs.

ANNE LEMEN aka ANNE LEMON
Defendant and Petitioner

ANNE LEMEN aka ANNE LEMON
Moving Party and Appellant

Appeal from the Orange County Superior Court
Gerald G. Johnston, Judge

PETITION FOR WRIT OF SUPERCEDEAS OR OTHER APPROPRIATE STAY ORDER AND FOR AN IMMEDIATE STAY; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

(Accompanied by Supporting Exhibits)

IMMEDIATE STAY REQUESTED

D. MICHAEL BUSH
Bridgman & Associates
State Bar No. 101601
17330 Brookhurst St., Suite 330
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(714) 963-5486

Attorneys for Defendant/Appellant
ANNE LEMEN

S127904

ORIGINAL

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INTRODUCTION

Moving party and Appellant, ANNE LEMEN aka ANNE LEMON, request this Court to act immediately to preserve the status quo pursuant to **California Code of Civil Procedure § 923**, as the prior restraint of free speech warrants careful and deliberate

evaluation.

The manner in which the Village Inn conducts business is a hotly debated matter on Balboa Island. Defendant Anne Lemen lives just across the alley from the Village Inn. Her life has been significantly impacted by the Village Inn. She has been a vocal opponent to the expanded operations of the Village Inn. She has played a role in the gathering of over 400 petitions, the organization of a community meeting with the Alcoholic Beverage Control Board and has spoken at a local city council meeting.

Ms. Lemen was sued by the Village Inn and a judgment was entered against her to prevent her from making various specific "false" statements and from videotaping in close proximity to the Village Inn, other than from her property. Ms. Lemen denies making the false statements and contends that the videotapes and photographs she did take were of potential violations involving the operations at the Village Inn.

The operations of the Village Inn are clearly a matter of public debate. There have been many articles printed recently in the Daily Pilot and the Los Angeles Times, which are attached as exhibits to this brief.

1) August 27, 2002, Daily Pilot, Exhibit "P"

2) August 29, 2002, Daily Pilot, Exhibit "Q"

3) September 8, 2002, Daily Pilot, Exhibit "O"

4) October 21, 2002, Los Angeles Times, Exhibit "R"

5) December 4, 2002, Daily Pilot, Exhibit "M"

6) December 12, 2002, Daily Pilot, Exhibit "T"

Richard A. Nichols recently placed a yard sign in Anne Lemen's yard. He recently was elected to the Newport Beach City Council. In a recent Daily Pilot article, Mr. Nichols was quoted as saying "He plans on to make known to Councilman Steve Bromberg that he believes something should be done about the Village Inn." The article further states "The restaurant, in Steve Bromberg's district, has drawn numerous complaints and even a court case from neighbors upset about the noise and patrons." Daily Pilot, December 4, 2002. (See Exhibit "M" attached hereto and incorporated by reference).

The Village Inn has engaged in hardball tactics to silence Anne Lemen. The state of the law is clearly that the truth or falsity of statements is not the determining factor with respect to matters involving public debate. The opportunity for mischief is just to great.

Anne Lemen needs to be able to freely and fully participate in the robust debate involving the Village Inn. Ms. Lemen must be free to say the following without fear of recrimination:

1) The Village Inn has a history of selling alcohol to minors and has been cited for it. Further city councilman Nichol's son was severely injured by a minor who was served alcohol at the Village Inn.

2) The Village Inn is legally able to stay open until 6 AM.

3) Sexually explicit images, including women performing "pole dancing" are shown within the Village Inn.

4) Given the failure to properly monitor activities of the young patrons of the Village Inn, there has been an increase in drug use, prostitution and crime on Balboa Island and that the Village Inn is directly responsible for the increase in the criminal activity.

5) That others have said the Village Inn has a history of connections with the Mafia. Further the threats of bodily harm made towards Anne Lemen by those associated with Village Inn are reminiscent of tactics employed by the Mafia.

6) Given the failure to monitor activities directly outside the Village Inn, two women and a man have been engaged in flagrant public kissing and touching and at least one women has exposed herself.

7) In the past, people complained about becoming ill after eating the food at the Village Inn.

8) Those involved in positions of authority are involved in protecting the Village Inn, such as the current Mayor of Newport Beach, Steven Bromberg, who was the former attorney for the Village Inn and the Newport Beach Police Department.

9) In summary, the Village Inn runs an "unruly house" that local authorities do not control and it's time for the neighborhood to rise up and challenge the status quo.

Furthermore, the Trial Court's Judgment is so vague and ambiguous with respect to the restrictions placed on the Appellant that the Appellant is unsure what she can and cannot do or say regarding the activities of the Village Inn, the business directly next door to her home. This has had a chilling effect on the Appellant's free speech rights at a time when there is vigorous political debate throughout the city and community over the conduct of the Village Inn.

Ms. Lemen doesn't have to be a lawyer to make sure every word she says is strictly accurate and doesn't have to be at the mercy of those favorable disposed towards the bar who are testifying from memory, as opposed to having audio and videotapes of their own.

There have been longstanding allegations that Ms. Lemen is a liar. That is why she started to compile photos and videotapes. Otherwise, nobody would believe her. She must be free to videotape possible violations from public streets and public sidewalks if she so desires. The recording of such violations is in the public interest.

There is not a single case that supports the Village Inn's case and the Judgment is in its entirety unconstitutional. The Village Inn is trying to crush Anne Lemen. Ms. Lemen is standing up for not only her rights, but the rights of her neighbors. The time to speak freely is now. If she steps across a line, she can be sued for defamation.

Appellant therefore urges this Court to stay, pending the determination of the appeal in this case, enforcement of the Trial Court's judgment in this case. Further, the appellant requests a temporary stay issue immediately pending this Court's decision on this Petition.

PETITION FOR WRIT OF SUPERCEDEAS OR OTHER APPROPRIATE STAY ORDER AND FOR AN IMMEDIATE STAY

By this verified Petition, Moving Party and Appellant, ANNE LEMEN, alleges:

1. The instant action was brought by Plaintiff BALBOA ISLAND VILLAGE INN in the Superior Court of California County of Orange Case Number 01 CC 13243. (A true and correct copy of the complaint is attached hereto as Exhibit "A"). Appellant is a party of record to the action.

2. The action was brought to stop the Appellant from petitioning local government, recording disturbances at the VILLAGE INN, from contacting customers of the VILLAGE INN, and from reporting offenses to the local authorities.

3. The Appellant responded with an Anti-Slapp Motion To Strike the Complaint. (See Exhibit "B" attached hereto and incorporated herein by reference).

4. Respondent then filed an amended complaint in which the Village Inn sought an injunction against Ms. Lemen to stop her from allegedly making false representations about the Village Inn, its food or its management, to stop her from allegedly harassing the patrons of the Village Inn and to stop her from taking pictures through the windows and doors of the Village Inn. (See Exhibit "C, First Amended Complaint, page 6, Item 1 of the Prayer for Relief).

5. The trial on this matter was held on August 19, 2002 through August 25, 2002.

6. The trial was held as a bench trial before the Honorable Judge Gerald G. Johnston, in Department C-29 of the Superior Court of California County of Orange.

7. At the end of the bench trial, the Honorable Judge Gerald G. Johnston took the matter under submission.

8. On or about August 28, 2002, the Honorable Judge Gerald G. Johnston issued a Tentative Ruling. (See Exhibit "D" attached hereto and incorporated herein by reference).

9. The essence of the Tentative Ruling was to prohibit Ms. Lemen from initialing any contact with employees of plaintiff, from making any statements to patrons, residents, or any other person whether engaged in petitioning or any other activity that Ms. Lemen knows to be false, and prohibits Ms. Lemen from filming within 50 feet of the plaintiff's premises of any approaching or departing patrons of the Village Inn, with the exception of filming from her property and other limited exceptions.

10. On September 9, 2002, the Appellant filing her Objection to the Tentative Ruling, citing the lack of legal basis for the Tentative Ruling. (See Exhibit "E" attached hereto and incorporated herein by reference).

11. On or about September 10, 2002, Respondent mailed a letter to the Court, with a copy to the Appellant's counsel, wherein the Respondent objected to the Appellant's Objection to the Tentative Ruling. (See Exhibit "F" attached hereto and incorporated herein by reference).

12. On or about September 11, 2002, Appellant filed her Reply to the September 10, 2002 letter from the Respondent. (See Exhibit "G" attached hereto and incorporated herein by reference).

13. On or about September 12, 2002, the Court served its Statement of Decision on all parties. There was no change between the Tentative Ruling and the Statement of Decision. (See Exhibit "H" attached hereto and incorporated herein by reference).

14. It is believed that on or about October 11, 2002, the Trial Court issued it's Judgment and Permanent Injunction, which has not been yet served on the moving party. (See Exhibit "I" attached hereto and incorporated herein by reference).

15. As of the filing of the instant Petition, neither the Moving Party or her attorneys of record have been served with a copy of the judgment.

16. Appellant filed a Notice of Appeal on or about December 26, 2002. (See Exhibit "J" attached hereto and incorporated herein by reference).

PRAYER

WHEREFORE, Appellant prays that this Court:

1. Pending this Court's ruling on this Petition, immediately stay the enforcement of the Trial Court's October 11, 2002 Judgment.

2. Issue a Writ of Supersedeas, a stay or other appropriate relief staying enforcement of the Trial Court's Judgement and currently in effect, such stay of enforcement to remain in effect until the remittitur is issued in the instant appeal.

3. Grant such other relief as may be just and proper.

DATED: 12/28/02

Respectfully submitted,

By: _____

D. Michael Bush
Attorney at Law
Bridgman & Associates
Attorneys for Appellant
ANNE LEMEN

VERIFICATION

I, D. Michael Bush, declare as follows:

I am the attorney for the Moving Party and Appellant herein. I have read the foregoing petition for Writ of Supercedeas Or Other Appropriate Stay Order And For An Immediate Stay and know its contents. The facts alleged in the Petition are within my own knowledge and the Petition is true of my own knowledge.

I declare under penalty of perjury, that the foregoing is true and correct.

Executed on December 27, 2002 at Fountain Valley, California.

BY: _____

D. Michael Bush
Declarant

MEMORANDUM OF POINTS AND AUTHORITIES

THIS COURT SHOULD ACT IMMEDIATELY TO PRESERVE THE STATUS QUO OF THE APPELLANT'S CONSTITUTIONAL RIGHTS

A. THE TRIAL COURT'S JUDGMENT SEVERELY AND DRAMATICALLY AFFECTS THE APPELLANT'S CONSTITUTION FREE SPEECH RIGHTS

This Court has the authority to issue a writ of supercedeas or a stay order or "to make any order appropriate to preserve the status quo ..." **California Code of Civil Procedure § 923**. Exercise of this authority is required now because the trial court's judgment in this case, now on appeal, fundamentally alters the constitutional free speech rights of the Appellant.

The Court order/decision is very broad and has a chilling effect on the Appellant's free speech rights, her right to collect information and present same to local government regarding pending political debate.

Attached as Exhibit "K", is a copy of "PERMIT TO CONDUCT LIVE ENTERTAINMENT," dated September 6, 2002. Attached as Exhibit "L" is a letter to Aric Toll dated September 6, 2002. Both exhibits were authored by Glen Everroad, acting on behalf of the Revenue Division of the City of Newport Beach. This permit was under consideration with the subject trial took place. These documents were generated after the court's tentative ruling.

Currently an elected official of the Newport Beach City Council, Richard "Dick" Nichols was known to state in a December 4, 2002 newspaper article, that something should

be done about the Village Inn as there are numerous complaints about the noise and the patrons. (Attached as Exhibit "M" is a true and correct copy of the December 4, 2002 newspaper article).

Time is of the essence for Ms. Lemen to act on this permit, which she has opposed. She needs to be free to approach others in order to petition the City Council, who are currently debating the issues that the Village Inn has raised. She needs the freedom now to document and record failures to comply with the new permit. Without the intervention of this Court, Ms. Lemen can not fully engage in the political process when time is of the essence. Ms. Lemen's time to speak is now.

Recently, on or about November 4, 2002, Village Inn's attorney, J. Scott Russo, wrote to Appellant's attorney regarding the Village Inn's concern about the Appellant's use of the newspapers to promote her exercise of free speech. (Attached as Exhibit "N" is a true and correct copy of the November 4, 2002 letter).

Now the Appellant is faced with an injunction and a restraint on her free speech rights and this Court has the authority to stay the trial court's order.

B. THE TRIAL COURT'S JUDGMENT SHOULD BE REVERSED ON APPEAL

It is critically important for Ms. Lemen and other citizens of Balboa Island to speak freely during the time just before decisions are made that will have a lasting impact on the public. Attached as Exhibit "O" is a copy of a staff editorial from the Daily Pilot, a local

newspaper distributed by the Los Angeles Times, dated September 8, 2002, which serves the Balboa Island community. This editorial was published after the trial. There are additional articles from the same local newspaper that indicate that the public debate is occurring now and that the Court's Judgment has silenced a very important and vocal opponent of the changes proposed, and started, by the Village Inn. (See Exhibits "P", "Q" , "R" and "S').

Copies of the deposition transcripts of two (2) residents, Karen and David Seeber are attached as Exhibits "T" and "U", respectively. These are voices that could be silenced if the Judgment is upheld.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." **U.S.C.A. Const Amend. 1**.

"Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." **California Constitution Article I, § 2 (a)**.

The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that

this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly. **California Code of Civil Procedure § 425.16.**

The Court's Judgment clearly violates the spirit and principals of the United States Constitution and Constitution of the State of California. The Court's Judgment would present a prior restraint of the free speech rights of not only the Appellant, but the members of the community that share her positions and beliefs.

The Court, in its Statement of Decision, relied two (2) cases: **Magill Bros. Inc. V. Bldg. Services Employee's International Union (1942) 20 Cal. 2nd 506** and **Aguilar v. Avis Rent A Car Sys. (1999) 21 Cal 4th 121.**

In the case of **Magill** (Supra), the critical issue in this case was picketing, as opposed to statements made in public forum. The court specifically stated, "here is not the utterance of false statements which is sought to be enjoined, but the conduct of picketing in an unlawful manner." (**Magill** at page 509)

The case of **Aguilar v. Avis** (Supra), related only to comments made in the work place environment, as opposed to comments made in public places. The prohibition was justified only by a compelling public policy against a hostile work environment.

In the subject case, the Court did not find a compelling public policy issue. The Court issued board prohibitions without regard to time or location.

"The First Amendment generally prevents government from proscribing speech ... because of disapproval of the ideas expressed. Content-based regulations are presumptively

invalid" **Walker vs. Kiousis (2001) 93 Cal.App.4th 1432, 114 Cal.Rptr.2d 69; R.A.V. vs. St. Paul 505 U.S. 377, 112 S.Ct. 2538, 120 L.Ed.2d 305 (1992).**

The court appeared to make its own determination as to what subjects of discussion were true and false for the present and future. The court in the case of **Wilson v. Los Angeles County (1975) 13 Cal.3rd 652,** ruled that "the truth or falsity of a statement on a public issue is irrelevant to the question whether it should be repressed in advance of publication." (**Wilson** at page 658).

Words and comments taken out of context can not be used to stifle a free debate. The **Wilson** court held:

> "Thus, Appellant was placed in the untenable position of speculating on whether his attempts to comply with the court orders were satisfactory or whether additional versions of the Newsletter would also be repressed. The result was not merely a theoretical chilling of his right to publish, but actual acquiescence by him, under threat of contempt, in refraining from future publication of any of the four versions of the circular. (**Crosby v. Bradstreet Company**, supra, 312 F.2d at p. 485). By the restraining order the court also devised for itself an intolerable role: it was called upon to determine whether various versions of the Newsletter presented "too narrow a view of the truth" and whether successive publications were "substantially similar" to the original circular. It even went so far as to specify such details of publication as the size of type which would give a "fair" presentation. The court thus aggressively

assumed the role of governmental censor, approving its version of a "fair" presentation, and disapproving a "too narrow view of the truth." (**Wilson** at page 661).

It is important to reiterate that the court ruling relied on only two cases that did not support the ruling. The counsel for the Village Inn brushed off the First Amendment issues as "rubbish".

There is no legal basis for prohibitions against "initiating" contact with employees without regard to location, time period, or content.

Ms. Lemen has been accused of making false police reports prior to the inception of this lawsuit and in the initial complaint. Even after the trial, Ms. Lemen was accused of "crossing the line" in comments made to the police. A copy of an article from the Daily Pilot is attached as Exhibit "R". There is no line to be crossed in making comments to the police as a citizen has an absolute right to make a police report.

The Courts have held that a report of suspected criminal activity made to an investigative agency is absolutely privileged. **Fremont Compensation Ins. Co. vs. Superior Court (1996) 44 Cal.App.4th 867, 52 Cal.Rptr.2d 211.** This would carry over to reports of violations ordinances, regulations and administrative rules.

Ms. Lemen has recorded violations to shield her from allegations of making false police reports. The broad denial of allowing her to document violations and disturbances

from anywhere the immediate area surround the Village Inn, restricts Ms. Lemen from documenting problems that clearly impact the community as a whole.

Identical broad free speech rights attach to "quintessential" public forums and public property which state has opened for use by public as place for expressive activity. **Cinevision Corp. v. City of Burbank, 745 F.2d 560, 53 USLW 2234 [9th Cir.(Cal.) Oct 18, 1984]**.

In public places historically associated with free exercise of expressive activities, such as streets, sidewalks, and parks, power of government to restrict expressive conduct is extremely limited. **Pittsburg Unified School Dist. v. California School Employees Ass'n, (1985) 166 Cal.App.3d 875, 213 Cal.Rptr. 34**.

Peaceful and orderly solicitation of signatures, discussion of issues, and distribution of information on first amendment protected activities which may not be prohibited broadly and absolutely on public streets, parks, and similar public places traditionally associated with exercise of First Amendment rights. **Diamond v. Bland (1970) 3 Cal.3d 653, 91 Cal.Rptr. 501, 477 P.2d 733**.

There were no allegations that any of the videotapes or photographs introduced by Ms. Lemen were inappropriate. Plaintiff introduced testimony, which was disputed, that Ms. Lemen had taken more videos and photographs than were introduced at the time of trial. Plaintiff had set up an outdoor security camera system in August of 2001, but could not find one single image of Ms. Lemen doing anything inappropriate.

Copies of videotapes taken buy Ms. Lemen that show egregious conduct by patrons of the Village Inn, that were entered into evidence, can be provided to this Court if requested.

CONCLUSION

This case involves an important pending political issue to the residents of Balboa Island. The time for everyone to speak freely and openly is now. The owner of the Village Inn, Aric Toll, was asked in trial why this lawsuit was filed. His response was to keep Ms. Lemen from petitioning the Island and to keep her from making false police reports. Ms. Lemen took videotapes to protect her from the allegations that she was making false police reports.

Ms. Lemen is not and will never be a politician. The alliance she has helped bring together may well be fragile. It is important that justice be swift and sure and that this Court grant the instant petition pending a determination of the appeal.

Dated: December 27, 2002 Respectfully submitted,

By: _____

D. Michael Bush
Attorney at Law
Bridgman & Associates
Attorneys for Appellant
ANNE LEMEN

TABLE OF EXHIBITS

Exhibit S	Article from December 12, 2002 Daily Pilot
Exhibit T	Deposition Transcript of Karen Seeber
Exhibit U	Deposition Transcript of David Seeber

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF ORANGE

I, SCOTT A. ZIMMON, declare:

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 17330 Brookhurst Street, Suite 330, Fountain Valley, Ca. 92708. On December 30, 2002, I served the following document(s):

PETITION FOR WRIT OF SUPERCEDEAS OR OTHER APPROPRIATE STAY ORDER AND FOR AN IMMEDIATE STAY; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

in the case entitled**: Balboa Island Village Inn vs. Lemen, et al.,** Orange County Superior Court case number 01 CC 13243**,** on the interested parties through their attorneys of record by placing a true and correct copy thereof addressed as shown on the attached service list, as designated below:

( ) **BY FIRST CLASS MAIL (C.C.P. § 1013a, et seq.):**
I caused said documents(s) to be deposited in the United States mail in a sealed envelope with postage fully prepaid at Fountain Valley, California, following the ordinary practice at my place of business of collection and processing of mail on the same day as shown as this declaration.

(XX) **BY HAND DELIVERY/PERSONAL SERVICE (C.C.P. § 1011, et seq.)**
I caused said documents(s) to be delivered to each addressee.

( ) **BY EXPRESS MAIL (C.C.P. § 1013(c)(d), et seq.)**
I caused said document(s) to be deposited with an express service carrier in a sealed envelope designated by the carrier as an express mail envelope, with fees and postage pre-paid.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

DATED: 12/30/02 BY: _____
SCOTT A. ZIMMON

BALBOA ISLAND VILLAGE INN, et al. vs. LEMEN, et al.
OCSC Case Number 01 CC 13243

"SERVICE LIST"

The Hon. Judge Gerald G. Johnston
Judge of the Superior Court
c/o Clerk of the Court
700 Civic Center Drive West
Santa Ana, California 92701

J. Scott Russo, Esq.
PINTO & DUBIA
2 Park Plaza, Suite 300
Irvine, California 92614

EXHIBIT A

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

COPY

NOTICE TO DEFENDANT: *(Aviso a Acusado)*
ANNE LEMEN aka ANNE LEMON, an individual; and DOES 1 through 10, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)
BALBOA ISLAND VILLAGE INN, INC., a California corporation

You have *30 CALENDAR DAYS* after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS *para presentar una respuesta escrita a máquina en esta corte.*

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosasde su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

01HL04151

The name and address of the court is: *(El nombre y dirección de la corte es)*
ORANGE COUNTY SUPERIOR COURT
HARBOR JUSTICE CENTER - NEWPORT BEACH FACILITY
4601 Jamboree Road
Newport Beach, California 92660-2595

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)
J. Scott Russo, Bar No. 155631 (949) 955-1177
PINTO & DUBIA, LLP
2 Park Plaza
Suite 300
Irvine, California 92614

DATE: *(Fecha,* SEP 28 2001 ALAN SLATER Clerk, by *(Actuario)* S. Axtell , Deputy *(Delegado)*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. [X] as an individual defendant.
2. [ ] as the person sued under the fictitious name of *(specify)*:
3. [ ] on behalf of *(specify)*:
   under: [ ] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
   [ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
   [ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (individual)
   [ ] other:
4. [ ] by personal delivery on *(date)*:

Form Adopted by Rule 982
Judicial Council of California
982(a)(9) [Rev. January 1, 1984]
Mandatory Form

(See reverse for Proof of Service)
SUMMONS

Legal Solutions Plus

CCP 412.20

PINTO & DUBIA, LLP
J. Scott Russo, Bar No. 155631
2 Park Plaza, Suite 300
Irvine, California 92614-8513
(949) 955-1177

Attorneys for Plaintiff
BALBOA ISLAND VILLAGE INN, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, COUNTY OF ORANGE

HARBOR JUSTICE CENTER – NEWPORT BEACH FACILITY

under $25,000

BALBOA ISLAND VILLAGE INN, INC., a California corporation, Plaintiff, vs. ANNE LEMEN aka ANNE LEMON, an individual; and DOES 1 through 10, inclusive, Defendants.	Case No.: 01HL04151 COMPLAINT FOR (1) NUISANCE; (2) DEFAMATION; (3) INTERFERENCE WITH BUSINESS; AND (4) PRELIMINARY AND PERMANENT INJUNCTION

For causes of action against Defendants Anne Lemen aka Anne Lemon, and DOES 1 through 10, inclusive, and each of them, Plaintiff Balboa Island Village Inn, Inc. ("Plaintiff") alleges as follows:

GENERAL ALLEGATIONS

1. At all relevant times, Plaintiff was and now is a California corporation organized, existing, qualified, and licensed under the laws of the State of California with its principal place of business in the County of Orange, State of California. At all relevant times, Plaintiff was and now is the owner of Balboa Island Village Inn, a restaurant and bar located at 127 Marine Avenue, Balboa Island, Newport Beach, California (the "Village Inn"). The Village

Inn maintains all of the appropriate licenses in order to operate a restaurant and bar.

2. Plaintiff is informed and believes, and based thereon alleges, that Defendant Anne Lemen aka Anne Lemon ("Lemen") is an individual and the owner of the real property located at 1305 Park Avenue, Balboa Island, Newport Beach, California which is adjacent to the Village Inn.

3. The true names and capacities, whether individual, corporate, associate, or otherwise of the Defendants named herein as DOES 1 through 10, inclusive, are unknown to Plaintiff and Plaintiff therefore sues such Defendants by such fictitious names, and will amend this Complaint to show the true and capacities when the same have been ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated as a DOE is responsible in some manner for the acts alleged herein and thereby approximately caused injuries and damages to Plaintiff as herein alleged.

4. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned each of the Defendants was the agent and employee of each of the remaining Defendants, and doing the things hereinafter alleged, was acting within the course and scope of agency and employment.

5. Plaintiff purchased the Village Inn in November, 2000. The Village Inn has existed on Balboa Island for more than 50 years and has enjoyed a longstanding good relationship with the community. Plaintiff is informed and believes, and based thereon alleges, that, prior to Plaintiff's ownership of the Village Inn and continuing through the date of this Complaint, Lemen has engaged in a personal campaign to destroy the business of the Village Inn by (i) interfering with the business; (ii) accosting its customers; (iii) making defamatory statements about the Village Inn to its customers and community; and (iv) making false oral and written complaints to local and state agencies as further alleged below.

6. Plaintiff is informed and believes, and based thereon alleges, that Lemen repeatedly made false allegations to the Newport Beach Police Department, Newport Beach Planning, Code Enforcement, and Revenue Departments about excessive noise at the Village Inn, including, but not limited to, on the following dates: January 11, 2001; April 1, 2001; June

22, 2001; July 17, 2001; July 19, 2001; and August 5, 2001.

7. Plaintiff is informed and believes, and based thereon alleges, that during March and June, 2001, Lemen accosted delivery persons delivering supplies to the Village Inn and yelled obscenities at them.

8. Plaintiff is informed and believes, and based thereon alleges, that on separate instances during the months of April and July, 2001, during the evening hours, Lemen took flash photographs through back screen door of the Village Inn of the employees in their changing area, calling the employees "illegal Mexicans" and accusing them of hiding from her.

9. Plaintiff is informed and believes, and based thereon alleges, that in or about May, 2001, Lemen accosted a produce supplier as he made a delivery to the rear entrance of the Village Inn. Plaintiff is further informed and believes, and based thereon alleges, that Lemen yelled at the delivery person, "We don't allow Mexicans to park in alleyways. Get your f _ cking truck out of here."

10. Plaintiff is informed and believes, and based thereon alleges, that in or about December, 2000, Lemen accosted an employee of the Village Inn, Art Perez, telling Mr. Perez "that place should be closed down . . . they have illegal aliens there . . . they shouldn't be working there . . . I'm going to do everything that I can to keep the doors closed."

11. Plaintiff is informed and believes, and based thereon alleges, that during the Spring of 2001, Lemen told one or more customers or neighbors of the Village Inn that the Village Inn was operating a "whorehouse" in the residential unit above the Village Inn.

12. Plaintiff is informed and believes, and based thereon alleges, that during the year 2001, Lemen has thrown beer cans in front of her house and then reported the existence of the beer cans to the Alcohol and Beverage Control Board as a violation of Village Inn's alcohol sales license.

13. Plaintiff is informed and believes, and based thereon alleges, that on or about July 20, 2001, Lemen confronted at least six potential customers of the Village Inn as they reviewed the menu in front of the Village Inn, telling the potential customers that the Village Inn "buys food out of the trunks of cars" and "fabricates food in the garage", and complaining that

patrons of the Village Inn have been sickened by the food. Lemen's assertions were false and Plaintiff is informed and believes, and based thereon alleges, that the potential customers were driven off by Lemen's claims.

14. Plaintiff is informed and believes, and based thereon alleges, that in or about March, 2001, while a patron of the Village Inn was waiting for a taxi next to the Village Inn, Lemen accosted the patron and yelled obscenities at her.

15. In or about the months of May to July, 2001, during Thursday and Friday nights, Lemen repeatedly took flash photographs of the patrons in the restaurant and in the bar of the Village Inn through windows of the Village Inn, interfering with and intimidating the patrons. Further, in or about the months of May to July, 2001, Lemen stood across from the Village Inn with a video camera and videotaped the patrons of the Village Inn as they entered and exited, causing the patrons to be uncomfortable and intimidated.

16. Plaintiff is informed and believes, and based thereon alleges, that on several occasions during 2001, Lemen approached customers entering the Village Inn and told them that the Village Inn had made people sick and that the owners were operating a "whorehouse" above the Village Inn.

17. Plaintiff is informed and believes, and based thereon alleges, that on or about July 7, 2001, Lemen threw a construction sign into a planter at the Village Inn.

18. Plaintiff is informed and believes, and based thereon alleges, that during June and July, 2001, Lemen circulated a petition against the Village Inn falsely claiming that the Village Inn (i) does not post hours; (ii) does not check identifications on minors; and (iii) does not serve appetizers or meals.

19. Plaintiff is informed and believes, and based thereon alleges, that on or about July 25, 2001, Lemen approached a neighbor of the Village Inn and offered to pay him money if he and his roommates would file complaints against the Village Inn alleging noise violations.

///

///

FIRST CAUSE OF ACTION

(Nuisance)

(Against All Defendants)

20. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 19 of this Complaint as if fully set forth herein.

21. The aforementioned acts by Defendants. and each of them, constitute a nuisance within the meaning of Section 3479 of the Code of Civil Procedure that she has interfered and obstructed Plaintiff's comfortable enjoyment and free use of its property.

22. Defendants, and each of them, have threatened to and will, unless restrained by the Court, continue to maintain the nuisance and continue the acts complained of.

SECOND CAUSE OF ACTION

(Defamation)

(Against All Defendants)

23. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 19 and 21 and 22 of this Complaint as if fully set forth herein.

24. Plaintiff is informed and believes, and based thereon alleges, that the statements by Lemen, as alleged herein, were heard by several other persons, including, but not limited to, Raefer Johnson, and others whose names are not known to Plaintiff. These statements were false and slanderous because they accused Plaintiff of committing crimes and serving food that harms the public.

25. As a result of the above-described statements, Plaintiff has suffered damages in a sum to be proved at the time of trial.

26. The above-described statements were spoken by Lemen with malice in that Lemen made these false statements with the specific intent to harm Plaintiff, and thus an award of exemplary and punitive damages is justified.

///

///

THIRD CAUSE OF ACTION

(Intentional Interference With Business)

(Against All Defendants)

27. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 19, 21 and 22, and 24 through 26 of this Complaint as if fully set forth herein.

28. Plaintiff is informed and believes, and based thereon alleges, that the aforementioned acts of Lemen were designed and intended to disrupt and harm the business of the Village Inn and in fact the business of the Village Inn was disrupted and harmed thereby. As a result of Defendants' conduct, Plaintiff has suffered damages in an amount according to proof.

29. The aforementioned acts of Defendants, and each of them, were willful and malicious. Plaintiff is therefore entitled to punitive damages.

FOURTH CAUSE OF ACTION

(Preliminary and Permanent Injunction)

(Against All Defendants)

30. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 19, 21 and 22, 24 through 26, and 28 and 29 of this Complaint as if fully set forth herein.

30. Unless Defendants, and each of them, are enjoined from continuing their course of conduct, the economic value of Plaintiff's property will be diminished and Plaintiff will be deprived of the comfort, use, and enjoyment of its property, and Plaintiff' business will continue to be disrupted and its business reputation and goodwill will be damaged. Further, unless retrained, Plaintiff will be forced to commence multiple lawsuits against Defendants to seek retribution but for which damages would not afford adequate relief.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

///

ON THE SECOND AND THIRD CAUSES OF ACTION

1. For damages according to proof;

2. For exemplary and punitive damages;

ON THE FIRST AND FOURTH CAUSES OF ACTION

3. For a preliminary injunction and a permanent injunction enjoining Defendants from (i) making any false representations to any patron of the Village Inn about the Village Inn; (ii) harassing any patron of the Village Inn within 50 feet of the premises of the Village Inn; (iii) taking photographs or videos through the windows or doors of the Village Inn; and (iv) making false reports about the Village Inn to the City of Newport Beach Planning Department or Police Department, or the Alcohol Beverage Control Board.

ON ALL CAUSES OF ACTION

4. For Plaintiff's costs of suit incurred herein; and

5. For such other and further relief as this Court deems just and proper.

DATED: September 21, 2001

PINTO & DUBIA, LLP

By: _____

J. Scott Russo
Attorneys for Plaintiff
BALBOA ISLAND VILLAGE INN, INC.

942\\332.001\complaint.pld

EXHIBIT B

BRIDGMAN & ASSOCIATES
D. Michael Bush, Esq. SBN 101601
17330 Brookhurst Street, Suite 330
Fountain Valley, California 92708
Telephone: (714) 963-5486
Facsimile: (714) 964-1328

Attorneys for Defendant,
ANNE LEMEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

BALBOA ISLAND VILLAGE INN, INC., a California corporation, Plaintiffs, vs. ANNE LEMEN aka ANNE LEMON, an individual; and DOES 1 through 10, inclusive, Defendants.	**CASE NO.: O1CC13243** ASSIGNED FOR ALL PURPOSES TO: COMMISSIONER F. LATIMER GOULD DEPARTMENT C 64 **NOTICE OF MOTION AND MOTION TO STRIKE COMPLAINT; REQUEST FOR ATTORNEYS FEES; MEMORANDUM OF POINTS AND AUTHORITIES**

DATE: January ~~18,~~ 25 2002
TIME: 9:10 a.m.
DEPT.: C 64:

TO PLAINTIFF, BALBOA ISLAND VILLAGE INN, INC., AND ITS ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on January ~~18,~~ 25 2002, at 9:10 a.m. or as soon thereafter as the matter may be heard, in Department C 64 of Orange County Superior Court located at 700 Civic Center Drive West, Santa Ana, Defendant ANNE LEMEN will move this Court for an order:

1. Striking all paragraphs of the plaintiff's complaint based on plaintiff's attempt to prevent defendant from engaging in her free speech rights in violation of the

California anti-SLAPP statute, California Code of Civil Procedure § 425.16.

2. For attorneys fees incurred in preparing and appearing for this motion in the amount of $2,250..

This motion is based upon this Notice of Motion; the accompanying Memorandum of Points and Authorities, the declarations of D. Michael Bush and Anne Lemen, and upon such other and further oral and documentary evidence as the court may consider on this motion or presented at the hearing of this matter.

DATED: 11/29/01

BRIDGMAN & ASSOCIATES

By: _____
D. Michael Bush
Attorneys for Defendant,
ANNE LEMEN

MEMORANDUM OF POINTS AND AUTHORITIES

I

INTRODUCTION

"Avoid loud & aggressive persons, they are vexations to the spirit"

Desiderata

The plaintiff in this case is an expanding business, described as one "bordering on a house of ill-repute and gaudiness, where hunched ritualistic males sit in middle-aged purgatory, eyeing the comely waitresses with hushed reverence." (See Exhibit "A" attached hereto and incorporated herein by reference). The business was purchased by Aric Toll in or about November, 2000. (See Exhibit "B" attached hereto and incorporated herein by reference and ¶ 5 of the complaint).

During the time referred to in the complaint, the defendant lived in her home, which is located 15 feet from the Village Inn. Defendant also operates The Island Cottage from this same location. (See Exhibit "C" attached hereto and incorporated herein by reference).

The defendant is part of a long line of individuals, decent and law abiding neighbors, that have been greatly disturbed by the manner in which the Village Inn has operated over the years. [See Exhibit "D" attached hereto and incorporated herein by reference (re history of loud music prior to July 5, 1989); Exhibit "E" attached hereto and incorporated herein by reference (re article entitled "Island landmark reopens-quietly," from the Daily Pilot in which noise and late night fights are mentioned)].

Defendant, Anne Lemen has exercised her right to free speech concerning the manner in which the Village Inn has operated. This has included making reports to law enforcement entities. Defendant has been informed and believes that the Village Inn has applied for a permit to allow the playing of drums on the premises. It appears this lawsuit is meant to level all hurdles that stand in the way of obtaining this permit.

Defendant contends that the new owner of the Village Inn has instituted this lawsuit to silence Ann Lemen and her neighbors in order to maximize profits with little, if any, regard for the surrounding neighborhood or its residents. The plaintiff's actions are a clear

violation of the California anti-SLAPP statute, **California Code of Civil Procedure** § 425.16. Defendants request that all paragraphs of the complaint be stricken, with prejudice, and that defendants be awarded attorneys fees related to the preparation and presentation of this motion.

II

ARGUMENT

The California anit-SLAPP statute, **California Code of Civil Procedure** § 425.16 is as follows:

> Actions arising from exercise of free speech or right of petition; legislative findings; motion to strike; stay of discovery; fees, costs; exception; report to legislature.
>
> (a) The Legislature finds and declares that there has been a disturbing increase in lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances. The Legislature finds and declares that it is in the public interest to encourage continued participation in matters of public significance, and that this participation should not be chilled through abuse of the judicial process. To this end, this section shall be construed broadly.
>
> (b)(1) A cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States or California Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.
>
> (2) In making its determination, the court shall consider the pleadings, and supporting and opposing affidavits stating the facts upon which the liability or defense is based.
>
> (3) If the court determines that the plaintiff has established a probability that he or she will prevail on the claim, neither that determination nor the fact of that determination shall be admissible in evidence at any later stage of the case, and no burden of proof or degree of proof otherwise applicable shall be affected by that determination.
>
> (c) In any action subject to subdivision (b), a prevailing defendant on a special motion to strike shall be entitled to recover his or her attorney's fees and costs. If the court finds that a special motion to strike is frivolous or is solely intended to cause unnecessary delay, the court shall award costs and reasonable attorney's fees to a plaintiff prevailing on the motion, pursuant to Section 128.5.
>
> (d) This section shall not apply to any enforcement action brought in the name of the people of the State of California by the Attorney General, district attorney, or city attorney, acting as a public prosecutor.

(e) As used in this section, "act in furtherance of a person's right of petition or free speech under the United States or California Constitution in connection with a public issue" includes: (1) any written or oral statement or writing made before a legislative, executive, or judicial proceeding, or any other official proceeding authorized by law; (2) any written or oral statement or writing made in connection with an issue under consideration or review by a legislative, executive, or judicial body, or any other official proceeding authorized by law; (3) any written or oral statement or writing made in a place open to the public or a public forum in connection with an issue of public interest; (4) or any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest.

(f) The special motion may be filed within 60 days of the service of the complaint or, in the court's discretion, at any later time upon terms it deems proper. The motion shall be noticed for hearing not more than 30 days after service unless the docket conditions of the court require a later hearing.

(g) All discovery proceedings in the action shall be stayed upon the filing of a notice of motion made pursuant to this section. The stay of discovery shall remain in effect until notice of entry of the order ruling on the motion. The court, on noticed motion and for good cause shown, may order that specified discovery be conducted notwithstanding this subdivision.

(h) For purposes of this section, "complaint" includes "cross-complaint" and "petition," "plaintiff" includes "cross-complainant" and "petitioner," and "defendant" includes "cross-defendant" and "respondent."

(i) On or before January 1, 1998, the Judicial Council shall report to the Legislature on the frequency and outcome of special motions made pursuant to this section, and on any other matters pertinent to the purposes of this section.

(j) An order granting or denying a special motion to strike shall be appealable under Section 904.1.

(k)(1) Any party who files a special motion to strike pursuant to this section, and any party who files an opposition to a special motion to strike, shall, promptly upon so filing, transmit to the Judicial Council, by e-mail or fax, a copy of the endorsed-filed caption page of the motion or opposition, a copy of any related notice of appeal or petition for a writ, and a conformed copy of any order issued pursuant to this section, including any order granting or denying a special motion to strike, discovery, or fees.

(2) The Judicial Council shall maintain a public record of information transmitted pursuant to this subdivision for at least three years, and may store the information on microfilm or other appropriate electronic media.

Anne Lemen was accused of making unfounded complaints to the "police, County Health Department, and other authorities," by counsel representing the prior owner of the Village Inn, in his letter of March 14, 2000. (See exhibit "F" attached hereto and incorporated herein by reference). Incidentally, after this allegation was made, Ms. Lemen

was advised by a police officer to take photographs to document her complaints. (See declaration of Anne Lemen). In the instant complaint, plaintiff alleges, in paragraph 6, that the defendant "made false allegations to the Newport Beach Police Department, Newport Beach Planning Commission, Code Enforcement, and Revenue Departments about excessive noise...."

Defendant has an absolute right to make complaints to law enforcement and regulatory entities and such activities fall with the ambit of **California Code of Civil Procedure § 425.16.**

The court in **ComputerXpress, Inc. v. Jackson (2001) WL 1429240 (Cal. App. 4 Dist.)** recently found that a complaint to the S.E.C. qualified "at least as a statement before an official proceeding." **(ComputerXpress, Inc.** at page 10.) Given conversations with plaintiff's counsel, it appears they now agree that defendant is allowed to make reports to any law enforcement or regulatory body. (See declaration of D. Michael Bush). Clearly the operation of the Village Inn is a public issue.

For the record, Anne Lemen does have a good faith belief that at a minimum, the following laws have been violated by the defendants. (see Declaration of Anne Lemen):

Business & Professions Code §§ 23787 and 23038: Whether the Village Inn is a bonafide eating place for the purpose the required liquor license.

Penal Code § 316 and Business & Professions Code § 25601: Keeping of a disorderly house that habitually disturbs the neighbors.

Penal Code § 397: Sale to alcohol to habitual drunkards.

Newport Beach Municipal Code § 5.28.041: Re entertainment areas open to view from outside the premises.

Newport Beach Municipal Code § 5.28.60 (C): Revocation of license authorized when music or noise interferes with the peace and quiet of the neighborhood.

Ms. Lemen has made written complaints to several governmental agencies and received responses. Attached are the following:

Letter to Alcoholic Beverage Control (ABC), June 23, 1995: (Exhibit "H" attached

hereto and incorporated herein by reference);

Letter to ABC, May 20, 1998: (Exhibit "I"attached hereto and incorporated herein by reference);

Letter from City of Newport Beach, April 4, 2000 re lack of specific regulations regarding the hours of operation: (Exhibit "J" attached hereto and incorporated herein by reference);

Letter to ABC, January 19, 2001: (Exhibit "K" attached hereto and incorporated herein by reference);

Letter From ABC, March 16, 2001: (Exhibit "L" attached hereto and incorporated herein by reference);

Letters to City of Newport Beach Revenue Division, July 13, 2001: (Exhibit "M" attached hereto and incorporated herein by reference);

Letters to City of Newport Beach Planning Department, July 13,2001 (Exhibit "N" attached hereto and incorporated herein by reference).

Incidentally, the first lawsuit was filed on September 28, 2001. Ms. Lemen has received complaints from her customers. Some of those complaints are as follows:

Marcia Mack, May 1, 2000: (Exhibit "O" attached hereto and incorporated herein by reference);

Kathryn L. Fox, October 14, 2001: (Exhibit "P" attached hereto and incorporated herein by reference).

Ms. Lemen has circulated a petition which addressed the neighbors opinions concerning restrictions that should be imposed on the Village Inn with respect to the hours of operation, serving food, not drinks and the requirement that minors be carded. (Exhibit "Q" attached hereto and incorporated herein by reference).

A close review of only the complaint reveals a bully who is trying to prevent Ms. Lemen from organizing neighborhood support and from approaching law enforcement entities with her concerns. In addition, plaintiff is approaching this court for an order preventing Ms. Lemen from making complaints to public bodies, which plaintiffs

characterize as false. Plaintiff makes vague and silly allegations concerning other acts by Ms. Lemen. Anne Lemen does respond so some of those allegations in her declaration.

The motion to strike is based upon **Code of Civil Procedure § 436**, which states that the Court may strike out "any irrelevant, false, or improper matter inserted in any pleading," and strike out "all or part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court."

Defendant specifically requests the following paragraphs be stricken:

Paragraph 5: A false representation has been made that the Village Inn has "enjoyed a longstanding good relationship with the community." (See Exhibits D and E) Other allegations are vague and conclusory.

Paragraph 6: This is the lynchpin of the plaintiff's complaint. The fact the management of the BALBOA ISLAND VILLAGE INN, INC. and Anne Lemen do not agree on what constitutes excessive noise cannot bar her from making complaints about "excessive noise" to law enforcement and governmental agencies. One person's exotic music and party is another's insomnia.

Paragraphs 7 and 9: Defendant denies using obscenities, which is a non-issue as far as the courts are concerned. Lemen has a right to confront delivery persons from her property when they park on or next to her property during the early morning hours and leave the engine running and the radio on.

Paragraph 8 and 10: Defendant denies using disparaging remarks regarding the ethnicity of those who worked for plaintiff. Defendant is entitled to take photographs of open doors which are supposed to be closed, or are otherwise in violation of local ordinance in order to support her complaint.

Paragraph 11: Defendant denies making this statement. Customers of the Village Inn do live in the neighborhood. One person writing about the business described an atmosphere bordering on "a house of ill-repute." (See Exhibit A) This allegation is vague.

Paragraph 12: Defendant routinely picked up beer cans from her property. On one

occasion the thought occurred to her to photograph the cans. She place the cans back where she found them and photographed them. This paragraph is not actionable.

Paragraph 13 and 16: This allegations are so vague that it doesn't warrant a response. Suffice it to say, the BALBOA ISLAND VILLAGE INN is not known for its fine cuisine. Again, many customers live in the neighborhood. People must be free to discuss whether the food has made other patrons ill in making recommendations where to eat.

Paragraph 14: Taxis park late at night just below defendants window to transport drunken patrons who at times are loud. A firm request from one's own window to be quiet is not actionable.

Paragraph 15: Defendant is entitled to take photographs of possible violations of law to support complaints made the appropriate authorities.

Paragraph 16: Anne Lemen's daughter and others ran over an improperly place construction sign. Defendant's daughter left the broken sign with a note. Defendant approached construction personnel regarding the matter and they replaced the sign. This is not actionable.

Paragraph 18: The petition is attached as Exhibit "Q". Ms. Lemen was clearly exercising her free speech rights concerning a public issue.

Paragraph 19: Ms. Lemen told a young man that she would pay him for his time to circulate a petition. This is not actionable.

Paragraphs 1-4 and 20-30: These are either general allegations or restate factual allegations made under the general allegations portion of the complaint

III

CONCLUSION

Ms. Lemen is not the first to be traumatized by the way in which the Village Inn has operated. She is not the first to stand up for her rights to peace and quiet of the neighborhood. She must not be the last to stand up to the Village Inn.

WHEREFORE, Based on the foregoing, it is respectfully requested that court grant defendant's motion to strike in its entirety and award attorneys fees..

Respectfully Submitted,

DATED: 11/29/01

BRIDGMAN & ASSOCIATES

By: _____
D. Michael Bush, Esq.
Attorneys for Defendant,
Anne Lemen

EXHIBIT

"A"

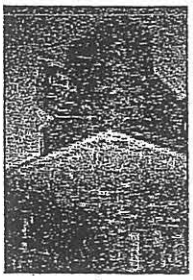
- Local Guide Home
- Entertainment Guide
- Business & Services
- People & Personals
- News & Sports
- Local Shopping Guide
- Visitor's Guide

Back to Bars & Clubs

The Village Inn

A word-of-mouth Island den.

Overview | Details | User Reviews



The Village Inn
127 Marine Avenue
Balboa Island, CA 92662
949-675-8300
Map | What's Nearby?

Lit like a dive but kept up like a drawing room, the Village Inn is done up in raspberry-colored wood and booth trim. There is also a parlor feel here, bordering on a house of ill-repute gaudiness, where hunched ritualistic males sit in middle-aged purgatory, eyeing the comely waitresses with hushed reverence. This is a neighborhood handhold for islanders who drink steadily and expertly, huddled in crimson shadows that steel their cracked souls. -- *CJ Bahnsen* *(Photo: CJ Bahnsen)*

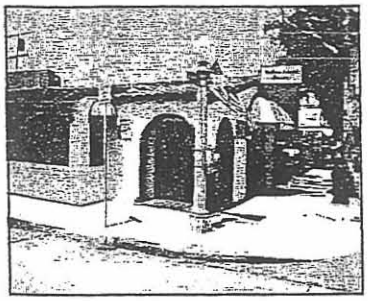
Bar/Club
Exotic, Jazz/blues, Live music, Neighborhood

More Info About The Village Inn:
- Overview
- Other details (hours, payment, etc.)
- User reviews and ratings

A

EXHIBIT

"B"



COMPLIMENTS OF : BALBOA ISLAND REALTY

BALBOA ISLAND REALTY NEWS

Balboa Island Realty
"We've Got Balboa Island Covered"

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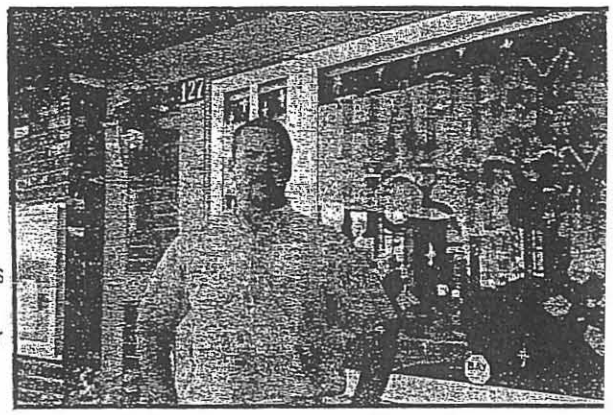
Inside This Issue:

New Owner Takes Over The Village Inn!

We all watched with interest as the Village inn was going through it's remodeling two years ago, and it turned out beautifully! After all the remodeling and a year and a half of growing the business, Lance Waggoner sold the Village Inn to it's new owner, Aric Toll. The Village Inn employees report that Aric is a great guy to work for and that he is friendly and open to suggestions. Customers also report that a positive transition has taken place.



Aric Toll, Owner of Village Inn

Aric and his wife Enid live in Corona with their two young sons Blake, 19 months and Mason, who is just 9 weeks old. Aric graduated from the Los Angeles Culinary Institute in 1995. After graduation he went to work at the House of Blues as a grill cook and worked his way up to Chef in the VIP dining room. He brings with him to the Village Inn many new and exciting ideas including a new menu that he plans to unveil on Valentine's Day, so don't forget to make your reservations and be a part of the grand reopening! (February 14th of course)

When you are out and about on the Island, be sure to stop by the Village Inn and say hello to Aric and let's all give him our support and encouragement.

Real Estate Inventory Remains Generally Low

All around Newport Beach the story is the same: Not enough homes for sale. Naturally, according to the basic laws of supply and demand, whenever there is not enough of something to go around, prices tend to move in an upwards direction, and that is definitely the case with home prices all around the Newport Area.

For example, on Balboa Island, out of a total of approximately 1500 homes, as of January 23, 2001, only 12 were for sale and of those 8 were already in Escrow (Leaving only 4 "available"). Consequently, prices have drifted upwards by an average of 10% during the second half of 2000.

The question in everyone's mind is the same: What's going to happen now? Will prices continue to go up? Are prices going to go down? Unfortunately, the answer is not so simple. It is true that historically Real Estate prices tend to be cyclical, therefore at some point there should be a downward price "adjustment". Another thing is also true: Right this minute Real Estate prices are at an all time high and inventory is very low, so if you are considering selling, now is an excellent time. For more information contact Balboa Island Realty at (949) 673-8700.

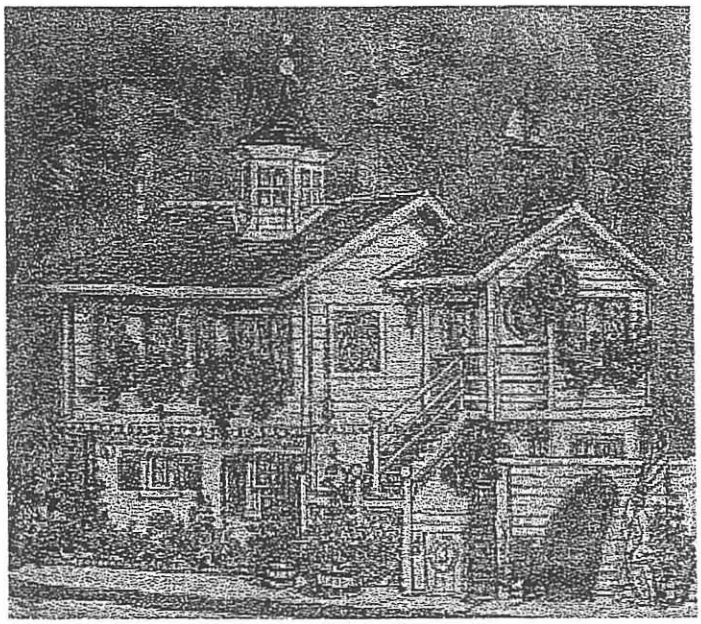
B

EXHIBIT

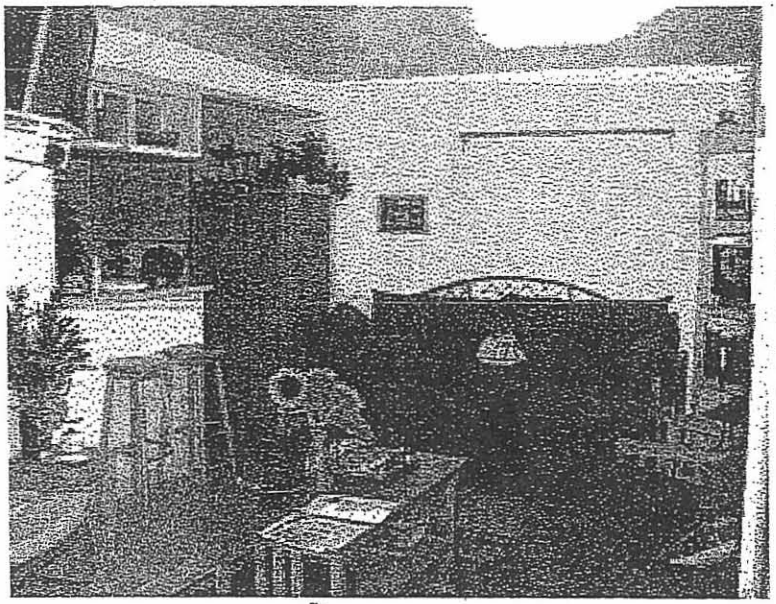
"C"

The

In the heart of Newport Beach on the historic Balboa Island, makes Island Cottage the perfect Summer Vacation destination. Balboa Island is famous for its shops and restaurants and is connected to the mainland by a bridge and a ferry boat.



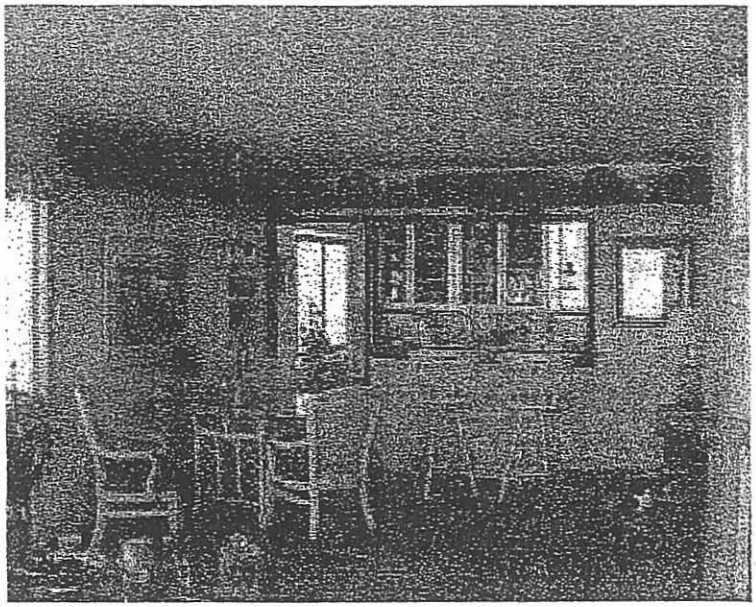
Fun, Sun, Sea and great food! Island Cottage is right in the heart of one of the finest areas to live in the world! Southern California with its beautiful beaches its awesome weather make it one of the best destinations there is(Be Warned!, you may never want to leave after visiting).



If Shopping is what you want Island Cottage is just moments away from Fashion Island, a shoppers heaven with its open air walkways and exciting restaurants it makes for a shopping excursion that is just incredible.

C

Island Cottage is a moments walk from sailing on Newport Harbor and a 20 minutes drive from the world famous Disneyland. Island Cottage is conveniently located close to John Wayne Airport so there is no long drive after a flight.



For more information please email:
beachctg@aol.com
or call (714) 658-2663

EXHIBIT

"D"

Subject Property Address 1305 PARK AVE

C. Are you (Seller) aware of any of the following:

1.	Features of the property shared in common with adjoining landowners, such as walls, fences, and driveways, whose use or responsibility for maintenance may have an effect on the subject property	☐ Yes ☒ No
2.	Any encroachments, easements or similar matters that may affect your interest in the subject property	☐ Yes ☒ No
3.	Room additions, structural modifications, or other alterations or repairs made without necessary permits	☐ Yes ☒ No
4.	Room additions, structural modifications, or other alterations or repairs not in compliance with building codes	☐ Yes ☒ No
5.	Landfill (compacted or otherwise) on the property or any portion thereof	☐ Yes ☒ No
6.	Any settling from any cause, or slippage, sliding, or other soil problems	☐ Yes ☒ No
7.	Flooding, drainage or grading problems	☐ Yes ☒ No
8.	Major damage to the property or any of the structures from fire, earthquake, floods, or landslides	☐ Yes ☒ No
9.	Any zoning violations, non-conforming uses, violations of "setback" requirements	☐ Yes ☒ No
10.	Neighborhood noise problems or other nuisances	☒ Yes ☐ No
11.	CC&R's or other deed restrictions or obligations	☐ Yes ☒ No
12.	Homeowners' Association which has any authority over the subject property	☐ Yes ☒ No
13.	Any "common area" (facilities such as pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)	☐ Yes ☒ No
14.	Any notices of abatement or citations against the property	☐ Yes ☒ No
15.	Any lawsuits against the seller threatening to or affecting this real property	☐ Yes ☒ No

If the answer to any of these is yes, explain. (Attach additional sheets if necessary.): IN THE PAST THERE HAS BEEN LOUD MUSIC IN THE VILLAGE INN BAR. THE CITY HAS REQUIRED A NOISE MONITORING INSTRUMENT TO BE INSTALLED IF THERE IS FURTHER NUISANCE THE ENTERTAINMENT LICENSE WILL BE REVOKED. IT IS NOW QUIET.

Seller certifies that the information herein is true and correct to the best of the Seller's knowledge as of the date signed by the Seller.

Seller X Lester E Packard Date X 7-5-19

Seller X Shirley Packard Date X 7-5-19

D

EXHIBIT

"E"

1996

Island landmark reopens – quietly

■ VIP Balboa owner takes over the old Village Inn after agreeing to long list of conditions.

By Evan Henerson, *Daily Pilot*

BALBOA ISLAND – After months of awaiting a liquor license and promising Island residents the reopening of a local historic haunt, the VIP Balboa is finally ready for visitors.

Monday night, and with little fanfare, owner Peter Cheng opened the doors of the Marine Avenue bar and restaurant – the former site of the Village Inn. This week, Cheng plans to iron out the kinks in his new operation, toward the end of the month, the VIP will hold a grand opening.

In the meantime, the restaurant will be open for lunch and dinner during the week and for breakfast, lunch and dinner on weekends.

"I want a couple of weeks to get back into practice," Cheng said Tuesday. "I want to make sure that the kitchen and the food servers are doing their jobs and that nobody's getting slow service.

"But it's great. All the old people and neighbors are coming back."

Old Village Inn menus trace the building back to 1930. The site has housed a private home, a beer garden-style German restaurant and an old English-style Inn.

Cheng, who also owns the nearby Shanghai Pine Gardens, bought the property in 1989. The Yardley family operated the Village Inn up until the business's lease expired in January of 1995. The restaurant closed its dining area immediately and the bar closed in July.

Cheng has since removed the pool table and refurbished the restaurant area. He had hoped to reopen the new restaurant – newly christened the V.I.P. (for Village Inn People) – last November, but it was not to be.

Neighbors who had objected to late-night noise from the Village Inn challenged Cheng's application with the state Alcoholic Beverage Control board. Police officials said noise from late night music and fights sometimes carried across the bay.

> *"I want a couple of weeks to get back into practice. ... But it's great. All the old people and neighbors are coming back ..."*
> – PETER CHENG

The owner eventually agreed to more than 20 conditions before nearby residents withdrew their protests, said Alcoholic Beverage Control's Marianne Eckhoff. The agency's permit was issued Jan. 30 with the following restrictions.

• The restaurant can have no amplified live music and no karaoke.

• No more than one musician can play live music at a time.

• No live entertainment after midnight.

• No pool table or coin operated games.

The business will be open until midnight Sunday through Thursday and to 1 a.m. on Friday and Saturday.

"We really want this place to co-exist peacefully with the nearby residents," Eckhoff said. "That's a big deal with us."

Balboa Island activists say they don't expect previous problems to resurface and are pleased to see businesses take over empty buildings.

"They're getting it done," Balboa Island Business Association President John Noyes said of the V.I.P. "And we really need them."

E

EXHIBIT

"F"

KICK BLAKE & ASSOCIATES
2700 N. Main Street
Suite 1000
Santa Ana, CA 92705-6635
(714) 667-7171

Our file: 2335-1

March 14, 2000

Anne Lemen
1305 Park Avenue
Balboa Island, CA 92662

Re: **The Village Inn**
Our File No.: 2335-1

Dear Ms. Lemen:

Mr. Lance Wagner and The Village Inn have retained this office to address certain conduct and acts of harassment which you have undertaken against them.

We are informed that you have engaged in a course and pattern of conduct designed to embarrass Mr. Wagner and to interfere with the operation of the restaurant, perhaps resulting in a closure of or economic loss to the business and Mr. Wagner directly. This conduct has included making unfounded complaints to the police, County Health Department, and other authorities, fabricating evidence of public nuisance and photographing it, making derogatory personal statements regarding Mr. Wagner and the restaurant to patrons, employees and other persons on the Island, disturbing Mr. Wagner in his residence and making offensive gestures at the customers while they were eating. This list is by no means meant to be exhaustive, but merely serves as an illustration of the types of conduct we have uncovered.

By this letter we are hoping to persuade you to cease all harassing and unprivileged actions directed at Mr. Wagner and/or The Village Inn. We understand that you may not like Mr. Wagner personally nor the fact that you are residing in close proximity to a restaurant, however, Mr. Wagner and The Village Inn have obtained the proper permits for their location from the City and other regulatory authorities and are there to stay. They will attempt to operate as good and responsible neighbors. Your conduct, should it continue, will force Mr. Wagner to examine his legal rights and right to compensation for any damages

F

he or The Village Inn may suffer as a result of your conduct. Please help us avoid that needless alternative.

Should you wish to discuss this matter further, please contact our office and not Mr. Wagner. Of course, any specific complaint you may have with the future operation of the restaurant may be made directly to Mr. Wagner at the appropriate time.

Very truly yours,

Rick A. Blake

RICK A. BLAKE

//9\corresp\2335 Lemen.ltr

EXHIBIT

"G"

EXHIBIT

"H"

Attn: ABC — 6/23/95

I am writing as a concerned resident of Balboa Island. I understand that the new owners of the Village Inn have applied for a "person to person transfer" of their liquor license.

I want to express how extremely difficult it has been to live next to a business that continually violated the rules by playing extremely loud music, then being awakened at 2:00, 2:30 3:00 am with the loud inebriated patrons shouting profanities, urinating on my front porch and littering my garden and porch with bottles and cups of alcohol. This type business is in too close proximity to my residence for me and my school age childs to be able to live and sleep normally.

I know for a fact that other residents are effected by the noise and offended by it as well. I also know that the Village Inn was sued in the past for these same problems and the City of Newport Beach was involved in the lawsuit to the extent that they would be shut down permanently if the noise level from the bar continue to be a problem. Thankyou for your considerate

phone 714-643-1662 Anne Lord

EXHIBIT

"I"

PROTEST LETTER

5-20-98

~~File # 300 578~~

To A.B.C.,

I am writing to you as a concerned resident of Balboa Island. I have lived and owned my home next to the VIP Balboa for the past ten years, at 127-129 Marine, Balboa Isl.

I understand that the owners, Cheng are wanting to transfer the liquor license to a Mr. Lance Anthony Wagner, and that Mr. Wagner has petitioned to have some of the conditions on the liquor license, type 1(removed.

I am requesting that none of the existing conditions on the existing license be remove

Please refer to my letter of 6-23-95, I will continue to live in the house next door for at least another two years while my daughter finishes school, and I need to have my home a livable residence, without the walls vibrating from the amplifier of the bar next door.

Maybe they should consider moving the bar to the other side of the room and have patrons enter on the street they use for their address — Marine Avenue.

Thank You,

RECEIVED

MAY 22 1998

Department Alcoholic Beverage Control
Santa Ana

Anne Lemer
PO Box 5853
Balboa Is 926

EXHIBIT

"J"

CITY OF NEWPORT BEACH

April 4, 2000 had 20 conditions in 1997

Anne Lemen
P.O. Box 55853
Newport Beach CA 92662

Re.: Village Inn, 127 Marine Avenue

Dear Ms. Lemen:

This correspondence is provided in response to your request for information regarding the business license issued to the Village Inn, and copies of the Newport Beach Municipal Code sections relating to noise and hours of operation. I apologize for not providing you with this response by March 20 as you requested, but staff has indicated that you have previously been provided with the information you requested.

Business licenses issued by the City of Newport Beach, like most California cities, are issued as evidence of tax payment by the business. Newport Beach Municipal Code specifically provides that business licenses are not for regulation (Section 5.04.120). Therefore, there are no conditions on the issuance of a business license beyond the payment of the license tax.

The City's noise regulations are found in Newport Beach Municipal Code Chapters 10.26 and 10.28. Section 10.26.025 establishes specific decibel levels for commercial locations.

as it? see history

Typically, the City regulates a restaurant's hours of operation via the Use Permit. The Village Inn has operated at 127 Marine Avenue for nearly fifty years, and predates the City's Use Permit requirements. Therefore, the City has no specific regulations relating to the hours of operation for the Village Inn.

I have enclosed the Municipal Code Sections referenced in this correspondence as requested. Should you have any questions regarding these sections please contact Revenue Manager Glen Everroad at 644-3141.

Sincerely,

Homer Bludau
City Manager

City Manager response to my request for peace & quiet after 10 or 11 so I can sleep without Bar N

J

EXHIBIT

"K"

RECEIVED

JAN 19 2001

ABC

Dept. of Alcoholic Beverage Control
Santa Ana

1-19-01

I am hereby protesting the transfer of license of the Island Village Inn Inc, and at the same time filing a complaint regarding loud noise and late hours. This is a plea to officials to not allow it to continue operating as it has in the past as an unruly bar with late hours past midnight in a ~~tight~~ small residential area.

It is too loud, too late, too close to homes, 15' from some.

It has been able to evolve from a vacant lot, to a nursery, to a hamberger stand, to restaurant and beer garden, then UT Restaurant, now MOSTLY just Bar, and over the years complaints from residents, law suits against the bar have proven it does not belong at that location.

Local police or city officials are not there as the loud drunks leave at one am, or to catch the occasional bar fight on the sidewalk, to hear the profanity and hollering when they get into their cars after midnight in front of homes, or catch the occasional drunk urinating or vomiting inside in the street or on residential property.

This "business" does not cater to 98% of the homeowners who never enter this establishment and would prefer some thing more dignified, quiet and safe like a nursery, hamberger stand or restaurant such as in existing. Call or write for details & have pics, videos

EXHIBIT

"L"

STATE OF CALIFORNIA — BUSINESS, TRANSPORTATION AND HOUSING AGENCY GRAY DAVIS, Governor

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
3810 ROSIN COURT, SUITE 150, SACRAMENTO, CA 95834
(916) 263-8111

March 16, 2001

Ann Leman
P.O. Box 5853
Newport Beach, CA 92662

Dear Protestant(s):

BALBOA ISLAND VILLAGE INN, INC.
127-29 Marine Avenue
Balboa Island, CA 92662
File: 11234

We regret that we cannot take any action on your protest against the above application.

The application is for a stock transfer of the existing license at the existing premises. The premises licensees are entitled to transfer their stock to any qualified person or persons.

The objections you state pertain to operation of the premises by the present licensees and do not constitute valid reasons why the new applicant(s) should not be licensed. Your allegations cannot be considered as valid grounds of protest for should the transfer application be denied, the existing licensed premises could continue in operation.

We wish to assure you that a thorough investigation of the applicant(s) will be made and that the Department will not approve the application unless the applicant qualifies as a licensee. Further, a copy of your letter and this correspondence will be sent to our District Office so they will be informed of your complaints and can investigate the operation of the premises.

Should you need further help, please contact our District Office shown below.

Sincerely,

Theresa Laster

Theresa Laster
Legal Analyst

TL: da
cc: Santa Ana District Office

8/24/99

8/24/99 BT V1. Inc annex liq lic? Outside + bldg? ____

L

EXHIBIT

"M"

Revenue Department
Glen Everood

7-13-07

Re: Entertainment at Village Inn

According to public records the Village Inn was required to have a decimal box inside the establishment when music was playing.

It has been removed.

Please let me know if it is to be reinstalled, and if not please explain why, as noise has been a continual problem according to police records.

Thank you,

Anne Lewen
PO Box 5853
Newport Beach
Ca

(714) 658-3663

Revenue Division
City of Newport Beach
[illegible] Newport Boulevard
[illegible] Beach, California 92663

Revenue Division
City of Newport Beach
3300 Newport Boulevard
Newport Beach, California 92663

M

7-13-01

Newport Beach Revenue Dept.,

Please provide me with the list entertainment permits of all Restaurant/Bar (Type 47) establishments in the city of Newport Beach.

Thank You,

Anne Lewen
PO Box 5853
Newport Beach Ca
92662
(714) 658-3663

Revenue Division
City of Newport Beach
[illegible] Newport Boulevard
Newport Beach, California 92663

7/13/01

7-13-01

City of Newport Beach
Revenue Department,

The Village Inn at 127 Monroe Avenue has a new owner, new business license, new liquor license and new Live Entertainment Permit.

Historicly, it has been a Cafe, and for the past 10 years had live entertainment on <u>weekends</u> only.

They are now advertising live entertainment for Six nights of the week. With unlimited hours of operation I do not feel this should be allowed. There is a long history of disturbances as crowds leave as late as 2 and 3 in the morning.

Please review this and let me know your decision to allow or not allow music playing more than weekends.

Thank You;

Anne Lemen
PO Box 5853
Newport Beach
Ca 92662
(714) 658-2663

Revenue Division
City of Newport Beach
[illegible] Newport Boulevard
Newport Beach, California 92663

7/13/01

EXHIBIT

"N"

7-13-01

~~Tim~~ Siracek
Code Enforcement,

The Village Inn @ 127 Marine is in violation of code 5.28.040 which states:
"Entertainment areas shall not be in open view from outside the premises."

The entertainment area with its red lights the dancing and enlarged bar with drinks is in full view from the outside.

The opaque bottle glass has been removed and new windows were put up recently with clear glass.

Please let me know of your decision to not have the "entertainment" on display to the whole town.

Thank You,

Anne Lemen
PO Box 5853
Newport Beach, Ca
(714) 658-2663

N

7-13-01

Planning Department
City of Newport Beach

The Village Inn is in need of parking for the delivery trucks.

They park in the ally in front of my garage or the fire hydrant for up to 30 min to unload liquor boxes on a daily basis.

Please consider giving them a loading zone in front of their building on Park or Marine Ave.

Please let me know of your decision.

Thank You,

Anne Lemen
PO Box 5853
Newport Beach
(714) 658-2663

EXHIBIT

"O"

May 1, 2000

Anne Lemen
P.O. Box 5853
Newport Beach, CA. 92662

Dear Anne,
In response to your request I am writing to reaffirm my comments to you concerning our reasons for leaving your cottage on Balboa Island.

We checked in on December 16th during the boat week parade and were planning on staying until December 22nd. The island crowds were understandably noisy during the parade as viewers sought to find parking spots and get to the parade. As they left things were also quite chaotic. We expected that by 10:00 or so things would settle down. While that may have happened elsewhere on the island the noise grew on the street in front of the cottage because of the crowd at The Village Inn. They were noisy.

I would not have minded had the noise and crowd been kept inside where I understand measures have been taken to reduce noise. But well into the night the shouting and carousing continued. We had young children and my elderly parents with us not to mention my husband who is an airline pilot and requires sleep to perform his job. None of us slept much. We tried to work through it but nothing improved. Had I known my options I probably would have reported it.

Finally on the 19th we were forced to vacate in order to get some rest. There were other extenuating circumstances but the noise played a large part.

I trust you will be able to convince the city government that this type of business does not belong in the midst of a residential community.

Sincerely,

Marcia Mack

Marcia H. Mack

D

EXHIBIT

"P"

10/14/01

Dear Ann,

I just wanted to let you know how much I love your cottage. It could not have been more comfortable and welcoming. I did however feel the need to make you aware of the rather loud and bothersome events of Friday, the first night of my stay 10/12/01.

At aprox 11:15-11:45 while I was sitting on the porch, several people coming from the Village Inn were walking down the block cursing and yelling at each other and began fighting. One of the men threw the other across the street and he landed under the back tire of a parked car.

After he got up one of the women was trying to keep the aggressor away from the unbelievably drunken hurt man. She was yelling she would help him home and the aggressor continued to say no! I will. At one point he managed to yell at the woman don't use the lords name in vain. Amazing how you can continue to beat up a human being at his weakest and not want anyone to use the lord's name in vain. This is a good example of dumb drunk.

Anyway, the aggressor and the drunken man went at it again; only it was the drunken man trying to kick the aggressor. He was so drunk that he missed him by 2 feet. The aggressor then did something to the drunken man I could not see what he had his back to me and blocked the view. The drunken man landed on the corner of the bottom entrance of the house across the street. He was holding his ribs and trying to get up. The aggressor lifted him up and proceeded to carry him down the street and I could see his feet weren't even moving, they were dragging. A few moments later the drunken man appeared from the same direction he was drug and turned down the block mumbling shit.

If I were on the bottom level I know I would not have slept at all. As it was this made me somewhat nervous because one of the women kept looking up at me.

As much as I love this place I can't honestly say I would recommend this place to my parents and their friends. They are all 60's-70's and I think this would greatly upset them. As for myself I could never stay downstairs it is just too close to all the noise and violence.

Sincerely

Kathryn L. Fox

Kathryn L. Fox

P

EXHIBIT

"Q"

I feel the Village Inn, Balboa Island should have restrictions on their license as to:

Hours of operation
Serving food, not just drinks
Minors carded

Name	Address	Phone	Email	Date
Bob FRAZER	3717 CALLE FINO CLARETE S.C.	92673		6-21-01
KEVIN GEARY	2174 CALLE CLAUDIA SC	" "		"
Marcelle Bolin	223 1/2 Sapphire / Balboa Island, CA	949-675-1959		6-21-0
Betsy Ridgway	224 Sapphire	949-675-4055		6-21-01
Barbara Amel	34 mandalay LN 92677	949-240-4998		6/21/01
Suzanne Burgin	20671 IONA LN.	714) 968-5683		6-21-01
ROSEMARIE HEROLD	1200 So. BAY FRONT	675-5575		6/
Eric Frederick	1405. Bayfront (Renter)	650-704-9538		
Perry Grant	1208 S Bay Front	714 9107		
Judy SADLER	125 Grand Canal	6755095		
Gary SADLER	125 Grand Canal			
Gil Landau	121 Grand Canal	(310) 560-6556		
Sandra MacIntyre	1101 Park ave,	(949) 723-0852		
Adell Irvi	1608 Park ave.	(949) 675-2572		
Lee Riddle	1608 Park Ave	949-675-2572		

EXHIBIT

"R"

LAW OFFICES OF

BRIDGMAN & ASSOCIATES, INC.

Attorneys at Law

17330 BROOKHURST STREET, SUITE 330
FOUNTAIN VALLEY, CALIFORNIA 92708

(714) 963-5486• (949) 631-1222 • Fax (714) 964-1328
D. Michael Bush pager (877) 270-6856
DEMIKELB@CS.COM
Personal fax (213) 330-0344

November 19, 2001

Sent via fax to (949) 833-2067
J. Scott Russo
Pinto & Dubia
2 Park Plz #300
Irvine, CA 92614

Dear Scott:

This letter will serve to confirm our conversation of today. You granted Ms. Lemen an extension of time to respond to the complaint to and including November 30, 2001.

In the meantime, you will compile a list of items that are important to your client. I will do the same. It is clear that Ms. Lemen can make reports to any governmental agency at anytime. I suggest that you have a person to contact, on a 24/7 basis, concerning any complaints from my client, or the others in the area. From my conversations with you, it would appear that your client does want to be a good neighbor.

In general, my client wants to live in peace. She needs to be able to document possible code violations to report to the proper authorities. She is not intent on harassing your client, or your client's customers. I believe that if your client runs a "tight ship" and if there are open lines of communications, that when problems arise most, if not call, can be quickly resolved.

I suggested that we have an informal mediation to try to reach some type of agreement.

Yours truly,

D. Michael Bush

D. Michael Bush

DMB:DMB

R

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, SCOTT A. ZIMMON, declare:

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 17330 Brookhurst Street, Suite 330, Fountain Valley, Ca. 92708. On November 30, 2001, I served the following document(s):

NOTICE OF MOTION AND MOTION TO STRIKE COMPLAINT; REQUEST FOR ATTORNEYS FEES; MEMORANDUM OF POINTS OF AUTHORITIES

in the case entitled: **Balboa Island Village Inn vs. Anne Lemen, et al,** Orange County Superior Court case number 01 CC 13243, on the interested parties through their attorneys of record by placing a true and correct copy thereof addressed as shown on the attached service list, as designated below:

(XX) **BY FIRST CLASS MAIL (C.C.P. § 1013a, et seq.):**
I caused said documents(s) to be deposited in the United States mail in a sealed envelope with postage fully prepaid at Fountain Valley, California, following the ordinary practice at my place of business of collection and processing of mail on the same day as shown as this declaration.

( ) **BY HAND DELIVERY/PERSONAL SERVICE (C.C.P. § 1011, et seq.)**
I caused said documents(s) to be delivered to each addressee.

( ) **BY TELECOPY/FACSIMILE (C.C.P. § 1012.5, et seq.)**
I caused said document(s) to be facsimiled to each addressee's facsimile ("Fax") number.

( ) **BY EXPRESS MAIL (C.C.P. § 1013(c)(d), et seq.)**
I caused said document(s) to be deposited with an express service carrier in a sealed envelope designated by the carrier as an express mail envelope, with fees and postage pre-paid.

( ) **BY REGISTERED MAIL (C.C.P. § 1020, et seq.)**
I caused said document(s) to be deposited with the United States mail, postage pre-paid, return receipt requested, signed by the addressee that said document(s) were received.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

DATED: 11/30/01

BY: _____
SCOTT A. ZIMMON

BALBOA ISLAND VILLAGE INN vs. ANNE LEMEN, et al.
OCSC Case Number 01 CC 13243

"SERVICE LIST"

J. Scott Russo, Esq.
PINTO & DUBIA
2 Park Plaza, Suite 300
Irvine, California 92614

BRIDGMAN & ASSOCIATES
D. Michael Bush SBN 101601
17330 Brookhurst Street, Suite 330
Fountain Valley, California 92708
Telephone: (714) 963-5486
Facsimile: (714) 964-1328

Attorneys for Defendant,
ANNE LEMEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

BALBOA ISLAND VILLAGE INN, INC., a California corporation,

Plaintiffs,

vs.

ANNE LEMEN aka ANNE LEMON, an individual; and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: O1CC13243

ASSIGNED FOR ALL PURPOSES TO:
COMMISSIONER F. LATIMER GOULD
DEPARTMENT C 64

DECLARATION OF ANNE LEMEN

DATE: January ~~18~~ 25, 2002
TIME: 9:10 a.m.
DEPT.: C 64

I, Anne Lemen, declare as follows:

1. I am a party to the above-captioned action and I have personal knowledge of the following matters and if called and sworn as a witness, I could and would testify competently testify thereto, as to the matters set forth herein.

2. I purchased my home at 1305 Park Ave, on Balboa Island in 1989. At the time I knew, and had been informed, there had been a disruptive history between the community and Village Inn and I was advised that the problems had been resolved. (See exhibit "D").

3. In addition to living at the property during the time referenced in the complaint, I have legally operated the Island Cottage Resort at the same location. A copy of the

information concerning this business from the Internet is attached as Exhibit "C".

3. I believe I am a reasonable person. I have experienced numerous problems with the Village Inn since I purchased my real property. I have always attempted to do the right thing by documenting and reporting my complaints to law enforcement entities. I simply want the quite use and enjoyment of my property and for my guests to experience that same peace and quiet.

4. My primary complaints are as follows:

a. Excessive noise coming from inside the Village, with respect to music;

b. Rude and disruptive behavior from intoxicated patrons of the defendant;

c. The noise and disruptive behavior lasting until the early morning hours;

d. Delivery personnel parking on my property and leaving their motors running, their radios on and stacking boxes of liquor on my property as early as 6:00 a.m.

5. I have either authored or received the letters on my behalf regarding the conditions and disruptions from the defendant, copies of which have been referred to as Exhibits "H" through "N" of the Motion to Strike.

6. I have reviewed the complaint filed against me and find that it is inaccurate. I will respond to the following paragraphs:

a. **Paragraph 5.** I challenge the Village Inn regarding their assertion they have had a longstanding good relationship with the community. I and my neighbors have had problems with them from the time I purchased my real property. I am aware, and was informed, that those who lived in the area before me also had problems with this business. Furthermore, I strongly deny that I have every acted in any improper manner.

b. **Paragraph 6:** I have made complaints, but the noise was, in fact, extremely excessive. There is live music in the restaurant and the doors and windows are frequently open which does nothing to buffer the excessive noise from defendant's establishment.

c. **Paragraphs 7 and 9:** Regarding this and the other paragraphs, I have not used obscenities. I have firmly, and repeatedly, asked delivery persons to turn their

engines and radios off, from my own property, when they park on or near my property at 6- 7:00 a.m.

d. **Paragraph 8 and 10:** Regarding this and the other paragraphs, I have not made disparaging remarks concerning the ethnicity of others. I have taken photographs of either doors that were not closed that should be, or doors that I believe were installed in violation of the local codes. I did say that I wanted the doors closed so that I did not have to hear what went on inside the restaurant.

e. **Paragraph 11**: I did not make the comment referred in this paragraph. I have been told that in the past others have suspected that prostitution was taking place at this location.

f. **Paragraph 12:** I routinely picked up beer cans/bottles and plastic drinking glasses. One time it occurred to me that I should photograph them and send the pictures to ABC. I placed some of the cans back on the yard and took photographs of them.

g. **Paragraph 13:** I have no recollection of making these statements. The allegations are so peculiar that I can not place the comments in any context.

h. **Paragraph 14:** There have been times when taxi cabs park under my windows, late at night, transporting patrons who are drunk, disorderly and obnoxious. I have firmly, and frequently, requested that such people respect the rights of others.

i. **Paragraph 15:** I have taken photographs and videotapes of what I believe to be violations of the law. After receiving a letter from attorney Blake (Exhibit "F"), I was advised by a police officer to photograph violations to support my contentions.

j. **Paragraph 16:** I deny the allegations made in this paragraph. I have discussed the Village Inn with my neighbors, who may or may not be patrons. However, I have not approached defendant's patrons as suggested in this paragraph.

k. **Paragraph 17:** My daughter and others ran over an improperly place construction sign. My daughter left the broken sign with a note. I approached the

construction personnel regarding the matter and they replaced the sign.

l. **Paragraph 18:** I did circulate a petition. (Exhibit "Q"). The plaintiff incorrectly summarized the contents of the petition. As the petition indicates, those who signed thought there should be restrictions regarding hours of operation, service of food, not just drinks and having minors carded.

m. **Paragraph 19:** I told one young man that I would pay him for his time to circulate the petition. I did not offer to pay money to or encourage him or his roommates to file complaints against the defendant.

7. I do believe that the Village Inn has violated a multitude of laws and local ordinances regarding selling more alcohol than food; habitually disturbing neighbors; regularly selling alcohol to those who are already intoxicated; having areas of entertainment that are open to the public view; and extremely excessive noise.

8. I do have photographs and videos to present to the court when necessary.

9. I feel like I live next door to a bar where there is no regard for the rights of the people who live nearby. I have done what I believe to be the right thing by documenting and reporting my complaints to the appropriate authorities. Furthermore, I was specifically told by the police department to conduct such activities.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 11/29/01

By: Anne Lemen
Anne Lemen
Declarant

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, SCOTT A. ZIMMON, declare:

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 17330 Brookhurst Street, Suite 330, Fountain Valley, Ca. 92708. On November 30, 2001, I served the following document(s):

DECLARATION OF ANNE LEMEN

in the case entitled: **Balboa Island Village Inn vs. Anne Lemen, et al,** Orange County Superior Court case number 01 CC 13243, on the interested parties through their attorneys of record by placing a true and correct copy thereof addressed as shown on the attached service list, as designated below:

(XX) **BY FIRST CLASS MAIL (C.C.P. § 1013a, et seq.):**
I caused said documents(s) to be deposited in the United States mail in a sealed envelope with postage fully prepaid at Fountain Valley, California, following the ordinary practice at my place of business of collection and processing of mail on the same day as shown as this declaration.

( ) **BY HAND DELIVERY/PERSONAL SERVICE (C.C.P. § 1011, et seq.)**
I caused said documents(s) to be delivered to each addressee.

( ) **BY TELECOPY/FACSIMILE (C.C.P. § 1012.5, et seq.)**
I caused said document(s) to be facsimiled to each addressee's facsimile ("Fax") number.

( ) **BY EXPRESS MAIL (C.C.P. § 1013(c)(d), et seq.)**
I caused said document(s) to be deposited with an express service carrier in a sealed envelope designated by the carrier as an express mail envelope, with fees and postage pre-paid.

( ) **BY REGISTERED MAIL (C.C.P. § 1020, et seq.)**
I caused said document(s) to be deposited with the United States mail, postage pre-paid, return receipt requested, signed by the addressee that said document(s) were received.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

DATED: 11/30/01

BY: _____
SCOTT A. ZIMMON

BALBOA ISLAND VILLAGE INN vs. ANNE LEMEN, et al.
OCSC Case Number 01 CC 13243

"SERVICE LIST"

J. Scott Russo, Esq.
PINTO & DUBIA
2 Park Plaza, Suite 300
Irvine, California 92614

BRIDGMAN & ASSOCIATES
D. Michael Bush, Esq. SBN 101601
17330 Brookhurst Street, Suite 330
Fountain Valley, California 92708
Telephone: (714) 963-5486
Facsimile: (714) 964-1328

Attorneys for Defendant,
ANNE LEMEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

BALBOA ISLAND VILLAGE INN, INC., a California corporation,

Plaintiffs,

vs.

ANNE LEMEN aka ANNE LEMON, an individual; and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: O1CC13243

ASSIGNED FOR ALL PURPOSES TO: COMMISSIONER F. LATIMER GOULD
DEPARTMENT C 64

DECLARATION OF D. MICHAEL BUSH

DATE: January ~~18~~ 25, 2002
TIME: 9:10 a.m.
DEPT.: C 64

I, D. Michael Bush, declare as follows:

1. I am an attorney at law licensed to practice before all the courts in the State of California and I am an associated with the Law Offices of Bruce C. Bridgman & Associates, attorneys of record for the defendant in this action. I have personal knowledge of the facts recited herein and, if called as a witness, could and would testify competently thereto.

2. On October 25, 2001, I spoke with plaintiff's counsel, J. Scott Russo. I advised him I did not think the instant lawsuit was meritorious as it was plainly in violation of the California anti-SLAPP statute, **California Cose of Civil Procedure § 425.16**.

3. I unsuccessfully attempted to convince Mr. Russo to dismiss this lawsuit.

4. Based on my conversations with Mr. Russo, I do not believe he is any longer contending that Ms. Lemen cannot approach law enforcement and regulatory entities regarding any complaints she has against the Village Inn.

5. On November 19, 2001, I sent a letter to Mr Russo, via fax, in which I attempted to resolve this matter without having to file the instant motion. (See Exhibit "R").

6. As of the date of the drafting of this declaration, I was unsuccessful.

7. I spent 5 hours researching and preparing this motion. I anticipate spending an additional two (2) hours reviewing and responding to plaintiff's objections. I also anticipate spending two (2) hours traveling and appearing for this motion. My standard billing rate is $250 per hour. The total anticipated legal fees incurred in presenting this motion is $2,250.

I declare under penalty of perjury under the laws of the State of California that the forgoing is true and correct.

DATED: 11/29/01

BRIDGMAN & ASSOCIATES

By: _____
D. Michael Bush
Attorneys for Defendant,
ANNE LEMEN

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, SCOTT A. ZIMMON, declare:

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 17330 Brookhurst Street, Suite 330, Fountain Valley, Ca. 92708. On November 30, 2001, I served the following document(s):

DECLARATION OF D. MICHAEL BUSH

in the case entitled: **Balboa Island Village Inn vs. Anne Lemen, et al,** Orange County Superior Court case number 01 CC 13243, on the interested parties through their attorneys of record by placing a true and correct copy thereof addressed as shown on the attached service list, as designated below:

(XX) **BY FIRST CLASS MAIL (C.C.P. § 1013a, et seq.):**
I caused said documents(s) to be deposited in the United States mail in a sealed envelope with postage fully prepaid at Fountain Valley, California, following the ordinary practice at my place of business of collection and processing of mail on the same day as shown as this declaration.

( ) **BY HAND DELIVERY/PERSONAL SERVICE (C.C.P. § 1011, et seq.)**
I caused said documents(s) to be delivered to each addressee.

( ) **BY TELECOPY/FACSIMILE (C.C.P. § 1012.5, et seq.)**
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( ) **BY REGISTERED MAIL (C.C.P. § 1020, et seq.)**
I caused said document(s) to be deposited with the United States mail, postage pre-paid, return receipt requested, signed by the addressee that said document(s) were received.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

DATED: 11/30/01

BY: _____
SCOTT A. ZIMMON

BALBOA ISLAND VILLAGE INN vs. ANNE LEMEN, et al.
OCSC Case Number 01 CC 13243

"SERVICE LIST"

J. Scott Russo, Esq.
PINTO & DUBIA
2 Park Plaza, Suite 300
Irvine, California 92614

EXHIBIT C

SUMMONS ON F..ST AMENDED COMPLAINT
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: *(Aviso a Acusado)*
ANNE LEMEN aka ANNE LEMON, an individual; and DOES 1 through 10, inclusive

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

COPY

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)
BALBOA ISLAND VILLAGE INN, INC., a California corporation

You have *30 CALENDAR DAYS* after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS *para presentar una respuesta escrita a máquina en esta corte.*

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosasde su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: *(El nombre y dirección de la corte es)*
ORANGE COUNTY SUPERIOR COURT
700 Civic Center Drive West
Santa Ana, California 92701
CENTRAL JUSTICE CENTER

CASE NUMBER *(Número del Caso)*
01CC13243

Judge Gerald G. Johnston
Department C 64

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)
J. Scott Russo, Bar No. 155631 (949) 955-1177
PINTO & DUBIA, LLP
2 Park Plaza
Suite 300
Irvine, California 92614

DATE: *(Fecha)*

Clerk, by _____, Deputy
(Actuario) *(Delegado)*

[SEAL]

NOTICE TO THE PERSON SERVED: You are served
1. [X] as an individual defendant.
2. [ ] as the person sued under the fictitious name of *(specify)*:
3. [ ] on behalf of *(specify)*:

under: [ ] CCP 416.10 (corporation) [ ] CCP 416.60 (minor)
[ ] CCP 416.20 (defunct corporation) [ ] CCP 416.70 (conservatee)
[ ] CCP 416.40 (association or partnership) [ ] CCP 416.90 (individual)
[ ] other:

4. [ ] by personal delivery on *(date)*:

PINTO & DUBIA, LLP
J. Scott Russo, Bar No. 155631
2 Park Plaza, Suite 300
Irvine, California 92614-8513
(949) 955-1177

Attorneys for Plaintiff
BALBOA ISLAND VILLAGE INN, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

BALBOA ISLAND VILLAGE INN, INC., a California corporation, Plaintiff, vs. ANNE LEMEN aka ANNE LEMON, an individual; and DOES 1 through 10, inclusive, Defendants.	Case No.: 01CC13243 **ASSIGNED FOR ALL PURPOSES TO:** **Judge Gerald G. Johnston** **Department C 64** **FIRST AMENDED COMPLAINT FOR (1) NUISANCE; (2) DEFAMATION; (3) INTERFERENCE WITH BUSINESS; AND (4) PRELIMINARY AND PERMANENT INJUNCTION** *Complaint Filed:* *October 16, 2001* *Evaluation Conference:* *March 12, 2002*

For causes of action against Defendants Anne Lemen aka Anne Lemon, and DOES 1 through 10, inclusive, and each of them, Plaintiff Balboa Island Village Inn, Inc. ("Plaintiff") alleges as follows:

GENERAL ALLEGATIONS

1. At all relevant times, Plaintiff was and now is a California corporation organized, existing, qualified, and licensed under the laws of the State of California with its principal place of business in the County of Orange, State of California. At all relevant times, Plaintiff was and now is the owner of Balboa Island Village Inn, a restaurant and bar located at

127 Marine Avenue, Balboa Island, Newport Beach, California (the "Village Inn"). The Village Inn maintains all of the appropriate licenses in order to operate a restaurant and bar.

2. Plaintiff is informed and believes, and based thereon alleges, that Defendant Anne Lemen aka Anne Lemon ("Lemen") is an individual and the owner of the real property located at 1305 Park Avenue, Balboa Island, Newport Beach, California which is adjacent to the Village Inn.

3. The true names and capacities, whether individual, corporate, associate, or otherwise of the Defendants named herein as DOES 1 through 10, inclusive, are unknown to Plaintiff and Plaintiff therefore sues such Defendants by such fictitious names, and will amend this Complaint to show the true and capacities when the same have been ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated as a DOE is responsible in some manner for the acts alleged herein and thereby approximately caused injuries and damages to Plaintiff as herein alleged.

4. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned each of the Defendants was the agent and employee of each of the remaining Defendants, and doing the things hereinafter alleged, was acting within the course and scope of agency and employment.

5. Plaintiff purchased the Village Inn in November, 2000. The Village Inn has existed on Balboa Island for more than 50 years and has enjoyed a longstanding good relationship with the community. Plaintiff is informed and believes, and based thereon alleges, that, prior to Plaintiff's ownership of the Village Inn and continuing through the date of this Complaint, Lemen has engaged in a personal campaign to destroy the business of the Village Inn by (i) interfering with the business; (ii) accosting its customers; (iii) making defamatory statements about the Village Inn, its management, and its food to its customers and the community.

6. Plaintiff is informed and believes, and based thereon alleges, that during March and June, 2001, Lemen accosted delivery persons delivering supplies to the Village Inn and yelled obscenities at them.

7. Plaintiff is informed and believes, and based thereon alleges, that on separate instances during the months of April and July, 2001, during the evening hours, Lemen took flash photographs through back screen door of the Village Inn of the employees in their changing area, calling the employees "illegal Mexicans" and accusing them of hiding from her.

8. Plaintiff is informed and believes, and based thereon alleges, that in or about May, 2001, Lemen accosted a produce supplier as he made a delivery to the rear entrance of the Village Inn. Plaintiff is further informed and believes, and based thereon alleges, that Lemen yelled at the delivery person, "We don't allow Mexicans to park in alleyways. Get your f_cking truck out of here."

9. Plaintiff is informed and believes, and based thereon alleges, that in or about December, 2000, Lemen accosted an employee of the Village Inn, Art Perez, telling Mr. Perez "that place should be closed down . . . they have illegal aliens there . . . they shouldn't be working there . . . I'm going to do everything that I can to keep the doors closed."

10. Plaintiff is informed and believes, and based thereon alleges, that repeatedly during the year 2001, Lemen told customers and neighbors of the Village Inn that the Village Inn was operating a "whorehouse".

11. Plaintiff is informed and believes, and based thereon alleges, that during the year 2001, Lemen has thrown beer cans in front of her house and then reported the existence of the beer cans to the Alcohol and Beverage Control Board as a violation of Village Inn's alcohol sales license.

12. Plaintiff is informed and believes, and based thereon alleges, that on or about July 20, 2001, Lemen confronted at least six potential customers of the Village Inn as they reviewed the menu in front of the Village Inn, telling the potential customers that the Village Inn "buys food out of the trunks of cars" and "fabricates food in the garage", and complaining that patrons of the Village Inn have been sickened by the food. Lemen's assertions were false and Plaintiff is informed and believes, and based thereon alleges, that the potential customers were driven off by Lemen's claims.

13. Plaintiff is informed and believes, and based thereon alleges, that in or

about March, 2001, while a patron of the Village Inn was waiting for a taxi next to the Village Inn, Lemen accosted the patron and yelled obscenities at her. Plaintiff is informed and believes, and based thereon alleges, that Lemen has driven off, and continues to drive off, the Village Inn's patrons through verbal abuse.

14. In or about the months of May to July, 2001, during Thursday and Friday nights, Lemen repeatedly took flash photographs of the patrons in the restaurant and in the bar of the Village Inn through windows of the Village Inn, interfering with and intimidating the patrons. Further, in or about the months of May to July, 2001, Lemen stood across from the Village Inn with a video camera and videotaped the patrons of the Village Inn as they entered and exited, causing the patrons to be uncomfortable and intimidated.

15. Plaintiff is informed and believes, and based thereon alleges, that on several occasions during 2001, Lemen approached customers entering the Village Inn and told them that the Village Inn had made people sick and that the food tastes bad. Plaintiff is informed and believes, and based thereon alleges, that Lemen has never eaten any food at the Village Inn.

16. Plaintiff is informed and believes, and based thereon alleges, that on or about July 25, 2001, Lemen approached a neighbor of the Village Inn and offered to pay him money if he and his roommates would file complaints against the Village Inn alleging false noise violations.

FIRST CAUSE OF ACTION

(Nuisance)

(Against All Defendants)

17. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 16 of this Complaint as if fully set forth herein.

18. The aforementioned acts by Defendants. and each of them, constitute a nuisance within the meaning of Section 3479 of the Code of Civil Procedure that she has interfered and obstructed Plaintiff's comfortable enjoyment and free use of its property.

19. Defendants, and each of them, have threatened to and will, unless

restrained by the Court, continue to maintain the nuisance and continue the acts complained of.

SECOND CAUSE OF ACTION

(Defamation)

(Against All Defendants)

20. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 16 and 18 and 19 of this Complaint as if fully set forth herein.

21. Plaintiff is informed and believes, and based thereon alleges, that the statements by Lemen, as alleged herein, were heard by several other persons, including, but not limited to, Raefer Johnson, and others whose names are not known to Plaintiff. These statements were false and slanderous because they accused Plaintiff of committing crimes and serving food that harms the public.

22. Defendants, and each of them, have threatened to and will, unless restrained by the Court, continue to make slanderous statements about Plaintiff. Damages for Lemen's actions will not accord Plaintiff adequate relief and, unless restrained, Lemen's actions will lead to multiple and repetitious lawsuits.

THIRD CAUSE OF ACTION

(Intentional Interference With Business)

(Against All Defendants)

23. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 16, 18 and 19, and 21 and 22 of this Complaint as if fully set forth herein.

24. Plaintiff is informed and believes, and based thereon alleges, that the aforementioned acts of Lemen were designed and intended to disrupt and harm the business of the Village Inn and in fact the business of the Village Inn has been and continues to be disrupted and harmed thereby.

25. Damages for Lemen's actions will not accord Plaintiff adequate relief,

and, unless restrained, Lemen's actions will lead to multiple and repetitious lawsuits.

FOURTH CAUSE OF ACTION

(Preliminary and Permanent Injunction)

(Against All Defendants)

26. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 16, 18 and 19, 21 and 22, and 24 and 25 of this Complaint as if fully set forth herein.

27. Unless Defendants, and each of them, are enjoined from continuing their course of conduct, the economic value of Plaintiff's property will be diminished and Plaintiff will be deprived of the comfort, use, and enjoyment of its property, and Plaintiff' business will continue to be disrupted and its business reputation and goodwill will be damaged. Further, unless retrained, Plaintiff will be forced to commence multiple lawsuits to restrain Defendants and damages would not afford adequate relief.

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

ON ALL CAUSES OF ACTIONTHE SECOND AND THIRD CAUSES OF ACTION

1. For a preliminary injunction and a permanent injunction enjoining Defendants from (i) making any false representations to any patron of the Village Inn about the Village Inn, its management, or its food; (ii) harassing any patron or employee of the Village Inn within 50 feet of the premises of the Village Inn; and (iii) taking photographs or videos through the windows or doors of the Village Inn.

2. For Plaintiff's costs of suit incurred herein; and

///

///

///

///

3. For such other and further relief as this Court deems just and proper.

DATED: January 10, 2002

PINTO & DUBIA, LLP

By: _____

J. Scott Russo
Attorneys for Plaintiff
BALBOA ISLAND VILLAGE INN, INC.

942\\332.001\firstamendedcomplaint.pld

PROOF OF SERVICE

(CCP §1013A(3) Revised)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the above County, State of California. I am over the age of 18 and not a party to the within action. My business address is 2 Park Plaza, Suite 300, Irvine, California 92614.

On **January 11, 2002,** I served the foregoing document described as: **SUMMONS ON FIRST AMENDED COMPLAINT AND FIRST AMENDED COMPLAINT FOR (1) NUISANCE; (2) DEFAMATION; (3) INTERFERENCE WITH BUSINESS; AND (4) PRELIMINARY AND PERMANENT INJUNCTION** on the interested party in this action in the manner indicated below and as further indicated on the attached service/mailing list:

[XXX] by placing a true copy thereof enclosed in a sealed envelope addressed to each of the interested parties as indicated on the attached service/mailing list.

[ ] by placing [ ] the original [ ] a true copy thereof in a sealed envelope addressed to each of the following interested parties:

[XXX] **BY MAIL** I deposited such envelope in the mail at Irvine, California. The envelope was mailed with postage thereon fully prepaid. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit. Executed on **January 11, 2002,** at Irvine, California.

[ ] **BY PERSONAL SERVICE** I caused to be hand delivered by ASAP Corporate Services, Inc. to the offices of the addressee. Executed on _____, at Irvine, California.

[ ] **BY TELECOPIER** I forwarded the above document via telecopier to the above interested parties to the telecopier numbers noted on the attached service/mailing list. Each transmission was completed, without error or interruption. Executed on _____, at Irvine, California.

[ ] **BY OVERNIGHT DELIVERY**: I am readily familiar with Pinto & Dubia, LLP's practice for collection and processing of correspondence for overnight delivery with Overnite Express. Pursuant to such practice, all correspondence is deposited in a regularly maintained box or delivered to any authorized Overnite Express courier in the ordinary course of business on the date it is generated. I know that the envelope was sealed, and with delivery fees thereon fully prepaid, placed for collection on this date, following ordinary business practices in the United States, at Irvine, California. Executed on _____, at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **January 11, 2002,** at Irvine, California.

Kelley L. Saunders

Kelley L. Saunders

SERVICE/MAILING LIST

D. Michael Bush, Esq.
Bridgman & Associates
17330 Brookhurst Street
Suite 330
Fountain Valley, California 92708

EXHIBIT D

CRC 232 A

Tentative Decision

Balboa Island Village Inn. v. Lemen

Plaintiff in this action is the Balboa Island Village Inn, Inc., a public house that has been in existence in various iterations since 1933. Defendant is a 19 year resident of Balboa island who owns a residential property across an alley from Plaintiff. Balboa island is an insular community of some 1100 inhabitants located in one of the most scenic and densely populated coastal areas of Orange County. The close proximity of a restaurant/bar to a residential area, particularly in such a geographically compact locale, is an invitation for rancor and divisiveness.

In recent years, Plaintiff has modified its establishment to bring in more business. On most evenings live music is performed in the bar area. Plaintiff often stays open until 2:00 AM on weekends and this means that the occasional inebriate is turned out to the street at a time when the residents would rather sleep than listen to fights, yelling or off-key songs.

Defendant has taken exception to these nocturnal disturbances, which over the years have included the aforementioned fights and yelling, as well as damage to her property in the form of broken windows, discarded trash and indiscriminant urination. Defendant has become so exasperated that she has attempted to sell her home in order to move to a more peaceful location.

Defendant has also become an advocate for change and has filed numerous complaints against plaintiff with law enforcement and regulatory agencies. Defendant has also attempted to spread her message as a harbinger for change through a door to door petition campaign within the community. Additionally, Defendant has spent countless hours and significant effort to gather evidence of the problems she believes to be created by Plaintiff's presence and business practices.

Against this backdrop, comes a law suit filed by Plaintiff alleging that Defendant has engaged in an orchestrated effort to destroy Plaintiff's business by way of nuisance, defamation and interference with Plaintiff's business.

The California Constitution at Article 1, Section 2 subdivision (a) provides "Every Person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." Article 1, Section 3 further provides "The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good."

Free speech under the First Amendment as well as California's constitution has been construed to be subject to reasonable limitations. In *Magell Bros. Inc. V. Bldg. Services Employee's International Union* 20 Cal. 2nd 506 (1942), the court determined that false and untruthful statements made on picket signs displayed in front of plaintiff's place of business were properly enjoined. In a later case, *Aguilar v. Avis Rent A Car Sys.* 21 Cal 4th 121 (1999) the court wrote at page 167:

As we explained in ="/research/buttonTFLink?_m=b56626e4d18bfb407d8be632710a2cdb&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b21%20Cal.%204t"MACROBUTTONHtmlResAnchor*Wilson v. Superior Court, supra*, 13 Cal. 3d at pages 661-662: "We do not . . . suggest that prior restraint upon publication can never be justified. The decisions recognize that prior restraints may be imposed under some extraordinary circumstances. For example, it has been said that the government may prohibit the disclosure of military secrets in time of war and prevent the utterance of words that may have the effect of force. [Citation.] Furthermore, an injunction restraining speech may issue in some circumstances to protect private rights (see, e.g., ="/research/buttonTFLink?_m=b56626e4d18bfb407d8be632710a2cdb&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b21%20Cal.%204t"MACROBUTTONHtmlResAnchor*Magill Bros. v. Bldg. Service etc. Union* (1942) 20 Cal. 2d 506, 511-512 [127 P.2d 542]) or to prevent deceptive commercial practices (="/research/buttonTFLink?_m=b56626e4d18bfb407d8be632710a2cdb&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b21%20Cal.%204t"MACROBUTTONHtmlResAnchor*Securities and Exchange Comn. v. Texas Gulf Sulphur Co.* (2d Cir. 1971) 446 F.2d 1301, 1306). " In other words, a sufficiently strong public policy

reason can justify a prior restraint on speech even under the heightened protection afforded by the state Constitution.

The case before the court involves statements and conduct by Defendant which Plaintiff alleges have caused damage to plaintiff's business. At trial, testimony and other evidence was presented to the court that Defendant has made statements to customers of Plaintiff, as well as residents of Balboa island which include the following: plaintiff sells alcohol to minors; stays open until 6:00 AM; makes sex videos; is involved in child pornography; distributes illegal drugs; has mafia connections; encourages lesbian activities; participates in prostitution and acts as a bordello; and serves tainted food. Some of these statements were made while Defendant was presenting a petition for signature regarding Plaintiff's business activities to island residents. On other occasions, the statements occurred while Defendant engaged in conversation with actual or prospective customers of Plaintiff who were entering or departing Plaintiff's premises. Evidence was also presented to show that Defendant has confronted employees of Plaintiff, questioned their legal status and demanded to see a "green card", accused employees of being "whores", called one of Plaintiff's owners the "madam of a whorehouse", and stated that "Satan" owns and operates Plaintiff.

Evidence was also presented that Defendant has engaged in a regular course of video taping and still photography of Plaintiff's patrons and the activities in and around Plaintiff's premises. This has included a practice of following departing customers with video camera in hand and asking questions. In addition, there was evidence produced to show that Defendant has, at times, made a regular practice of parking her van across the street from Plaintiff's business and video taping the business and its patrons. Defendant was also shown to have taken still flash photos at night through the windows of Plaintiff's building.

Plaintiff, in its fourth cause of action is seeking a permanent injunction to prevent Defendant from making false statements to patrons of Plaintiff about its food, management and practices; or harassing patrons and employees within 50 feet of the Plaintiff's premises, or taking photographs or videos through the windows or doors of Plaintiff's establishment.

Defendant has denied most of the activity and statements attributed to her. However, the court is convinced by a preponderance of the evidence based on the many witnesses called to testify, that, in fact, defendant did make many of the statements attributed to

her and engaged in the other conduct previously described.

Therefore, the court finds for the Plaintiff on the first three causes of action for nuisance, defamation, and interference with business. This leads to the question of whether the court should grant the injunction requested in the fourth cause of action. As noted above, limitations on free speech and the right to petition may permissible and appropriate to prevent otherwise inappropriate conduct. The court believes that such a situation exists here. A permanent injunction should issue to limit Defendant's activities and speech as they relate to Plaintiff.

However, it is crucial that such limitations be no more restrictive than what is necessary to protect Plaintiff's legitimate interests in conducting a lawful business, and the restrictions must be clear and specific enough that Defendant can understand what is prohibited and what is not. The permanent injunction should contain the following provisions:

(1) Defendant is prohibited from initiating contact with individuals known to Defendant to be employees of Plaintiff. Any complaints Defendant has regarding Plaintiff must be communicated to a member or members of plaintiff's management, who will be identified by Plaintiff for Defendant. Plaintiff will also provide Defendant a phone number or some similar method of communication by which Defendant can timely and easily communicate any problems related to Plaintiff's operation.

(2) Defendant is prohibited from making statements to patrons of Plaintiff or residents of Balboa Island or any other person, whether engaged in petitioning or any other activity, that Defendant knows not to be true. Such statements include, but are not limited to statements suggesting that plaintiff sells alcohol to minors; stays open until 6:00 AM; makes sex videos; is involved in child pornography; distributes illegal drugs; has mafia connections; encourages lesbian activities; participates in prostitution and acts as a bordello; and serves tainted food.

(3) Defendant is prohibited from filming (whether by video camera or still photography) within 50 feet of Plaintiff's premises, either approaching or departing patrons, or activities occuring within Plaintiff's premises unless Defendant engages in such filming while on Defendant's own property. An exception to this prohibition occurs when Defendant is documenting the circumstances surrounding an immediate disturbance or damage to her property. An example of this exception might involve Defendant's attempts to gather evidence regarding the mechanism and identity of any person who breaks the window of Defendant's house.

In no other way does the Court limit Defendant's right to engage in free speech or petition.

Attorney's fees to be determined by noticed motion and costs to be determined by memorandum of costs.

Plaintiff is ordered to prepare the Permanent Injunction and Judgment.

Copy of this ruling to be mailed to counsel on 8/28/02. The Tentative Decision becomes the Statement of Decision if no request is made within 10 days from 8/28/02.

EXHIBIT E

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Attorneys for Defendant,
ANNE LEMEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

BALBOA ISLAND VILLAGE INN, INC., a California corporation, Plaintiffs, vs. ANNE LEMEN aka ANNE LEMON, an individual; and DOES 1 through 10, inclusive, Defendants.	**CASE NO.: O1CC13243** ASSIGNED FOR ALL PURPOSES TO: JUDGE GERALD G. JOHNSTON DEPARTMENT C 29 **DEFENDANT ANNE LEMEN'S OBJECTION TO TENTATIVE RULING**

COMES NOW Defendant ANNE LEMEN, by and through her attorneys of record, to object to the Tentitive Ruling issued in the above-captioned matter.

The objection will be based upon the fact that the Tetative Ruling clearly violates the defendant's constitutional rights of free speech and is, in fact, a form of prior restraint.

The objection will be based upon the evidence and facts entered at trial, the following discussion and upon all documents contained within the Court's file.

I

INTRODUCTION

It is not often when one has the opportunity to be involved in something that is

vitally important to our society. This is one of those chances. The limitation of free speech warrants careful and deliberate evaluation. With that said, defendant contends the proposed order is in, its entirety, unconstitutional. The truth or falsity of a statement made in connection with a public issue is irrelevant for purposes of a prior restraint on speech. The court has failed to articulate a strong public policy that would warrant consideration being given to engaging in censorship of public debate.

II

THE CASE LAW CITED IN THE DECISION FAILS TO SUPPORT THE TENATIVE RULING

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances." **U.S.C.A. Const Amend. 1.**

"Every person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not restrain or abridge liberty of speech or press." **California Constitution Article I, § 2 (a).**

Upon a careful reading of the Tentative Ruling, there is clearly a violation of the United States Constitution and The California Constitution as the ruling enjoins the defendant from exercising her free speech rights regarding the conduct of the plaintiff and its patrons. Further, the defendant is precluded from sharing her beliefs with any resident of the small island community of Balboa Island for fear that she will be taken to task for an innocent conversation with an unknown patron of the plaintiff.

The Court, in its Tentative Ruling, cites two (2) cases: **Magell Bros. Inc. V. Bldg. Services Employee's International Union (1942) 20 Cal. 2nd 506** and **Aguilar v. Avis Rent A Car Sys. (1999) 21 Cal 4th 121.**

In the case of **Magill** (Supra), the critical issue in this case was picketing. The court specifically stated, "here is not the utterance of false statements which is sought to be enjoined, but the conduct of picketing in an unlawful manner." (Magell at page 509)

In the case of **Aguilar** (Supra), a case much narrower that the Village Inn v. Lemen case, a divided California Supreme Court ruled that restrictions could be placed on what employees said in the work place only if:

A) There was a strong public policy or strong governmental interest involved, which in this case involved the rights of employees in the work place.

B) A prior determination by a jury of unlawful conduct..

C) A procedure that insures "a prompt and carefully circumscribed determination of the issue."

D) That the order not be over broad and in this case the court ruled that the prohibitions would not extend outside of the work place.

The Village Inn vs. Lemen case fails to meet any one of these tests. There would be no need for division on this case.

IV

THERE IS NO PUBLIC POLICY THAT WOULD SUPPORT THE TENTATIVE RULING

There is no compelling public policy issue that warrants the restrictions of Anne Lemen's rights of free speech. The court in the case of **Aguilar** (Supra), referred to the case of **Securities and Exchange Comn. v. Texas Gulf Sulphur Co. 446 F.2d 1301 (2d Cir. 1971)** The **Texas Gulf Sulphur Co.** related to "commercial factual speech", as opposed to the "free exchange of ideas." (Texas Gulf at page 1306).

There certainly isn't a public policy for the Village Inn to make money at the expense of those living in the neighborhood. In fact the opposite is true according to the Alcoholic Beverage Control Board. Assuming arguendo there was such a policy, there was not any evidence introduced to the effect that any one person was mislead by Anne Lemen in signing a petition and that any one person failed to buy one (1) less alcoholic beverage because of specific statements made by Anne Lemen. Aric Toll hadn't even read the 400 plus petitions, which contained comments in people's own words. Instead, there was a precipitous drop in income as of June of 2002, long after Ms. Lemen made

many of the statements and engaged in actions attributed to her at trial. The drop in income occurred in the same month as the public forums involving the ABC and the Newport Beach Planning Commission meeting. The drop off was predicted in defendant's attorney's prior letters to plaintiff's counsel. The Village Inn claims to be a neighborhood bar, but Aric Toll engaged in bullying tactics and "blew off" the complaints of the neighborhood. Instead of taking responsibility for his own actions, Mr. Toll blames Anne Lemen.

As indicated above, the **Aguilar** court referred to the strong public policy of assuring that employees don't have to serve in a hostile or abusive work environment. (**Aguilar** at page 126) The limitations of speech were strictly limited to the work place.

The **Aguilar** court referred to the case of **Wilson v. Los Angeles County (1975) 13 Cal.3rd 652,** which warrants careful review, especially given the courts ruling was unanimous.

The **Wilson** case involved a "Newsletter" sent out as a part of a political campaign. The court ruled that a preliminary injunction was not appropriate. The court specifically held that the "the truth or falsity of a statement on a public issue is irrelevant to the question whether it should be repressed in advance of publication." (**Wilson** at page 658). The court also stated the following:

"Thus, petitioner was placed in the untenable position of speculating on whether his attempts to comply with the court orders were satisfactory or whether additional versions of the Newsletter would also be repressed. The result was not merely a theoretical chilling of his right to publish, but actual acquiescence by him, under threat of contempt, in refraining from future publication of any of the four versions of the circular. (**Crosby v. Bradstreet Company**, supra, 312 F.2d at p. 485). By the restraining order the court also devised for itself an intolerable role: it was called upon to determine whether various versions of the Newsletter presented "too narrow a view of the truth" and whether successive publications were "substantially similar" to the original circular. It even went so far as to specify such details of publication as the size of type which

would give a "fair" presentation. The court thus aggressively assumed the role of governmental censor, approving its version of a "fair" presentation, and disapproving a "too narrow view of the truth." (**Wilson** at page 661).

The Village Inn v. Lemen case could well serve as a text book example for future law students of why the courts can not be allowed to "aggressively assume the role of governmental censor." In this case, the court seems to made judicial findings as to the truth of certain facts that can not be discussed by Ms. Lemen even if she believes them to be true, or if they in fact are true. The court has made no attempt to limit the area and time of the restrictions as is universally required by case precedent.

V

THE SPECIFIC COURT LIMITATIONS ON FREE SPEECH AS CONTAINED IN THE TENTATIVE RULING ARE UNCONSTITUTIONAL

The Tentative Ruling appears to prevent Ms. Lemen from discussing with anybody the following facts:

1) **Suggesting that the Village Inn serves alcohol to minors:** There is no dispute that the Village Inn's license to serve alcohol was suspended for 10 days in 1995 for serving alcohol to minors. The late night rowdy crowd consists of young people. There is a compelling public interest in bars not serving minors. Citizens have the right to discuss suspicions with their neighbors and certainly with law enforcement entities. Ms. Lemen has the right to document possible violations, including taking photographs and videotapes, especially given the local police departments protection of the bar. Further, this prohibition is unconstitutionally vague.

2) **That the Village Inn stays open until 6 AM:** Mr. Toll admitted there were no limitations as far as the food service portions of the restaurant. One can not even imagine a compelling governmental interest regarding this prohibition.

3) **Regarding making sex videos:** Aric Toll admitted that Direct TV was shown within the bar. Patrons and staff can change the channels. One can only imagine what is shown within the Village Inn after midnight, on weekends, with a highly charged

inebriated young crowd dancing to loud music. Whatever is being shown, including images of "pole dancing", can be discussed by the neighbors. In the context of this case, the actual making of "sex videos" within the Village Inn doesn't make sense. Again, this prohibition is unconstitutionally vague and there is no compelling public policy that warrants such a limitation on free speech.

4) **Involvement in child pornography:** There was only one witness who reported the defendant making this comment and the other participants in the conversation did not report this critical allegation. This was the same elderly witness who reported that Ms. Lemen talked about finding "conundrums" in the street. (Kirby Galt Page 6, lines 14-17, the court reporter reported the word condrums). The word conundrum is defined in part as "a question or problem having only a conjectural answer." **© 2002 by Merriam-Webster, Incorporated**. In this context, the prohibitions contained in the Tentative Ruling can fairly be described as conundrums.

Mr. Galt also indicated that Ms. Lemen looked "harassed" as she was gathering petitions. (Galt Page 6, lines 10-13). Obviously, Mr. Galt has some problems with the English language. Mr. Galt did not ask for clarification and thought the comment about child porn was ridiculous. (Galt page 11 lines 11-23). What clearly appears to be a miscommunication involving one mixed up person, somehow has now been transformed, in a Kafkaesque manner, into a sweeping court order.

5) **Distributes illegal drugs:** Ms. Lemen has a videotape involving suspected patrons of the Village Inn that clearly involves a proposed deal for drugs and/or sex. The video showed two of life's losers, with Christmas music playing in the background, which seemed to have a Frank Capra touch. Aric Toll testified this is was **not** the type of incident that he would not want reported to him. This is undisputable evidence that Mr. Toll looks the other way when it comes to illegal activities involving his paying customers. This is especially egregious given the Village Inn is operating under local police protection. Ms. Lemen is entitled to deduce that given some customers of the Village Inn engage in the use and trafficking of narcotics and that the Village Inn

management looks the other way, that the Village Inn is responsible for the drug use by its patrons on the Island.

We don't know who the people in the video are because the Village Inn won't help the defendant and the police wont investigate. It is certainly possible that one of the people in the video is an employee of the Village Inn. It's not unheard for employees to be distributing drugs. Recently, The Half Crown Bar, in Santa Ana, had its liquor license revoked, in part, because employees were selling cocaine. (See articles in the Orange County Register and Los Angeles Times from September 6, 2002 editions).

As indicated above, David Seeber witnessed drug use, or at least its aftermath, by suspected patrons of the Village Inn. There is no pubic policy that warrants gagging Ms. Lemen, especially given vagueness of the prohibition.

6) **Has Mafia connections:** This testimony was improperly allowed to remain in evidence given that Ms. Lemen testified that she was having what she considered to be a confidential communication with an attorney about the possibility of filing a class action against the Village Inn. Presumably the prohibition would extend to those acting as her legal counsel, which is not worthy of comment. If a person suspects that the bar has a history of being associated with the Mafia, it is certainly in the public interest to be able to talk about it.

7) **Encourages lesbian activities:** Mr. Van Sussen testified that Ms. Lemen referred to a lesbian "tryst". Despite his education, somehow he equated sex with tryst. He then defined a lesbian tryst as flagrant activity involving two females. This does correspond to what Ms. Lemen filmed. Mr.Van Sussen was offered an opportunity to view the video tape, but declined the offer. The word tryst, with its origins in the 14th Century, is defined as 1): an agreement (as between lovers) to meet, 2): an appointed meeting or meeting place. **© 2002 by Merriam-Webster, Incorporated**.

Regardless of ones views about who should be able to engage in flagrant romantic activity in public, clearly the neighbors can talk about it and the failure of the management of the Village Inn to monitor and control such activity. Again, a citizen of

this country is entitled to deduce, under such circumstances, that a proprietor "encourages lesbian activities." On the other hand, the court does not have the right to extrapolate and make sweeping prohibitions involving public discourse. A judicial leap from tryst to "encourages lesbian activities" is not constitutionally permissible.

8) **Participates in Prostitution:** As discussed above, if the Village Inn looks the other way to obvious signs and patterns of prostitution, they are in fact participating in prostitution. The Village Inn stands to make a lot of money from prostitutes and their customers. Anne Lemen filmed a transaction that might have involved a prostitute. David Seeber has witnessed solicitation of prostitution. Aric Toll doesn't want to know anything about it. If he did, he could easily identify illegal activities by promptly comparing his internal video surveillance cameras with those images captured neighbors. Instead, Toll "blows off" the neighbors and doesn't retain his own security videos. Obviously, Aric Toll playing cop would be bad for his business, given the "anything goes" environment . Again given the local police protection of the Village Inn, Ms. Lemen has the right to comment on this matter of great public importance, at least important to the community where she lives.

9) **Bordello:** No where is the absurdity of the court ruling more apparent than the prohibition that Ms. Lemen indicate the Village Inn acts as a bordello. There was no testimony that Ms. Lemen made these statements. Reference to a "bordello" was made in a review from Digitalcity.com, which was Exhibit 53. The full text of the review read as follows:

> "Lit like a dive but kept up like a drawing room, the Village Inn is done up in raspberry-colored wood and booth trim. There is also a parlor feel here, bordering on a house of ill-repute gaudiness, where hunched ritualistic males sit in middle-aged purgatory, eyeing the comely waitresses with hushed reverence. This is a neighborhood handhold for islanders who drink steadily and expertly, huddled in crimson shadows that steel their cracked souls." -- CJ Bahnsen

Not only did Ms. Lemen not refer to a bordello, but the article did not say the Village Inn acted as a Bordello. This portion of the court ruling clearly demonstrates the danger inherent censorship of ideas and speech. There is no logical nexus between the

Internet article and the tentative court ruling.

10) **Tainted food:** If Ms. Lemen hears or anyone who has gotten ill from eating food at the Village Inn, she is entitled to talk about it. A review of the trial transcript will be needed to determine if any patron was told that Ms. Lemen made this comment. To the best of my recollection, this was merely an allegation and was not evidence.

Members of the public are very interested in knowing about the sanitary conditions of a restaurant. There are grades posted prominently in the restaurant windows. Freedom to speak allows for people to freely state their views and opinions concerning the food service operations of a restaurant open to the public. This prohibition is unconstitutionally vague and there is no compelling public policy interest that justifies such a restriction on free speech.

Despite the fact that there was no evidence to support the fact that Ms. Lemen made any false police reports, the tentative ruling appears to prohibit Ms. Lemen from discussing these issues with anyone including law enforcement personnel. This was one of the two (2) goals of the Village Inn. This will not stand. Specifically, given the lack of local law enforcement protection, Ms. Lemen can document and report violations to the Alcoholic Beverage Control Board. A disorderly house is defined as "one where there are acts prohibited by statute that are habitually indulged in or permitted." **Los Robles Motor Lodge vs. Department of Alcoholic Beverage Control (1966) 246 Cal. App.2d 198, 54 Cal.Rptr. 547.** A license to sell alcohol can be revoked if there is a finding of a disorderly house. THIS is, in fact, a compelling public policy which allows a wide open range in which citizens can breath deep and engage in free and open discourse. This is one of the cornerstones of this great Country.

In the primary case cited by this court in support of the tentative ruling, Judge Werdegar, wrote a concurring opinion in the **Aguilar v. Avis** case, which read in part as follows:

> "When we leave our homes, we enter a hurly-burly world where we are sometimes required to endure the unpleasant and undesirable opinions and entreaties of others. Unfortunately, such unwelcome speech sometimes

> attacks us on the basis of our race, gender or ethnic heritage. (See, e.g., Brandenburg v. Ohio, supra, 395 U.S. 444 [Ku Klux Klan leader made derogatory remarks about African- Americans]; Contento v. Mitchell (1972) *169
> 28 Cal.App.3d 356 [104 Cal.Rptr. 591] [defendant called plaintiff a "bitch" and a "whore"]; National Socialist Party v. Skokie (1977) 432 U.S. 43 [97 S.Ct. 2205, 53 L.Ed.2d 96] (per curiam) [American Nazis wishing to stage parade in predominantly Jewish village].) Ensuring proper breathing room for the airing of diverse views generally requires that we simply close our ears, avert our eyes and move on. The freedom of speech guaranteed by the First Amendment "presupposes that right conclusions are more likely to be gathered out of a multitude of tongues, than through any kind of authoritative selection. To many this is, and always will be, folly; but we have staked upon it our all." (United States v. Associated Press (S.D.N.Y. 1943) 52 F.Supp. 362, 372 (opn. of Hand, J.), affd. sub nom. Associated Press v. United States (1945) 326 U.S. 1 [65 S.Ct. 1416, 89 L.Ed. 2013].)
>
> The workplace is different from sidewalks and parks, however; workers are not so free to leave to avoid undesired messages. When employees are forced to endure racially harassing speech on the job, it is arguable that "substantial privacy interests are being invaded in an essentially intolerable manner." (Cohen v. California, supra, 403 U.S. at p. 21 [91 S.Ct. at p. 1786].) In enacting FEHA and its related provisions, the state has recognized the damage racial discrimination at the workplace can cause, both economically to society and psychologically to the victimized worker. Finally, the restriction on the harasser seems de minimis because he remains free to state his views and opinions in every place other than his place of employment.
> No single factor present in this case justifies the restraint on speech here; indeed, another case posing different facts may lead to a different conclusion. However, for all the reasons stated above, I conclude that Lawrence's speech, even if constitutionally protected, may nevertheless be subject to the modest time and place restrictions discussed above, and that an injunction, properly narrowed on remand, [FN9] will not violate his right to freedom of speech guaranteed to him by both the First Amendment to the United States Constitution and by article I, section 2, subdivision (a) of the California Constitution.(Agular, pages 168 to 169)

The Village Inn v. Lemen case involves the streets and sidewalks of Balboa Island, not inside the work place. There is not even an attempt to place any limitations on the extraordinary scope of the Court's Tentative Ruling, which goes far beyond what even the plaintiff's requested.

The Court's Tentative Ruling is also over broad and vague as to prohibitions against Ms. Lemen initiating contact with persons known to be employees of the Village Inn. Does the court really mean that if she is at a Bible study, or a community forum that she can not initiate a conversation about the Village Inn? Is she prohibited from talking about any other subjects, such as saying excuse me as she is reaching for Rolaids in a

grocery store check out line?

If, as was offered in evidence, one employee initiates a conversation about Ms. Lemen's flowers, is she prohibited from greeting the person the next day? Aren't these the type of bridges that should be encouraged as opposed to constructing judicial cones of silence around a single woman who has been indisputably traumatized by a brutish neighbor who is intent on making a profit and refusing to put up a simple sign that asks late night patrons to be considerate of the people next door. This is the same Aric Toll that somehow didn't remember his patrons being drunk and disorderly in the streets the night the he reported Ms. Lemen to the police for "harassing" his patrons because she was videoing the late night noise makers.

VI

THE VIDEOTAPING AND PHOTOGRAPHY RESTRICTIONS ARE UNCONSTITUTIONAL

In 1999, an attorney representing the owner of the Village Inn contended Ms. Lemen was making false police reports. In order to protect herself, Ms. Lemen documented potential violations with a video and still camera. Aric Toll did not contend that any of the videos or photographs introduced into to evidence were unreasonable. For example, Ms. Lemen recorded a door being propped open during the time that Lance Wagner owned the Village Inn in such a way to allow music to be heard outside of the bar. This was in violation of company and public policy. Ms. Lemen took photographs of a kitchen door that was allowed to continuously remain open, in violation of company and public policy because an employee didn't understand a posted notice regarding the door.

Videotape of recent dancing within the Village Inn was introduced into evidence, despite the fact that Aric Toll testified, under oath, that the Village Inn does not allow dancing. This is the sort of activity that could not be filmed from Ms. Lemen's property. The Village Inn refuses to maintain or share their own video surveillance tapes and the local police are protecting the bar.

There was disputed testimony about whether Ms. Lemen engaged in discrete filming of the Village Inn activities from her van. Although she denied it, the testimony supporting the allegation was based on speculation. Despite security cameras being installed in August of 2001 to document Ms. Lemen's allegedly improper filming, there was not one such image captured. If there is not a single instance of credible evidence of improper filming by Ms. Lemen for over one (1) year and numerous instances of appropriate filming, a permanent injunction is inappropriate.

Such an injunction impedes Ms. Lemen's ability and right to document code violations, which are many, by the Village Inn. The Injunction also "chills" Ms. Lemen's free speech rights by making her vulnerable to the main weapon in the Village Inn's arsenal, which is the allegation that Ms. Lemen has made false statements.

Ms. Lemen has the right, as does any citizen, to record code violations from a public street and sidewalk, especially given the Village Inn's denial of obvious problems

VII

CONCLUSION

Ms. Lemen has tried unsuccessfully to sell her house. She can't sleep at nights, which is a problem shared by many in the neighborhood. The police are not protecting her. Now she faces limitations about what she can talk about. Quite a conundrum, if the Tentative was allowed to stand.

DATED: 9/9/02

BRIDGMAN & ASSOCIATES

BY: _____
D. Michael Bush
Attorneys for Defendant,
ANNE LEMEN

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, SCOTT A. ZIMMON, declare:

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 17330 Brookhurst Street, Suite 330, Fountain Valley, Ca. 92708. On September 9, 2002, I served the following document(s):

DEFENDANT ANNE LEMEN'S OBJECTION TO TENTATIVE RULING

in the case entitled: **Balboa Island Village Inn vs. Anne Lemen, et al,** Orange County Superior Court case number 01 CC 13243, on the interested parties through their attorneys of record by placing a true and correct copy thereof addressed as shown on the attached service list, as designated below:

(XX) **BY FIRST CLASS MAIL (C.C.P. § 1013a, et seq.):**
I caused said documents(s) to be deposited in the United States mail in a sealed envelope with postage fully prepaid at Fountain Valley, California, following the ordinary practice at my place of business of collection and processing of mail on the same day as shown as this declaration.

( ) **BY HAND DELIVERY/PERSONAL SERVICE (C.C.P. § 1011, et seq.)**
I caused said documents(s) to be delivered to each addressee.

(XX) **BY TELECOPY/FACSIMILE (C.C.P. § 1012.5, et seq.)**
I caused said document(s) to be facsimiled to each addressee's facsimile ("Fax") number.

( ) **BY EXPRESS MAIL (C.C.P. § 1013(c)(d), et seq.)**
I caused said document(s) to be deposited with an express service carrier in a sealed envelope designated by the carrier as an express mail envelope, with fees and postage pre-paid.

( ) **BY REGISTERED MAIL (C.C.P. § 1020, et seq.)**
I caused said document(s) to be deposited with the United States mail, postage pre-paid, return receipt requested, signed by the addressee that said document(s) were received.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

DATED: 9/9/02

BY: _____
SCOTT A. ZIMMON

BALBOA ISLAND VILLAGE INN vs. ANNE LEMEN, et al.
OCSC Case Number 01 CC 13243

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OUR FILE NO.
942\1332.001

September 10, 2002

VIA MESSENGER

Honorable Gerald G. Johnston
Orange County Superior Court
Department C-29
700 Civic Center Drive West
Santa Ana, California 92701

Re: Balboa Island Village Inn, Inc. v. Anne Lemen aka Anne Lemon
Orange County Superior Court Case No. 01CC13243

Dear Judge Johnston:

Enclosed is the Proposed Judgment and Permanent Injunction in the above referenced matter. The Memorandum of Costs and Motion for Attorney's Fees will be filed shortly.

This office was not served with a Request for a Statement of Decision within 10 days from August 28, 2002. This office was faxed Defendants' Objection to Tentative Ruling on September 9, 2002. Defendant has not "specified controverted issues or made proposals not covered in the Tentative Decision." It is therefore Plaintiff's understanding that, pursuant to your Tentative Decision and California Rule of Court 232(a), your Tentative Decision has become the Statement of Decision. If I am wrong, please let me know and Plaintiff will resubmit your Tentative Decision verbatim as the Statement of Decision.

Very truly yours,

J. Scott Russo

JSR:tf
Enclosure

cc: Michael Bush, Esq. (via mail)

942\1332.001Johnson.ltr

EXHIBIT G

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ANNE LEMEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

BALBOA ISLAND VILLAGE INN, INC., a California corporation,

Plaintiffs,

vs.

ANNE LEMEN aka ANNE LEMON, an individual; and DOES 1 through 10, inclusive,

Defendants.

CASE NO.: O1CC13243

ASSIGNED FOR ALL PURPOSES TO:
JUDGE GERALD G. JOHNSTON
DEPARTMENT C 29

DEFENDANT, ANNE LEMEN'S REPLY TO PLAINTIFF' S LETTER DATED SEPTEMBER 10, 2002

COMES NOW Defendant ANNE LEMEN to reply to plaintiff's letter of September 10, 2002.

Defendant's Opposition to the Tentative Ruling was timely filed via facsimile, ten (10) days after the Tentative Ruling, which fell on Saturday. (See CCP § 10, et seq.).

Defendant clearly identified the issues in dispute. The Tentative Ruling, in its entirety, is unconstitutional.

If plaintiff waives the opportunity to respond to the constitutional issues raised by the defendant, the defendant requests notice as to when the Order becomes final so that a Writ may be submitted to the Court of Appeals.

Plaintiff failed to provide any legal basis for attorney fees.

Defendant requests a stay of all orders, including attorney fees, until the Court of Appeal has an opportunity to review the defendant's Writ.

DATED: 9/11/02

BRIDGMAN & ASSOCIATES

BY: _____
D. Michael Bush
Attorneys for Defendant,
ANNE LEMEN

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, SCOTT A. ZIMMON, declare:

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 17330 Brookhurst Street, Suite 330, Fountain Valley, Ca. 92708. On September 11, 2002, I served the following document(s):

DEFENDANT ANNE LEMEN'S REPLY TO PLAINTIFF'S LETTER OF SEPTEMBER 10, 2002

in the case entitled: **Balboa Island Village Inn vs. Anne Lemen, et al,** Orange County Superior Court case number 01 CC 13243, on the interested parties through their attorneys of record by placing a true and correct copy thereof addressed as shown on the attached service list, as designated below:

(XX) **BY FIRST CLASS MAIL (C.C.P. § 1013a, et seq.):**
I caused said documents(s) to be deposited in the United States mail in a sealed envelope with postage fully prepaid at Fountain Valley, California, following the ordinary practice at my place of business of collection and processing of mail on the same day as shown as this declaration.

( ) **BY HAND DELIVERY/PERSONAL SERVICE (C.C.P. § 1011, et seq.)**
I caused said documents(s) to be delivered to each addressee.

(XX) **BY TELECOPY/FACSIMILE (C.C.P. § 1012.5, et seq.)**
I caused said document(s) to be facsimiled to each addressee's facsimile ("Fax") number.

( ) **BY EXPRESS MAIL (C.C.P. § 1013(c)(d), et seq.)**
I caused said document(s) to be deposited with an express service carrier in a sealed envelope designated by the carrier as an express mail envelope, with fees and postage pre-paid.

( ) **BY REGISTERED MAIL (C.C.P. § 1020, et seq.)**
I caused said document(s) to be deposited with the United States mail, postage pre-paid, return receipt requested, signed by the addressee that said document(s) were received.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

DATED: 9/11/02

BY: _____
SCOTT A. ZIMMON

BALBOA ISLAND VILLAGE INN vs. ANNE LEMEN, et al.
OCSC Case Number 01 CC 13243

"SERVICE LIST"

J. Scott Russo, Esq.
PINTO & DUBIA
2 Park Plaza, Suite 300
Irvine, California 92614

EXHIBIT H

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
MINUTE ORDER

Department: C-29

COURT CONVENED AT: 9:00 AM		**ON:**	September 12, 2002
JUDGE / COMM:	GERALD JOHNSTON	**CLERK:**	BEVERLY WASTELL
BAILIFF:	JIM WALLACE	**REPORTER:**	NONE

AND THE FOLLOWING PROCEEDINGS WERE HAD:

01CC13243 BALBOA ISLAND VILLAGE INN, INC. VS. LEMEN

STATEMENT OF DECISION

No Appearances.

The Court having heard the matter; issued it's TENTATIVE STATEMENT OF DECISION on 8/28/02; and read and considered DEFENDANT ANNE LEMEN'S OBJECTION TO TENTATIVE RULING filed 9/9/02, A letter from J. Scott Russo, PINTO & DUBIA filed 9/10/02, and DEFENDANT, ANNE LEMEN'S REPLY TO PLAINTIFF'S LETTER DATED SEPTEMBER 10, 2002 filed 9/12/02 now issues it's STATEMENT OF DECISION:

Plaintiff in this action is the Balboa Island Village Inn, Inc., a public house that has been in existence in various iterations since 1933. Defendant is a 19 year resident of Balboa island who owns a residential property across an alley from Plaintiff. Balboa island is an insular community of some 1100 inhabitants located in one of the most scenic and densely populated coastal areas of Orange County. The close proximity of a restaurant/bar to a residential area, particularly in such a geographically compact locale, is an invitation for rancor and divisiveness. In recent years, Plaintiff has modified its establishment to bring in more business. On most evenings live music is performed in the bar area. Plaintiff often stays open until 2:00 AM on weekends and this means that the occasional inebriate is turned out to the street at a time when the residents would rather sleep than listen to fights, yelling or

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
MINUTE ORDER

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BAILIFF:	JIM WALLACE	**REPORTER:**	NONE

AND THE FOLLOWING PROCEEDINGS WERE HAD:

01CC13243 BALBOA ISLAND VILLAGE INN, INC. VS. LEMEN

off-key songs.

Defendant has taken exception to these nocturnal disturbances, which over the years have included the aforementioned fights and yelling, as well as damage to her property in the form of broken windows, discarded trash and indiscriminant urination. Defendant has become so exasperated that she has attempted to sell her home in order to move to a more peaceful location.

Defendant has also become an advocate for change and has filed numerous complaints against plaintiff with law enforcement and regulatory agencies. Defendant has also attempted to spread her message as a harbinger for change through a door to door petition campaign within the community. Additionally, Defendant has spent countless hours and significant effort to gather evidence of the problems she believes to be created by Plaintiff's presence and business practices.

Against this backdrop, comes a law suit filed by Plaintiff alleging that Defendant has engaged in an orchestrated effort to destroy Plaintiff's business by way of nuisance, defamation and interference with Plaintiff's business.

The California Constitution at Article 1, Section 2 subdivision (a) provides "Every Person may freely speak, write and publish his or her sentiments on all subjects, being responsible for the abuse of this right. A law may not

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01CC13243 BALBOA ISLAND VILLAGE INN, INC. VS. LEMEN

restrain or abridge liberty of speech or press." Article 1, Section 3 further provides "The people have the right to instruct their representatives, petition government for redress of grievances, and assemble freely to consult for the common good."

Free speech under the First Amendment as well as California's constitution has been construed to be subject to reasonable limitations. In *Magell Bros. Inc. V. Bldg. Services Employee's International Union* 20 Cal. 2nd 506 (1942), the court determined that false and untruthful statements made on picket signs displayed in front of plaintiff's place of business were properly enjoined. In a later case, *Aguilar v. Avis Rent A Car Sys.* 21 Cal 4th 121 (1999) the court wrote at page 167:

> As we explained in *Wilson v. Superior Court, supra*, 13 Cal. 3d at pages 661-662: "We do not . . . suggest that prior restraint upon publication can never be justified. The decisions recognize that prior restraints may be imposed under some extraordinary circumstances. For example, it has been said that the government may prohibit the disclosure of military secrets in time of war and prevent the utterance of words that may have the effect of force. [Citation.] Furthermore, an injunction restraining speech may issue in some circumstances to protect private rights (see, e.g., *Magill Bros. v. Bldg. Service etc. Union* (1942) 20 Cal. 2d 506, 511-512 [127 P.2d 542]) or to prevent deceptive commercial practices (*Securities and Exchange Comn.*

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AND THE FOLLOWING PROCEEDINGS WERE HAD:

01CC13243 BALBOA ISLAND VILLAGE INN, INC. VS. LEMEN

v. Texas Gulf Sulphur Co. (2d Cir. 1971) 446 F.2d 1301, 1306)." In other words, a sufficiently strong public policy reason can justify a prior restraint on speech even under the heightened protection afforded by the state Constitution.

The case before the court involves statements and conduct by Defendant which Plaintiff alleges have caused damage to Plaintiff's business. At trial, testimony and other evidence was presented to the court that Defendant has made statements to customers of Plaintiff, as well as residents of Balboa island which include the following: Plaintiff sells alcohol to minors; stays open until 6:00 AM; makes sex videos; is involved in child pornography; distributes illegal drugs; has mafia connections; encourages lesbian activities; participates in prostitution and acts as a whorehouse; and serves tainted food. Some of these statements were made while Defendant was presenting a petition for signature regarding Plaintiff's business activities to island residents. On other occasions, the statements occurred while Defendant engaged in conversation with actual or prospective customers of Plaintiff who were entering or departing Plaintiff's premises. Evidence was also presented to show that Defendant has confronted employees of Plaintiff, questioned their legal status and demanded to see a "green card", accused employees of being "whores", called one of Plaintiff's owners the "madam of a whorehouse", and stated that "Satan" owns and operates Plaintiff.

Evidence was also presented that Defendant has engaged in a regular course of video taping and still

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01CC13243 BALBOA ISLAND VILLAGE INN, INC. VS. LEMEN

photography of Plaintiff's patrons and the activities in and around Plaintiff's premises. This has included a practice of following departing customers with video camera in hand and asking questions. In addition, there was evidence produced to show that Defendant has, at times, made a regular practice of parking her van across the street from Plaintiff's business and video taping the business and its patrons. Defendant was also shown to have taken still flash photos at night through the windows of Plaintiff's building.

Plaintiff, in its fourth cause of action is seeking a permanent injunction to prevent Defendant from making false statements to patrons of Plaintiff about its food, management and practices; or harassing patrons and employees within 50 feet of the Plaintiff's premises, or taking photographs or videos through the windows or doors of Plaintiff's establishment.

Defendant has denied most of the activity and statements attributed to her. However, the Court is convinced by a preponderance of the evidence based on the many witnesses called to testify, that, in fact, Defendant did make the statements attributed to her and engaged in the other conduct previously described.

Therefore, the court finds for the Plaintiff on the first three causes of action for nuisance, defamation, and interference with business. This leads to the question of whether the court should grant the injunction requested in the fourth cause of action. As noted above, limitations on free speech and the right to petition may permissible

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
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and appropriate to prevent otherwise inappropriate conduct. The court believes that such a situation exists here. A permanent injunction should issue to limit Defendant's activities and speech as they relate to Plaintiff.

However, it is crucial that such limitations be no more restrictive than what is necessary to protect Plaintiff's legitimate interests in conducting a lawful business, and the restrictions must be clear and specific enough that Defendant can understand what is prohibited and what is not. The permanent injunction should contain the following provisions:

(1) Defendant is prohibited from initiating contact with individuals known to Defendant to be employees of Plaintiff. Any complaints Defendant has regarding Plaintiff must be communicated to a member or members of Plaintiff's management, who will be identified by Plaintiff for Defendant. Plaintiff will also provide Defendant a phone number or some similar method of communication by which Defendant can timely and easily communicate any problems related to Plaintiff's operation.

(2) Defendant is prohibited from making the following defamatory statements about Plaintiff to third persons: Plaintiff sells alcohol to minors; Plaintiff stays open until 6:00 AM; Plaintiff makes sex videos; Plaintiff is involved in child pornography; Plaintiff distributes illegal drugs; Plaintiff has mafia connections; Plaintiff encourages lesbian activities; Plaintiff participates in prostitution and acts as a whorehouse; Plaintiff serves tainted

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
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BAILIFF:	JIM WALLACE	**REPORTER:**	NONE

AND THE FOLLOWING PROCEEDINGS WERE HAD:

01CC13243 BALBOA ISLAND VILLAGE INN, INC. VS. LEMEN

food.

(3) Defendant is prohibited from filming (whether by video camera or still photography) within 25 feet of Plaintiff's premises unless Defendant engages in such filming while on Defendant's own property. An exception to this prohibition occurs when Defendant is documenting the circumstances surrounding an immediate disturbance or damage to her property. An example of this exception might involve Defendant's attempts to gather evidence regarding the mechanism and identity of any person who breaks the window of Defendant' s house.

In no other way does the Court limit Defendant's right to engage in free speech or petition.

Plaintiff is ordered to prepare the Permanent Injunction. Attorneys' fees are to be determined by noticed motion. Costs to be determined by memorandum of costs. Copy of this order to be mailed to counsel. ENTERED:9/12/02

GERALD JOHNSTON

HONORABLE GERALD JOHNSTON, JUDGE

J. Scott Russo, PINTO & DUBIA, LLP, 2 PARK PLAZA, SUITE 300, IRVINE, CA 92614-8513

D. Michael Bush, LAW OFFICES OF BRUCE C. BRIDGMAN & ASSOCIATES, 17330 BROOKHURST ST. SUITE #330, FOUNTAIN VALLEY, CA 92708

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER
MINUTE ORDER

Department: C-29

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01CC13243 BALBOA ISLAND VILLAGE INN, INC. VS. LEMEN

CLERK'S CERTIFICATE OF MAILING (CCP 1013a) - I certify I am not a party to this cause, am over 18, and a copy of this document was mailed first class postage prepaid in a sealed envelope addressed as show listed below. Mailing and execution of this certificate occurred on 9-13-02 at Santa Ana, California.
ALAN SLATER, CLERK, by Beverly R Wastell, Deputy.

EXHIBIT I

MS

FILED
ORANGE COUNTY SUPERIOR COURT
OCT 11 2002
ALAN SLATER, Executive Officer/Clerk
BY B. WHITELL

IMAGED
OCSC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

ORIGINAL

BALBOA ISLAND VILLAGE INN, INC., a California corporation, Plaintiff, vs. ANNE LEMEN aka ANNE LEMON, individual; Defendants.	Case No.: 01CC13243 **ASSIGNED FOR ALL PURPOSES TO:** **Judge Gerald G. Johnston** **Department C-29** **AMENDED [~~PROPOSED~~] JUDGMENT AND PERMANENT INJUNCTION** *First Amended Complaint Filed:* *January 11, 2002* *Discovery Cut-Off:* *July 19, 2002* *Trial Date:* *August 19, 2002*

This cause came on regularly for trial on August 19, 2002, in Department C-29 of the above-entitled Court, the Honorable Gerald G. Johnston, Judge, presiding. Plaintiff Balboa Island Village Inn, Inc. ("Plaintiff") appeared by its attorney J. Scott Russo of Pinto & Dubia, LLP and Defendant Anne Lemen aka Anne Lemon ("Defendant") appeared by her attorney D. Michael Bush of Bridgman & Associates.

Evidence, both oral and documentary, having been presented by both parties, the cause having been argued and submitted for decision, and the Court having caused to be made and entered herein on September 12, 2002 its Statement of Decision,

///

JCoB

IT IS ORDERED, ADJUDGED, AND DECREED that

1. On the first cause of action for Nuisance against Defendant, judgment is entered in favor of Plaintiff and against Defendant.

2. On the second cause of action for Defamation against Defendant, judgment is entered in favor of Plaintiff and against Defendant.

3. On the third cause of action for Intentional Interference With Business against Defendant, judgment is entered in favor of Plaintiff and against Defendant.

4. On the fourth cause of action for Preliminary and Permanent Injunction against Defendant, judgment is entered in favor of Plaintiff and against Defendant, and the Court orders that Lemen, her agents, all persons acting on her behalf or purporting to act on her behalf and all other persons in active concert and participation with her, be and hereby are, permanently enjoined from engaging in or performing directly or indirectly, any of the following acts:

A. Defendant is prohibited from initiating contact with individuals known to Defendant to be employees of Plaintiff. Any complaints Defendant has regarding Plaintiff or Plaintiff's business must be communicated to a member or members of Plaintiff's management, who will be identified by Plaintiff for Defendant and for which Plaintiff will provide Defendant a phone number by which Defendant can timely and easily communicate any problems related to Plaintiff's operation.

B. Defendant is prohibited from making the following defamatory statements about Plaintiff to third persons: Plaintiff sells alcohol to minors; Plaintiff stays open until 6:00 a.m.; Plaintiff makes sex videos; Plaintiff is involved in child pornography; Plaintiff distributes illegal drugs; Plaintiff has mafia connections; Plaintiff encourages lesbian activities; Plaintiff participates in prostitution and acts as a whorehouse; Plaintiff serves tainted food.

C. Defendant is prohibited from filming (whether by video camera or still photography) within 25 feet of the premises of the Balboa Island Village Inn unless Defendant engages in such filming while on Defendant's own property. An exception to this prohibition occurs when Defendant is documenting the circumstances surrounding an immediate disturbance or damage to her property. An example of this exception might involve Defendant's

attempts to gather evidence regarding the mechanism and identity of any person who breaks the window of Defendant's house.

~~5. Plaintiff is the prevailing party for all purposes and is awarded its attorneys' fees in the amount of $_____ and costs of suit in the amount of $_____ as against Defendant. The monetary award and judgment in favor of Plaintiff against Defendant is therefore the principal sum of $_____. Said sum shall accrue interest at the rate of ten percent (10%) per annum until paid.~~

Dated: 10/11/02

Honorable Gerald G. Johnston
Judge of the Superior Court

APPROVED AS TO FORM:

BRIDGMAN & ASSOCIATES

By:_____
D. Michael Bush

942\1332.001\proposed judgment - amended

PROOF OF SERVICE

(CCP §1013A(3) Revised)

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the above County, State of California. I am over the age of 18 and not a party to the within action. My business address is 2 Park Plaza, Suite 300, Irvine, California 92614.

On **September 17, 2002,** I served the foregoing document described as: **[AMENDED] PROPOSED JUDGMENT AND PERMANENT INJUNCTION** on the interested party in this action in the manner indicated below and as further indicated on the attached service/mailing list:

[XXX] by placing a true copy thereof enclosed in a sealed envelope addressed to each of the interested parties as indicated on the attached service/mailing list.

[ ] by placing [ ] the original [ ] a true copy thereof in a sealed envelope addressed to each of the following interested parties:

[XXX] **BY MAIL** I deposited such envelope in the mail at Irvine, California. The envelope was mailed with postage thereon fully prepaid. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit. Executed on **September 17, 2002,** at Irvine, California.

[ ] **BY PERSONAL SERVICE** I caused such envelope to be personally delivered to the offices of the addressee indicated on the attached service/mailing list. Executed on _____, at Irvine, California.

[ ] **BY TELECOPIER** I forwarded the above document via telecopier to the above interested parties to the telecopier numbers noted on the attached service/mailing list. Each transmission was completed, without error or interruption. Executed on, at Irvine, California.

[ ] **BY OVERNIGHT DELIVERY**: I am readily familiar with Pinto & Dubia, LLP's practice for collection and processing of correspondence for overnight delivery with Overnite Express. Pursuant to such practice, all correspondence is deposited in a regularly maintained box or delivered to any authorized Overnite Express courier in the ordinary course of business on the date it is generated. I know that the envelope was sealed, and with delivery fees thereon fully prepaid, placed for collection on this date, following ordinary business practices in the United States, at Irvine, California. Executed on _____, at Irvine, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on **September 17, 2002,** at Irvine, California.

Kelley L. Saunders

Kelley L. Saunders

SERVICE/MAILING LIST

D. Michael Bush, Esq.
Bridgman & Associates, Inc.
17330 Brookhurst Street
Suite 330
Fountain Valley, California 92708

EXHIBIT J

BRIDGMAN & ASSOCIATES
D. Michael Bush, Esq. SBN 101601
17330 Brookhurst Street, Suite 330
Fountain Valley, California 92708
Telephone: (714) 963-5486
Facsimile: (714) 964-1328

Attorneys for Defendant,
ANNE LEMEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

BALBOA ISLAND VILLAGE INN, INC., a California corporation, Plaintiffs, vs. ANNE LEMEN aka ANNE LEMON, an individual; and DOES 1 through 10, inclusive, Defendants.	**CASE NO.: O1CC13243** ASSIGNED FOR ALL PURPOSES TO: JUDGE GERALD G. JOHNSTON DEPARTMENT C 29 **NOTICE OF APPEAL**

TO THE CLERK OF THE ABOVE-ENTITLED COURT, THE PLAINTIFF AND THEIR ATTORNEYS OF RECORD:

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Defendant/Appellant, ANNE LEMEN, appeals to the California Court of Appeals of the State of California, Fourth Appellate District from the above-entitled Court's Amended Judgment and Permanent Injunction entered on October 11, 2002, but not yet served on Defendant, ANNE LEMEN.

DATED: 12/23/02

BRIDGMAN & ASSOCIATES

BY: _____
D. Michael Bush
Attorneys for Defendant/Appellant,
ANNE LEMEN

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, SCOTT A. ZIMMON, declare:

I am employed in the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action. My business address is 17330 Brookhurst Street, Suite 330, Fountain Valley, Ca. 92708. On December 23, 2002, I served the following document(s):

NOTICE OF APPEAL

in the case entitled: **Balboa Island Village Inn vs. Anne Lemen, et al,** Orange County Superior Court case number 01 CC 13243, on the interested parties through their attorneys of record by placing a true and correct copy thereof addressed as shown on the attached service list, as designated below:

(XX) **BY FIRST CLASS MAIL (C.C.P. § 1013a, et seq.):**
I caused said documents(s) to be deposited in the United States mail in a sealed envelope with postage fully prepaid at Fountain Valley, California, following the ordinary practice at my place of business of collection and processing of mail on the same day as shown as this declaration.

( ) **BY HAND DELIVERY/PERSONAL SERVICE (C.C.P. § 1011, et seq.)**
I caused said documents(s) to be delivered to each addressee.

( ) **BY TELECOPY/FACSIMILE (C.C.P. § 1012.5, et seq.)**
I caused said document(s) to be facsimiled to each addressee's facsimile ("Fax") number.

( ) **BY EXPRESS MAIL (C.C.P. § 1013(c)(d), et seq.)**
I caused said document(s) to be deposited with an express service carrier in a sealed envelope designated by the carrier as an express mail envelope, with fees and postage pre-paid.

( ) **BY REGISTERED MAIL (C.C.P. § 1020, et seq.)**
I caused said document(s) to be deposited with the United States mail, postage pre-paid, return receipt requested, signed by the addressee that said document(s) were received.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct.

DATED: 12/23/02

BY: _____
SCOTT A. ZIMMON

BALBOA ISLAND VILLAGE INN vs. ANNE LEMEN, et al.
OCSC Case Number 01 CC 13243

"SERVICE LIST"

J. Scott Russo, Esq.
PINTO & DUBIA
2 Park Plaza, Suite 300
Irvine, California 92614

EXHIBIT K

CITY OF NEWPORT BEACH

REVENUE DIVISION
P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915
(714) 644-3141 • FAX (714) 644-3073

Mr. Aric Toll
Balboa Island Village Inn Inc.
127 Marine Avenue
Balboa Island, CA 92662

September 6, 2002

PERMIT TO CONDUCT LIVE ENTERTAINMENT

The City of Newport Beach does hereby authorize Mr. Aric Toll to provide live entertainment at the Village Inn, 127 Marine Avenue. This live entertainment permit is issued to Aric Toll and is not transferable to another individual or location. Approval of the permit is contingent upon compliance with the requirements of Newport Beach Municipal Code Chapter 5.28 and the following conditions:

1. Live entertainment shall consist of no more than five musicians and/or vocalists using amplified instruments and microphones. The live entertainment shall be confined to the interior of the building with performances located on the stage as shown on the plans submitted with the application.

2. Live entertainment shall only use the house sound amplification system as described in the application, the July 10 Chapman Cooper & Associates correspondence, the July 3, 2002 correspondence from J. Scott Russo and the site plan. Additional sound amplification devices or modification of the existing system or location of the stage or speakers without prior approval are prohibited.

3. The controls for the house sound amplification system shall be located in the management office, are to be controlled by Village Inn management and shall not exceed the following maximum settings:

Expander/Gate:	OFF
Threshold:	-40dB
Ratio:	2.0
Attack:	0
Release:	0.5
Output:	+6
Peak Limiter Level:	+9
Compressor:	In

4. All exterior doors and windows shall remain closed during live entertainment activities except to allow the ingress and egress of patrons.

5. Noise levels from live entertainment shall be controlled so as not to exceed 60 dB(A) on the public sidewalk adjacent to the exterior doors and 50 dB(A) at the centerline of the public alley between the Village Inn and 1305 Park Avenue while the doors are closed. Noise spikes up to 80 db(A) on the public sidewalk adjacent to the exterior doors and up to 70 db(A) at the centerline of the public alley between the Village Inn and 1305 Park Avenue are permitted during patron ingress and egress.

6. Live entertainment shall comply with the requirements of Municipal Code Chapter 5.28. Compliance with Section 5.28.040(B)(3) is reasonably met by not exceeding the maximum levels set forth in condition 5.

7. This permit authorizes live entertainment approved by the permit only. No other live entertainment may be provided without amendment to this permit. Permittee shall comply with all other applicable requirements of the Newport Beach Municipal Code.

Glen Everroad

EXHIBIT L

CITY OF NEWPORT BEACH

REVENUE DIVISION
P.O. BOX 1768, NEWPORT BEACH, CA 92658-8915
(714) 644-3141 • FAX (714) 644-3073

Mr. Aric Toll
Balboa Island Village Inn Inc.
127 Marine Avenue
Balboa Island, CA 92662

September 6, 2002

Re: Amended Live Entertainment Permit

Dear Mr. Toll:

I have completed my investigation of your June 24, 2002 application to modify the Village Inn live entertainment permit to include up to five performers using amplified instruments and microphones. The investigation of the requested amendment to the live entertainment permit was done in accordance with the requirements of Newport Beach Municipal Code Chapter 5.28.

Section 5.28.040 of the Code establishes the standards for approval of the live entertainment permit. It provides, in part, that the live entertainment noise shall "not be audible" anywhere on adjacent public right of way or private property. In order to establish an objective standard to determine compliance with this condition the enclosed live entertainment permit establishes maximum live entertainment noise decibel levels for the exterior of the facility.

With your consent and cooperation, the noise decibel levels were established by a City hired acoustical consultant after notice to the affected neighbors of the date and time of the sound check and the opportunity to listen and observe. On August 27 a sound check was conducted with a live band using the new sound system. I was present and participated in the sound check. You, and your attorney, Scott Russo were also present. The owner of the property ay 1305 Park Ave was also present part of the time, but declined to participate in the proceedings. No other neighbors were present. Sound decibel readings were taken on the interior and exterior, with exterior doors open and closed, while entertainers were performing. While I was standing at the centerline of the alley between the Village in and 1305 Park Ave I found the sound from the music to be inaudible while the doors and windows were closed. I have concluded it is appropriate to issue you a live entertainment permit subject to conditions relating to the new sound system, its operation, speaker locations and the location for entertainer's performance reflecting the conditions (sound system, system control settings, stage area, speaker type & location) as measured on August 27.

Finally, conditions proposed by the acoustical consultant and reflecting previous agreement between the City and the Village Inn have also been included in the enclosed approved live entertainment permit.

These conditions to the live entertainment permit have been added in an attempt to mitigate the long history of resident complaints relating to noise from the Village Inn, while providing the Village Inn the latitude to operate as a successful business. The City anticipates that the Village Inn will take all steps necessary to ensure compliance with the conditions of the enclosed permit. Failure to comply with the enclosed permit or the provisions of Municipal Code Chapter 5.28, based on the objective standards and limits set forth in the permit, will result in appropriate actions to obtain compliance or revocation of the permit.

Sincerely,

Glen Everroad
Revenue Manager

Cc: Steven Bromberg, Councilman
Homer Bludau, City Manager
J. Scott Russo

EXHIBIT M

Los Angeles Times
latimes.com

http://www.latimes.com/news/local/pilot/news/cityhall/la-dpt-profile04dec04.story

Honesty will prevail, incoming Newport councilman says

Dick Nichols, so far no stranger to controversy, says his constituents can expect to hear the truth during his tenure.

By June Casagrande
Daily Pilot

December 4 2002

NEWPORT BEACH -- Even before being sworn in as City Councilman, Dick Nichols has already exhibited a style of wading boldly into controversy.

At the Nov. 12 council meeting, just as previously warring parties had found a harmonious compromise on the size of a Mormon temple steeple, Nichols rehashed the matter by saying he thought the steeple was too short.

"Architecturally, it would have been prettier if it was 10 feet higher," Nichols said Tuesday, reaffirming his objection to lowering the steeple from about 100 to 90 feet. It was a politically risky move, especially in council chambers packed with residents who had fought passionately to keep the steeple as short as possible.

Nichols drew fire during the campaign by referring to a motorist as a Mexican, even though he did not have any information about the man's citizenship or country of origin.

Such moves will likely set the tone for Nichols' next four years on the dais. The Corona del Mar resident says he will have no qualms about speaking his mind, especially when it comes to honesty in government.

"When people make a statement, I expect it to mean something," Nichols said.

He will hold his colleagues, staff members and residents doing business with the city to the same standard of honesty, he said, and people will be able to expect honesty from him, if not always complete openness.

"If the item is something I believe either that people do not understand or I think they should understand, I will try to clarify that and make it clear what the council's voting on," he said.

At other times, such as the city's recent lease negotiations with the American Legion, there's no point in publicly airing all the potentially contentious details.

"I met with the people at the American Legion and asked if they were satisfied with the deal and they said they were, so in a case like that, there's no reason to bring controversy into the chamber," said Nichols, who will be sworn in as a council member on Tuesday.

Other issues, though, are certain to be controversial in Nichols' hands.

For example, he said he plans to make known to Councilman Steve Bromberg that he believes something should be done about the Village Inn. The restaurant, in Bromberg's district, has drawn numerous complaints and even a court case from neighbors upset about the noise and patrons.

"Until that is changed, I'm going to stick it to Bromberg every once in a while," Nichols said.

Nichols' pet issue, property rights, will be central to his service to the city. He said he plans to keep a close watch on the general plan update, which he believes probably goes too far in trying to overhaul the entire document. And he made a bold vow on behalf of all property owners.

"I will not change anybody's zoning unless the adjacent property owners are aware of what's happening and take part in it," Nichols said. "I know that's a strong statement. I mean it."

* JUNE CASAGRANDE covers Newport Beach and John Wayne Airport. She may be reached at (949) 574-4232 or by e-mail at june.casagrande@latimes.com.

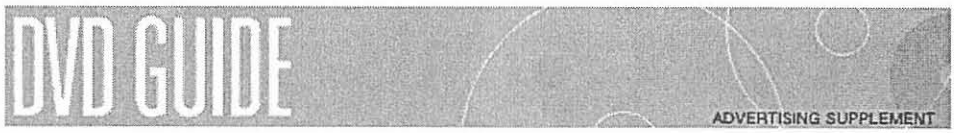

EXHIBIT N

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WRITER'S E-MAIL ADDRESS
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November 4, 2002

VIA FACSIMILE AND U.S. MAIL

D. Michael Bush, Esq.
Bridgman & Associates
17330 Brookhurst Street, Suite 330
Fountain Valley, California 92708

Re: Balboa Island Village Inn, Inc. v. Anne Lemen

Dear Mr. Bush:

This shall respond to your letter dated November 2, 2002.

Simply stated, my client had nothing to do with the vandalism that you discuss in your letter. With respect to "diffusing the tension", I suggest that your client look to herself on this issue. Since the lawsuit, I noted at least four newspaper articles on this matter. Neither you nor Ms. Lemen shied away from being quoted. Ms. Lemen's self-proclamation about the support for her crusade does not make it true.

The judgment in the lawsuit requires the Village Inn to provide Ms. Lemen with someone who she can call if she has a problem with the Village Inn. If Ms. Lemen has a specific problem, she should call Aric Toll at the Village Inn, (949) 675-8300. If Mr. Toll is not at the Village Inn when Ms. Lemen calls, he will be tracked down or someone else will be available to speak with Ms. Lemen. Mr. Toll will do his best to respond to any complaints specific to the Village Inn's operations.

Very truly yours,

J. Scott Russo

JSR/kls

EXHIBIT O

September 8, 2002

Daily Pilot

Village Inn decision demands overturning

There has been much discussion during the war on terrorism about whether new government policies infringe on Americans' basic Constitutional rights. Last month a much clearer, and therefore much more chilling, attack on those rights occurred during a much smaller war raging on Balboa Island.

This fight is one that could happen almost anywhere. On one side is a Balboa Island homeowner, Anne Lemen. On the other is her neighbor, the Village Inn. She claims the restaurant/bar is far too noisy, far too late into the night and that the inn's new owners, the Toll family, have changed the establishment from a relatively quiet, locals-mostly spot to a nightclub for non-islanders.

The Tolls, in return, say Lemen has harassed customers and wrongly videotaped patrons at the inn.

Their battle, as so many do in America, escalated to the point that it ended up in court. And an Orange County Superior Court judge ruled in late August that Lemen cannot make false statements about the Village Inn, make contact with the restaurant's employees or videotape the business from within 50 feet, except from her own property (which happens to be 10 feet away).
Setting aside all the specifics of this dispute -- talking not at all about whether Lemen has harassed customers or employees of the Village Inn or if the new owners have created a nuisance that needs to be curbed or shut down -- this injunction was wrong. It was wrong for one fundamental reason: the First Amendment.

The First Amendment, the initial Constitutional freedom Americans enjoy, guarantees Lemen the right to give her opinion of the Village Inn, as it guarantees the same to the Village Inn's owners and all U.S. citizens. And this decision trampled unnecessarily on her rights.

There are other legal recourses for the Village Inn owners to pursue. Libel and slander laws exist so particular, improper statements can be punished and so the First Amendment will not be besieged as it has been in this case. The case is a perfect example of what is known in free speech legal jargon as "prior restraint," that is a muzzle of her speech by the courts before the speech even occurs.

Therefore, this is a decision that deserves the appeal Lemen and her attorney have filed. It is one that demands to be overturned.

If you want other stories on this topic, search the Archives at latimes.com/archives.

EXHIBIT P

August 27, 2002

Daily Pilot

Village Inn, neighbor in legal row over noise

■Owners of the Balboa Island venue are seeking an injunction against Anne Lemen, saying her actions constitute harassment.

By June Casagrande, Daily Pilot

BALBOA ISLAND -- An outspoken opponent of loud, late-night revelry at the Village Inn is facing an injunction to keep her quiet.

Village Inn owners the Toll family are fighting neighbor Anne Lemen in court on the charges that her actions to battle noise problems in her neighborhood constitute harassment.

Lemen and her attorney, Michael Bush, say her comments to customers at the restaurant and her videotaping some of the activities there do not constitute harassment.

"What is harassment?" Bush asked. "It looks like Anne had one of her windows broken by one of their customers. Is that harassment?"

Toll family attorney Mark Russo could not be reached Monday, and co-owner Jerry Toll declined to comment, saying it would be inappropriate because the case has not yet been resolved.

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BRIEFLY

Ficus tree battle in hands of the court

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Lemen, whose Balboa Island home is about 10 feet from the Village Inn, said the loud music and rowdy patrons often keep her up until well past 2 a.m. She said she had a good relationship with previous owners but that the Toll family's changes to the establishment are attracting a nightclub crowd that's causing her and her neighbors a lot of sleep.

"I didn't want to be a bad neighbor. I wanted to be a good neighbor. But losing so much sleep affects my ability to work," said Lemen, who bought her home about 14 years ago.

The Village Inn's injunction request would mean that Lemen would have to stop doing things that amount to harassment, but, Bush said, it remains unclear what that could mean.

Bush said Lemen has as much of a right to yell to patrons to be quiet as the patrons have to make noise.

Lemen has also opposed the restaurant's request to add drums and a guitar to its live music lineup.

Planning Department staff had referred the request to the Planning

Commission. But in June, commissioners ruled that the question of musical instruments did not constitute a land-use matter. City staff are reviewing the request, which will likely end up in front of the City Council.

The Village Inn is exempt from some city noise rules because the restaurant, opened in the 1930s, predates noise restrictions.

* JUNE CASAGRANDE covers Newport Beach and John Wayne Airport. She may be reached at (949) 574-4232 or by e-mail at june.casagrande@latimes.com.

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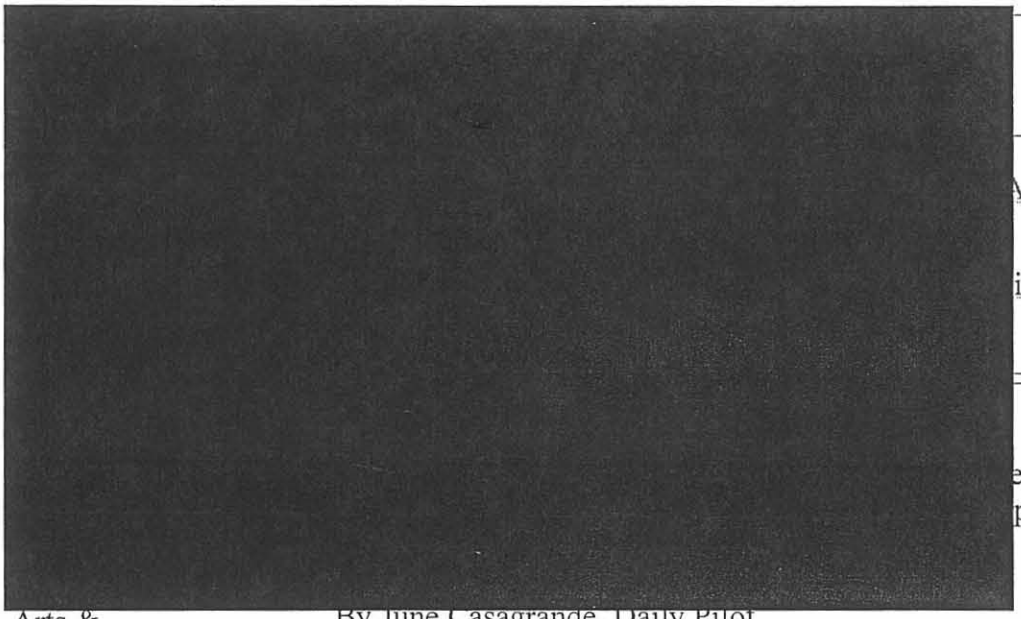
EXHIBIT Q



en's battle against the promises her

By June Casagrande, Daily Pilot

BALBOA ISLAND -- A Superior Court judge has ruled that a resident made false statements against the Village Inn and should be restricted in her future speech.

Judge Gerald G. Johnston on Tuesday issued an injunction against resident Anne Lemen forbidding her from making false statements about the Village Inn, making contact with the restaurant's employees or videotaping the business from within 50 feet, except from her own property.

Lemen and her attorney said the ruling amounts to a violation of her free speech rights. They vowed to fight the decision on constitutional grounds.

"Now she has to worry about what she says and how she says it. This is at the very heart of our constitutional rights," attorney Michael Bush said.

But an attorney for Village Inn owners the Toll family said the decision proves that some of Lemen's activities in fighting against noise at the restaurant constituted harassment and defamation.

"The evidence was pretty compelling that her activities were not reasonable," said attorney Scott Russo, who emphasized that this court battle was not about noise at the restaurant but about whether Lemen crossed the line in statements she made to neighbors and police, and in comments she has made to Village Inn employees.

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"The line has been crossed," Russo said.

Lemen denied that she had made false statements that some illegal activities were going on at the business, but Johnston, citing witnesses' testimony, ruled that she had made such statements.

Lemen, whose home is next door to the restaurant and bar, has been at odds with the business over noise and unruly patrons. City staff is considering a request by the business to expand its live entertainment -- a request Lemen opposes.

"It affects our health, our jobs, our children, our sleep, our property values and our safety," Lemen said.

* JUNE CASAGRANDE covers Newport Beach and John Wayne Airport. Airport. She may be reached at (949) 574-4232 or by e-mail at june.casagrande@latimes.com.

If you want other stories on this topic, search the Archives at latimes.com/archives.

EXHIBIT R

October 21, 2002 E-mail story Print

ORANGE PEELED / A LOOK AT LIFE IN ORANGE COUNTY
On the Outs Over the Inn
■A critic says Balboa Island institution disrupts life; bar owner insists he's a good neighbor.

By David Haldane, Times Staff Writer

The jerky videotape plays like a local version of "The Blair Witch Project." Dark and unfocused, it pans a crowded, shadowy street as barely audible voices mutter barely intelligible things. The camera settles on a clock reading 12:45 as the slightly more distinct voice of a narrator explains.

"It's 12:45 a.m.," the tired female voice says, "and they just got out of the bar. They're loud -- we can't sleep. It'd be nice if we could sleep, but we're all wide awake."

Welcome to the world of Anne Lemen: vacation cottage proprietor, amateur videographer, self-described anti-chaos crusader and general thorn in the side of the Village Inn, Balboa Island's only major bar and almost-historic icon.

Lemen's supporters -- numbering, she says, more than 400 in this wealthy residential enclave of Newport Beach -- call her the Erin Brokovich of Balboa, a designation she embraces.

Detractors, including Aric Toll, who owns the restaurant-bar in question, say she's a pest whose rantings have seriously hurt business and prompted a judge's order to shut up.

The Issues

She says that patrons of the inn next door have kept her up all hours by shouting obscenities, breaking windows and urinating in her flowerbed. He says that that's all bunk: A doorman/bouncer keeps them in line and, besides, his customers are among Balboa's finest.

She says the loud music drives her insane and prompted her daughter to drop out of high school; he says the noise is well within the limits set by the city.

She says the place is rife with prostitution, drug dealing or worse; he calls such charges absurd fantasies leveled at an establishment acting as a good neighbor and well within the law.

He says she ought to have thought of all these things before moving next door to what many consider the Cheers of Balboa. She says would love to move but can't sell her property because, well, it's right next door to the Cheers of Balboa.

"I'm not the felon; I'm the town hero," says Lemen, 52.

"I'm helping everyone's property values. I'm trying to save our precious island."

Counters Toll, 36, who took over ownership of the place two years ago and is trying to make it thrive: "I can't get into her mind. She has harassed the business and been a nuisance to this business. She has been on a campaign of misinformation for many, many years."

The foundation for those years was laid in 1928 when Anton and Wilhelmina Hershey, German immigrants unrelated to the Hersheys of chocolate fame, took jobs at the old Little Market at Park and Marine, across the street from two lots on which the inn now stands.

Anton, who had been a seller of houseplants in Germany, borrowed $800 from several friends to buy the lots and turn them into a nursery.

Because Wilhelmina liked to cook, the couple added a small room to serve hamburgers. With the repeal of prohibition in 1933, they obtained a liquor license and called the place Hershey's Cafe and German Beer Garden.

Local legend has it that among the patrons were James Cagney, Humphrey Bogart and Bing Crosby.

Over the next 65 years, the establishment was leased to a long line of operators who ran it under various names, including the Park Avenue Cafe, Whites Cafe, V.I.P. and, finally, the Village Inn. In 1998, owner Lance Wagner remodeled the interior, adding a new kitchen, bar and dining room.

And two years later, Toll, a chef, bought the place with the intention of restoring it to some measure of its former glory.

No one remembers exactly when the live music began. Lemen thinks it was about 1990, the year after she bought the modest duplex next door with the upstairs vacation rental she now calls Island Cot- tage.

But in the intervening years, she says, the erstwhile garden to the stars has made a steady march away from sobriety and quietude toward irritating Dionysian excess.

"I've seen 50 or more drunk people standing outside, screaming obscenities, waiting for taxis," she says. "It's a different crowd, a very nasty group. For the first time ever, we've had street fights. The first thing I tried was crying myself to sleep."

When that didn't work, Lemen drew up a petition protesting the restaurant's request that its live entertainment permit be expanded to include amplified drums and guitars. To bolster her case, she started videotaping what she considered the excesses of Village Inn customers on the streets in front of her house.

By going door to door and talking to people on their lawns and patios, Lemen says, she persuaded more than 400 to sign her petition.

Then the he-said/she-said argument took a bitter turn: He said she got those signatures by lying and slandering; she said that is a slander and lie.

"Previous owners had threatened to sue her," Toll says, "but never followed through."

He did, and last month won a Superior Court judgment instructive in its wording. After listening to the testimony of various witnesses regarding statements purportedly made by Lemen during her anti-Inn campaign, Judge Gerald G. Johnston wrote: "The Court is convinced by a preponderance of the evidence ... that [despite her denials] the defendant did make the statements attributed to her."

A Judge Rules

Lemen, the judge went on, is therefore "prohibited from making the following defamatory statements" to third parties: that the Village Inn "sells alcohol to minors ... stays open until 6 a.m. ... makes sex videos ... is involved in child pornography ... distributes illegal drugs ... has Mafia connections ... encourages lesbian activities ... participates in prostitution and acts as a whorehouse" or "serves tainted food."

Lemen denies ever saying any of those things and, anyway, promises never to say them again. Her lawyer is appealing the ruling on the basis that it violates her right of free speech.

"It's prior restraint," attorney Michael Bush says. "It's government censorship about what you can or cannot say in the future -- that's 1st Amendment activity."

City officials, while acknowledging the neighborhood crusader's concerns regarding noise, describe the Village Inn as a worthwhile establishment that's not a major offender.

"It's not a big problem," said Sgt. Steve Shulman, a spokesman for the Newport Beach Police Department.

"We get an occasional call, but we get occasional calls on most business establishments. I wouldn't consider it a chronic problem."

Sharon Wood, assistant city manager, described the Inn as an asset to the people of Balboa. "I think, overall, it's a good place," she said. "It's had problems from time to time, but I know that they are working with us to resolve them. It's been there for so long, I think, that it's a fixture in the community."

Early last month, the city quietly approved the Village Inn's application for expanded live entertainment, despite Lemen's petition. And now, Toll says, he's trying to pack 'em in to help rebound from the recent 25% decline in patronage he attributes to Lemen's crusade.

"As far as I can tell," he says, "she's affected three times as many people as live on this entire island. She really hurt us -- we're still trying to recover from her petition."

Tom Williams, 60, of Newport Beach said he has been coming to the Village Inn for a while, mostly for the lively music and pretty women.

"Since I was 21," he said. "In those days it was ruled by the jarheads, and all the girls were schoolteachers. Now it's kind of my generation's place."

The Village Inn's location is appropriate, Williams argued.

"You've got to have some entertainment somewhere. You can't have it in the middle of the desert."

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EXHIBIT S

Daily Pilot

POLITICS ASIDE
The message that Machiavelli left
POLITICS ASIDE / S.J. Cahn
One of the many interesting political stories bumping around
the nation's capitol is the back-pedaling of former President Bush aide John DiIulio from comments he made to Esquire magazine.

DiIulio is in trouble for saying the White House is being run by the politicos employed there, folks he called the "Mayberry Machiavellis."

This week, DiIulio, a University of Pennsylvania professor, issued an apology and said he was "deeply remorseful" for his statements in the January issue of the magazine.

In Newport-Mesa, the local political scene's leading "Machiavelli," campaign consultant Dave Ellis, has offered about the same concerning phony phone calls (a phrase that rolls off the keyboard like "Mayberry Machiavellis") made during this fall's Newport Beach election.

The latest twist to this story is that similar calls were made during the 2000 election, in the race among now-Mayor Steve Bromberg, Pat Beek and Robert Schoonmaker for the council district that includes Balboa Island.

The calls, for those who've missed the news, are essentially "misdirections." The one this year urged a Greenlight vote for Ron Winship, when the candidate supported by Greenlight was Rick Taylor. Both were running against Councilman Gary Adams, who won reelection.

Reporter June Casagrande and I heard the anti-Taylor message, which included a reference to a nonexistent "new Greenlight committee."

Two years ago, apparently, a call urged a vote for Schoonmaker and added what Beek says are lies about her having talks with the Irvine Co.

Of course, Bromberg -- who says he knew nothing about the calls -- narrowly beat Beek for the seat in what amounted to the first round of "Greenlight" elections.

Ellis did some work for Bromberg during that race, leading many to surmise that a tactic he had at the ready this year was also employed in 2000. Ellis is out of the country and unavailable for comment on the 2000 race.

The continuing revelations that -- gasp! -- there are dirty campaign tricks being played in Newport-Mesa have riled up many residents. There have been demands for a revote in the race between Taylor and Adams. A few people have suggested that Adams step down.

Most saliently, there have been calls for tougher laws governing Newport Beach's elections and questions of why those sitting on the dais have not spoken out more harshly against deceptive campaign practices.

Without trying to piece together what any Newport Beach councilman (as of this week, there are no women among the city's elected leaders) is thinking, the answer to that question, as well as to why tougher laws aren't likely, is the same as the answer to why it was so difficult to get even minor campaign finance reform completed on a national level: The playing field, as it stands, favors those in office.

Therefore, there is no compelling reason for them to want to make changes, and no compelling reason for them to find much wrong with how they got elected (after all, they won).

Of course, it was residents' perceptions that city leaders saw no compelling reason to listen to them on issues such as traffic, development, hotels, etc. that led to the Greenlight movement.

Whether that alone amounts to a compelling reason for city leaders to wash their hands of any tough-minded campaign strategy is a question, however.

Greenlight's leaders have, after all, had most success when sticking fairly closely to traffic and controlled-growth issues. When they have stepped up their rhetoric to include how city leaders treat residents or tackled policy issues such as how the budget is being handled, the effect of their message has been diluted.

That dilution may have contributed to Greenlight only pulling one victory among the four council races this fall.

Now a question is whether the nastier nature of those races will turn out to be another cause Greenlight can take up successfully.

Thus far, there is a lot of yelling and generic noise. Greenlight leaders -- or anyone else angered enough to desire different practices in City Hall -- will need to turn down the volume and find one compelling message they can stick to if they hope to see change happen.

* S.J. CAHN is the managing editor. He can be reached at (949) 574-4233 or by e-mail at s.j.cahn@latimes.com.

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EXHIBIT T

SUPERIOR COURT STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

- - -

CERTIFIED COPY

BALBOA ISLAND VILLAGE INN, INC., a California Corporation,

Plaintiffs,

vs.

ANNE LEMEN AKA ANNE LEMON, an Individual; and DOES 1 through 10, Inclusive,

Defendants.

No. 01CC13243

DEPOSITION OF

KAREN MARIE SEEBER

BALBOA ISLAND, CALIFORNIA

AUGUST 15, 2002

ATKINSON-BAKER, INC.
COURT REPORTERS
330 North Brand Boulevard, Suite 250
Glendale, California 91203
(818) 551-7300

REPORTED BY: KARI ANNE LACHER, CSR. NO. 12167

FILE NO.: 9C05F55

SUPERIOR COURT STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

- - -

BALBOA ISLAND VILLAGE INN, INC., a California Corporation,	)	
Plaintiffs,	)	
vs.	)	No. 01CC13243
ANNE LEMEN AKA ANNE LEMON, an Individual; and DOES 1 through 10, Inclusive,	)	
Defendants.	)	

Deposition of KAREN MARIE SEEBER, taken on behalf of Defendant, at 317 Marine Avenue, Balboa Island, California, commencing at 10:05 a.m., Thursday, August 15, 2002, before Kari Anne Lacher, CSR No. 12167.

A P P E A R A N C E S:

FOR PLAINTIFFS:

LAW OFFICES OF PINTO & DUBIA, LLP
BY: J. SCOTT RUSSO
Attorney at Law
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Irvine, California 92614-8513
(949) 955-1177

FOR DEFENDANTS:

LAW OFFICES OF BRUCE C. BRIDGMAN & ASSOCIATES
BY: D. MICHAEL BUSH
Attorney at Law
17330 Brookhurst Street
Suite 330
Fountain Valley, California 92708
(714) 963-5486

ALSO PRESENT: Scott A. Zimmon, David Roy Seeber

I N D E X

WITNESS: KAREN MARIE SEEBER

EXHIBITS:

(None.)

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

(None.)

INFORMATION TO BE SUPPLIED:

(None.)

KAREN MARIE SEEBER,

having first been duly sworn, was

examined and testified as follows:

EXAMINATION

MR. BUSH: My name is Michael Bush on behalf of Anne Lemen.

MR. RUSSO: Scott Russo for the Plaintiff.

BY MR. BUSH:

Q Will you please state your full name for the record.

A Karen Marie Seeber.

Q Have you ever had your deposition taken before?

A No.

Q Even though we're in an informal setting, it's important that you know you've taken an oath to tell the truth. It's just as important to tell the truth here as if you were in court.

All right?

A (Inaudible response.) Okay.

Q Okay. Now, that's another thing. You need to say "yes," "no" for the court reporter.

A Yes.

Q All right. I don't think we -- do you think we need to go with any admonitions?

MR. RUSSO: No.

BY MR. BUSH:

Q We're just going to go ahead and fly through this. Because we know you're in the middle of going from here to there. So we'll try to get this thing done pretty quickly.

A Okay.

Q Will you please state your full name for the record.

A Karen Marie Seeber.

Q And what's the name of the shop that we're at right now?

A Magnolia Charlie.

Q Do you own this shop?

A Yes.

Q What's the address?

A 317 Marine Avenue, Balboa Island.

Q Do you live on the Island?

A Yes.

Q What's your address here?

A 122 Onyx Avenue.

Q How long have you lived here?

A For 10 years.

Q Okay. What I would like to do is, if Counsel has no objection, is for you to just give us a little bit

of a narrative, as far as your knowledge, as far as the Village, and what's it's been like over the last 10 years and then the last year and a half, two years, specifically.

A Well, when I first moved here, it was very quiet. You never heard of the Village Inn. It was a local favorite spot where everyone went and had a few drinks. And they went home. I've never heard any noise, any problems, not until the last year and a half when it reopened. It was closed for a while for remodeling.

And the last year and a half, I've had several scary incidents. I had one drunk appear at our door at 2:00 in the morning, where I had to call the police. They physically took him away. I was scared to death. He was banging on the door. At that time I had a newborn. And there's times I've woken up in the night. And I live three houses in from the corner, so I'm quite a ways. But I've been woken up with people screaming profanities back at each other, like they're getting in fights. I'm scared to death because I have small children. My greatest fear is having a gun pulled. I hear a lot of commotion.

The last time, major time, it happened, I -- our garage backs up to Aric's. And I saw him. I said, "Aric, what happened last night?" He goes, "Nothing

happened." Well, later that day, I understand, I wasn't the only one. Neighbors in the surrounding area heard it as well. I mean, it's loud profanity, fist fights, where I've never heard that before in Newport Beach, or even on Balboa Island. So I was scared. I was really scared. I wake up in the middle night to people screaming they can't find their car, they're drunk. They go inside my back door because I hear the gate open at well past midnight. And they're urinating. You can see the plants are just dead right inside. There's, not lately, but there's beer bottles like in my flower bed, then it went to cups.

It's just -- I don't feel safe. Even in the later hours, I would send one of my children to the grocery store, which is Hersheys. And I've done this for years, 10 years, send them for milk, send them for a piece of bread. I would never even think about doing that after 7:00, 7:30 at night now because of the people that come out of the bar. I don't even feel safe. I walk across the street into Hersheys because of --

THE REPORTER: Hersheys?

THE WITNESS: Yeah, Hersheys Market. I mean, when you walk by the V.I. now, the looks you get, the snide remarks. And I don't know if they're drunk. I don't know if they're sober. I'm not a person who can

tell that. It's just that I feel very uncomfortable. And I don't feel safe. And for years and years, I never thought anything about it. So now it creates a different kind of anxiety in the evenings just from the clientele and the people that are going in the V.I.

BY MR. BUSH:

Q Now, when you say "Aric," is that Aric Toll?

A Yes.

Q Other than that one instance when you asked him, "What happened last night," have you talked to him any other times about your concerns about the Village Inn?

A I never really see him. So I think, oh, golly, have I? Because David talks to him more than I have. I don't think I have only because I don't see him. I stay in the house, or I'm here at the work. But -- and I always kind of kept quiet because Anne was fighting our battle for us.

So I think at that point, I was so afraid, I was ready to go after him. You know, once you think your children are not that safe and something major is going to happen in the middle of the night, it's like I've had enough. And I just told Aric. But Aric acted like, well, I don't even know what you're talking about. I've never had any disturbances. And I know just that there was. So I didn't want to cause a scene. But I just told

him that I was very afraid.

MR. RUSSO: Objection; move to strike as nonresponsive.

BY MR. BUSH:

Q When did you tell him that you were very afraid? When did you tell Aric that?

MR. RUSSO: Objection; leading.

BY MR. BUSH:

Q Go ahead.

A A time frame?

Q Yeah. Do you have any recollection?

A It was probably a week to two weeks before they had the meeting at the Beek Center with the Alcohol and Beverage.

Q Was that a few months ago or so?

A I would guess about two months.

Q So you told Aric that you're afraid. And what was his response?

A His response was, "I don't know," "I didn't hear anything happen." I -- he acted like nothing ever went wrong, or like I don't know what you're talking about.

Q How many children do you have?

A I have seven.

Q What's their range of ages?

A 20 -- almost 21 years to 22 months.

Q I hope you get a discount.

A That's why I have a store.

Q All right. That's -- is there anything else that you would like to add that you think is important?

A Just that I don't feel it's safe anymore. I don't feel safe, not like I used to.

Q Great. Thank you very much.

MR. BUSH: Do you have anything at this time?

MR. RUSSO: Yes.

EXAMINATION

BY MR. RUSSO:

Q Mrs. Seeber, is it?

A Yes.

Q Okay. Mrs. Seeber, have you been with Mrs., with Ms. Lemen when she has gone door to door with her petitions pertaining to the Village?

A No, I have not.

Q So you don't know what she's told people on the Island about the Village Inn?

A No, I do not.

THE REPORTER: Can you speak up just a little because I have people back here.

BY MR. RUSSO:

Q So you don't know what she has told people on the Island about the Village Inn?

A No.

Q Mrs. Seeber, have you sat out and watched Ms. Lemen videoing the customers as they go in and out of the Village Inn?

A No.

Q So you don't know what she has videoed; correct?

A No. I've just seen it.

Q You've seen a best-of type video that she's provided to you; correct?

A I don't think it's edited, no. She -- she sees something that is wrong. She sees something that is frightening to the community. And she videos it for proof. Because people were not listening to what she said. I think Anne has only gotten to the point like I am now, we're afraid and we need to do something about it to protect our quiet Island.

MR. RUSSO: Objection; move to strike as nonresponsive. Can you read back the question, please.

(Testimony read.)

BY MR. RUSSO:

Q You've seen the video that she's taken; correct?

A Yes.

Q Do you know whether or not you've seen all of the video that she's taken?

A Yes, I believe so. Or, I'm sorry, can you

repeat the question?

Q Have you seen all of the video that she has taken?

A I have only seen -- what -- I can't answer that.

Q You don't know, do you?

A I don't know.

Q Okay.

A Because I want to say yes. But I mean, I've been gone for two and a half weeks. So if she's taken anything in that interim, I have not seen it.

Q Well, do you know whether or not the video that you've seen, which is a compilation-type of video, is all of the video Ms. Lemen has taken of the last few years or just portions of it?

A I don't know.

Q And Mrs. Seeber, you don't know what Ms. Lemen has said to customers going in and out of the Village Inn, do you?

A No, I do not.

Q Mrs. Seeber, you don't know what Mrs. Lemen or Ms. Lemen has told employees of the Village Inn, do you?

A No.

Q Mrs. Seeber, have you watched Ms. Lemen confronting people in front of the Village Inn?

A No.

Q Is that because you haven't had an occasion to stand out there and watch what she does, or because you've actually been out there, and you just haven't seen her do it?

A I do not go in front of the V.I. I will do anything not to go in front of it. I just don't because of all the commotion and everything that's happened there. I will walk, like I said, across the street. I do not walk in that direction. I -- when I walk to work, I used to walk straight down the street. I don't do that anymore. I walk straight down the 200 Avenue over. I've changed my patterns.

MR. RUSSO: Objection; move to strike as nonresponsive.

BY MR. RUSSO:

Q My question is more focused. I asked you whether or not you've seen Ms. Lemen confronting people out in front of the Village Inn. I think the answer was no. The question before, the question now was: Is that because you're not typically out in front of the Village Inn, or to the alternative of that, because you have been out in front of the Village Inn, you just haven't seen her do it?

A I have not been there because I've changed my patterns.

Q When you changed your patterns regarding where you walk, is that during the daytime and nighttime?

A Yes, it is.

Q Thank you.

MR. RUSSO: I have no further questions.

MR. BUSH: Do you think there's any need to have her sign a penalty of perjury given we have the video tape? And they're going to be leaving for Dallas, I think, today.

MR. RUSSO: No. That's fine.

MR. BUSH: All right. So we'll just waive the requirements, if that's okay with you. Ordinarily, we have people review it, sign it and say everything is true and correct. But we have the video tape. So we're going to dismiss that, if that's okay with you.

Is that okay?

THE WITNESS: Fine.

MR. BUSH: Thank you very much.

THE WITNESS: Sure.

MR. RUSSO: Thank you for your time.

THE WITNESS: You're welcome.

(Whereupon the deposition concluded at 10:20 a.m.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, the undersigned, declare under penalty of perjury that I have read the foregoing transcript, and I have made any corrections, additions or deletions that I was desirous of making; that the foregoing is a true and correct transcript of my testimony contained therein.

EXECUTED this _____ day of _____, 2002, at _____ (City), _____ (State).

_____

REPORTER'S CERTIFICATE

I, KARI ANNE LACHER, CSR No. 12167, Certified Shorthand Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this 19th day of August, 2002.

Kari Anne Lacher, CSR No. 12167

KARI ANNE LACHER, CSR. No. 12167

REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, KARI ANNE LACHER, CSR No. 12167, a Certified Shorthand reporter in the State of California, certify that the foregoing pages 1 through 17, constitute a true and correct copy of the original deposition of Karen Marie Seeber on August 15, 2002.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 19th day of August, 2002.

Kari Anne Lacher, CSR No. 12167

KARI ANNE LACHER, CSR No. 12167

EXHIBIT U

SUPERIOR COURT STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

- - -

CERTIFIED COPY

BALBOA ISLAND VILLAGE INN, INC., a California Corporation,

Plaintiffs,

vs.

No. 01CC13243

ANNE LEMEN AKA ANNE LEMON, an Individual; and DOES 1 through 10, Inclusive,

Defendants.

DEPOSITION OF

DAVID ROY SEEBER

BALBOA ISLAND, CALIFORNIA

AUGUST 15, 2002

ATKINSON-BAKER, ~~INC.~~
COURT REPORTERS
330 North Brand Boulevard, Suite 250
Glendale, California 91203
(818) 551-7300

REPORTED BY: KARI ANNE LACHER, CSR. NO. 12167

FILE NO.: 9CO5F55

SUPERIOR COURT STATE OF CALIFORNIA

COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

- - -

BALBOA ISLAND VILLAGE INN, INC., a California Corporation, Plaintiffs,	)	
vs.	)	No. 01CC13243
ANNE LEMEN AKA ANNE LEMON, an Individual; and DOES 1 through 10, Inclusive, Defendants.	)	

Deposition of DAVID ROY SEEBER, taken on behalf of Defendant, at 317 Marine Avenue, Balboa Island, California, commencing at 10:20 a.m., Thursday, August 15, 2002, before Kari Anne Lacher, CSR No. 12167.

A P P E A R A N C E S:

FOR PLAINTIFF:

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(714) 963-5486

ALSO PRESENT, Scott A. Zimmon, Karen Marie Seeber

I N D E X

WITNESS: DAVID ROY SEEBER

EXHIBITS:

(None.)

QUESTIONS WITNESS INSTRUCTED NOT TO ANSWER:

(None.)

INFORMATION TO BE SUPPLIED:

(None.)

DAVID ROY SEEBER,

having first been duly sworn, was

examined and testified as follows:

EXAMINATION

BY MR. BUSH:

Q Will you please state your full name for the record?

A David Roy Seeber.

Q You understand you're supposed to tell the truth here; right?

A Correct, yes.

Q I'd like to do the same thing with you as far as you can tell me your experience. Because I assume you've lived here on the Island for 10 years; correct?

A Four years.

Q Four years. All right. Well, then let's, if you could describe your experience on the Island over the last four years relative to the Village Inn.

A Nighttime, it was a pretty quiet neighborhood. But at night any time after 8:00 on weekends, it will go till 2:00 in the morning, screaming, fighting, throwing bottles. We pick up bottles, trash, pretty much every night.

In fact, most people party in front of our

house. That's where they do their drinking because it's cheaper. They can drink there. And then go into the bar afterwards. Or they can do their drugs or whatever they do. They also do it behind the house. We have witnessed the solicitation of prostitution, drugs. I mean, we find pot in our trash can or by the trash can. That's where they smoke, behind our house.

Also, I think basically what happens is the bands are out of town that they hire. And along come the --

MR. RUSSO: I'm going to object to the narrative form at this point.

BY MR. BUSH:

Q What about the bands?

A Well, the band, what happens is the band brings their own people in. And you have people from Hemet or Riverside fighting with people from West Covina around here.

Q Are you talking about band members or their followers?

A Their followers.

MR. RUSSO: Objection; move to strike for lack of foundation.

BY MR. BUSH:

Q As far as the -- have you ever had any

conversations with Aric Toll about your concerns about the Village Inn activities?

A Only one time when my wife was scared.

Q How long ago was that?

A A couple of months ago.

Q And was that conversation in person?

A Yes.

Q And what did you say to Aric Toll?

A We were just concerned about what happened last night. He kind of blew it off like he didn't know what we were talking about. He said he would look into it. We saw him later. And he said -- I said, "So what was up?" He said, "I don't know. I don't know what was up. I'm looking into it."

Q What is the incident you're talking about?

A Just the fighting and the screaming going on. But it's, it's pretty regular. It's a regular situation. If you would walk by -- you don't walk by at night. Or I do by myself. But there's always -- if women walk by, there's guys out there. There's remarks about the women. If there's guys that don't look like they're from around here, it's just back and forth.

And my concern is people -- if you're drinking in the bars, you should drink in the bar. But what it seems to appear that they have red cups that they can --

they're allowed to drink outside as long as they can put it in a cup. And I find it in my, in my side of my house or in my trash. And it clearly smells like alcohol. And you only see the red cups outside the Village Inn.

Q Have you heard the noise from people around the Village Inn, like, between midnight and 2:00 o'clock in the morning over weekends?

A Absolutely, yes.

Q What have you heard?

A Most of the time it's fighting and screaming, somebody's getting in a fight with somebody else over girls, over whatever.

Q Have you ever taken any photographs or video tapes or anything like that?

A No. We just pretty much stay inside the house. No need to go outside. If I go outside, then I'm leaving my family inside. And then anything can happen.

Q Have you ever called the police about that?

A Actually not. We pretty much wait it out. We did call one time when we had a drunk beating on the door. We thought he was going to come through the glass. So we called the police. They arrested him.

Q In your mind, has there been any, any change in activity over the last year, year and a half as opposed to the first couple of years you've lived here on the

Island?

A Absolutely.

Q Can you describe that change for me?

A Well, what happens, it used to be a bar that was pretty much shut down by 10:00 o'clock. You had your locals who goes down and have their drinks. And now you're having -- it seems like there's a younger crowd. And I think they're catering. Because they're bringing the, the live music in, more of a jazz and a rock-n-roll type of atmosphere. And what happens is, they're just yelling and screaming outside and a lot of fights. And I'm surprised on the lack of police. You'll never find a cop around here at night, doesn't matter how long they scream. You can walk outside and see people fighting, and you don't see any police. Somebody is turning their head.

Q Thank you very much. Is there anything else that you would like to add?

A The only thing I see is just the drugs and prostitution.

Q And is there anything other than the marijuana?

A Just drugs in general. I mean, if I can find a joint or if I can find, you know, vials of cocaine behind my house, somebody is doing it.

Q Did you find vials of cocaine?

A I find empty caps that you could see it's all white powder.

Q All right. Thank you very much.

EXAMINATION

BY MR. RUSSO:

Q Mr. Seeber, when you moved to -- is it 122 Onyx?

A Yes.

Q You knew you were moving next to a bar; correct?

A Yes.

Q Did you know Mr. Wagner when he owned the Village Inn?

A Lance?

Q Yes.

A Yes.

Q Isn't it true that the hours of operation are the same as when Mr. Wagner owned the Village Inn?

A Mr. Wagner didn't have the same clientele. So I couldn't tell you that. It was a different kind of music.

Q Do you know what the hours were when Mr. Wagner --

A I do not.

Q I apologize. I have to finish asking my question before you answer. Do you know what the hours of operation were when Mr. Wagner owned the Village Inn?

A No.

Q Do you know whether or not there has been actually any change in the bands between the time Mr. Wagner owned the Village Inn and today?

A I believe so.

Q What changes in the bands is it that you are aware of?

A I think that -- I don't recall hearing drums and electric guitars. I recall hearing acoustical guitars. And when Lance was there, I also remember there was no dancing inside the place.

Q Mr. Seeber, would it surprise you to find out that the bands that are there today are the exact same bands as when Mr. Wagner owned the Village Inn?

A It wouldn't surprise me.

Q Mr. Seeber, are you aware of there being any of these red plastic cups actually inside the building?

THE REPORTER: I need you to speak up because these people are talking behind me.

MR. RUSSO: Sure.

THE REPORTER: Thank you.

BY MR. RUSSO:

Q Are you aware of there being an availability of any plastic cups inside the Village Inn?

A No.

Q So you don't know whether or not these plastic cups are actually provided by the Village Inn; correct?

A No.

Q Are you aware of Ms. Lemen, in the past, having placed plastic cups in front of the Village Inn and photographing it?

A No.

Q You're not aware of, or you don't know?

A I'm not aware of it.

Q Mr. Seeber, have you been with Ms. Lemen when she's gone on her door-to-door campaigns against the Village Inn to see what she had to say to --

A No, sir.

Q -- various residents at the Village Inn?

A No, sir.

Q Mr. Seeber, have you been present in front of the Village Inn when Ms. Lemen has been taking photographs of customers and employees of the Village Inn?

A No.

Q Mr. Seeber, have you been in front of the Village Inn when Ms. Lemen has been taking videos of the customers and employees of the Village Inn?

A Once.

Q Do you recall when that was?

A I do not.

Q Do you recall what year that was?

A It was this summer.

Q What was it you recall Ms. Lemen was videoing at that time?

A I don't know what she was videoing.

Q Do you recall what the events were in front of you at the time?

A Fighting, fighting in front of the Village Inn.

Q Do you recall what time of night that was at?

A No, I don't.

Q Do you recall what time of year that was?

A Year?

Q What time of the year was it, was it summer, winter?

A Summer.

Q So that would be this summer?

A Yes.

Q Mr. Seeber, I take it then that you're not aware about what Ms. Lemen has been telling people in the community or the customers of the Village Inn about the Village Inn; correct?

A I'm only aware of what she's told us.

Q Thank you.

MR. RUSSO: No further questions.

FURTHER EXAMINATION

BY MR. BUSH:

Q What has Anne Lemen told you?

A She just tells me we need to do something about people urinating on our houses, screaming and fighting, drugs and solicitation of prostitution, of damage to her house. I witnessed her taking a picture of her broken window when people were fighting. And they just broke her window out. And just, basically, sitting out front, partying before they go into the bar and while they are waiting for taxis. That's -- there's people running around between the stop signs right there and chasing each other, screaming as loud as they possibly can.

Q Would you say that Anne Lemen is passionate as far as her claims about the Village Inn?

A I think if it all stopped at 10:00 o'clock, or if there was some kind of police force that drove down the street, made some type of a presence, and it stopped at 10:00 o'clock so our kids could go to sleep, and you feel pretty safe, that's all she's asking.

Q But do you think she's passionate?

A Yes, absolutely.

Q And when she's talked to you about the Village Inn and her concerns, do you think she's harassing you?

MR. RUSSO: Objection; leading.

MR. BUSH: It's your case, half the center of your case.

BY MR. BUSH:

Q Do you think she's harassing you when she's talking to you about the Village Inn?

MR. RUSSO: It's different when it is cross examination as opposed to leading arguments.

BY MR. BUSH:

Q Go ahead.

A I think she's just concerned, as I'm concerned, that we're the only ones with kids that close to it. Everyone else goes there and has a drink. They hang out there. But they don't hang out till 2:00 in the morning. They're not the problem.

Q When Anne's talking to you, do you feel harassed that she's talking about it?

A Not at all, not at all.

Q Thank you.

MR. BUSH: Anything, Scott?

FURTHER EXAMINATION

BY MR. RUSSO:

Q Mr. Seeber, do you know Manjit Bain?

A Yes, sir.

THE REPORTER: Who?

MR. BUSH: Manjit Bain.

MR. RUSSO: Manjit, M-a-n-j-i-t, new word, Bain, B-a-i-n.

BY MR. RUSSO:

Q Is he a friend of yours?

A He's my next door neighbor.

Q Okay. Do you socialize with him?

A Yes.

Q Do you believe he's a truthful person?

A I would assume so.

Q Do you know him to be a drinker?

A I haven't seen him drink.

Q Thank you.

MR. RUSSO: No further questions.

MR. BUSH: No questions. Same stipulation?

MR. RUSSO: Sure.

(Whereupon the deposition concluded at 10:35 a.m.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF ORANGE)

I, the undersigned, declare under penalty of perjury that I have read the foregoing transcript, and I have made any corrections, additions or deletions that I was desirous of making; that the foregoing is a true and correct transcript of my testimony contained therein.

EXECUTED this _____ day of _____, 2002, at _____ (City), _____ (State).

_____

REPORTER'S CERTIFICATE

I, KARI ANNE LACHER, CSR No. 12167, Certified Shorthand Reporter, certify;

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;

That the testimony of the witness, the questions propounded, and all objections and statements made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

That the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties, nor financially interested in the action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated this 19th day of August, 2002.

Kari Anne Lacher, CSR No. 12167

KARI ANNE LACHER, CSR. No. 12167

REPORTER'S CERTIFICATION OF CERTIFIED COPY

I, KARI ANNE LACHER, CSR No. 12167, a Certified Shorthand reporter in the State of California, certify that the foregoing pages 1 through 18, constitute a true and correct copy of the original deposition of David Roy Seeber on August 15, 2002.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 19th day of August, 2002.

Kari Anne Lacher, CSR No. 12167

KARI ANNE LACHER, CSR No. 12167