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SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

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COLETTE TURNER and a class of	)	
similarly situated individuals,	)	
	)	No. 06-2-36980-7 SEA
PLAINTIFFS,	)	
vs,	)	ORDER
CITY OF SEATTLE,	)	
DEFENDANT.	)	

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THIS MATTER comes before the court on Defendant City of Seattle's Motion for Summary Judgment and Plaintiff's Motion for Partial Summary Judgment. Plaintiff is represented by attorney David Stobaugh and the City of Seattle is represented by Assistant City Attorney Rebecca Boatright. The court has considered the following in connection with the submitted motions:

- (1) City of Seattle's Motion for Summary Judgment;
- (2) Plaintiff's Response to City of Seattle's Motion for Summary Judgment with Declaration of DeWelle Ellsworth;
- (3) Plaintiff's Motion for Partial Summary Judgment with attachments;
- (4) City of Seattle's Reply to Plaintiff's Response to City's Motion for Summary Judgment;

ORDER

Judge Harry J. McCarthy  
King County Superior Court  
516 Third Avenue  
Seattle, WA 98104  
206-296-9205

- 1 (5) City of Seattle's Response to Plaintiff's Motion for Partial Summary Judgment;
- 2 (6) Plaintiff's Reply on Motion for Partial Summary Judgment;
- 3 (7) City's Motion to Strike Portions of the Declaration of Colette Turner and
- 4 appendices thereto;
- 5 (8) City's Motion to Strike Portions of the Declaration of DeWelle Ellsworth;
- 6 (9) Plaintiff's Response to City's Motion to Strike Portions of the Declaration of
- 7 Colette Turner and appendices thereto;
- 8 (10) Plaintiff's Response to City's Motion to Strike Portions of the Declaration of
- 9 DeWelle Ellsworth;
- 10 (11) Second Declaration of Wayne Wentz;
- 11 (12) Second Declaration of Motiryo Keambiroiro;
- 12 (13) Second Declaration of Rebecca Boatright with attachments and
- 13 (14) Oral argument.

14 I

15 BACKGROUND

16  
17 On Friday, December 31, 2004, Colette Turner drove to Seattle to do some shopping in  
18 the International District. She chose that day because she knew that parking would be free since  
19 it was a holiday. Normally, January 1, 2005 is considered the holiday, but because that date fell  
20 on a Saturday, most employers, including Turner's, gave their employees the Friday before,  
21 December 31, as the day off. On previous visits to the International District, she had parked at  
22 the location on Jackson Street and was familiar with the meter-payment requirements. Because  
23 she understood December 31 was considered the holiday Ms. Turner did not bother to pay the  
24 meter. When she returned to her car a few hours later, there was a parking ticket on the  
25 windshield. The parking ticket accused her of failing to pay the meter in violation of Seattle  
26 Municipal Code (SMC) 11.76.015. She knew that she was not required to pay the meter on a  
27 holiday, and she resolved to contest the ticket.

28  
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1 Ms. Turner inadvertently did not request a contested hearing on the parking ticket within  
2 the 15 day period that was stated on the ticket and eventually paid her fine. Similarly, a number  
3 of other people were also ticketed for overtime meter parking violations and they too paid their  
4 fines. As a result, Turner and those others ticketed had default judgments entered against them.

5 On November 21, 2006, Turner filed a complaint as a class action against the City.  
6 Turner requests a declaratory judgment that the City had impermissibly issued parking  
7 violations on days that were legal holidays as defined in SMC 11.14.277. The City has moved  
8 for summary judgment and Turner has moved for partial summary judgment. At a hearing of  
9 March 30<sup>th</sup>, 2007, this court certified a class action suit pursuant to CR 23 of the numerous  
10 individuals, like Turner, who were assessed parking fines by the City of Seattle on alleged  
11 holidays.

12 II

13 DISCUSSION

14 A court may grant a motion for summary judgment only if the pleadings, affidavits,  
15 depositions and admissions on file demonstrate that there is no genuine issue as to any material  
16 fact, and that the moving party is entitled to judgment as a matter of law. CR 56(c). The court  
17 must consider all facts submitted and all reasonable inferences from the facts in the light most  
18 favorable to the nonmoving party. Wilson v. Steinbach, 98 Wash. 2d 434, 437, 656 P.2d 1030  
19 (1982). The motion should be granted only if, from all the evidence, reasonable persons could  
20 reach but one conclusion. Id.

21  
22 A. JURISDICTION

23 Does this court have jurisdiction to determine whether plaintiffs  
24 were unlawfully issued citations by the City of Seattle on days  
25 that were legal holidays?

26 The City challenges this court's jurisdiction to hear this matter when default judgments  
27 have been entered against Turner and Class members when they did not contest their citations in  
28 Seattle Municipal Court and paid their fines in full. A superior court has "original jurisdiction"  
29 in all cases at law which involve a municipal fine. WASH. CONST. Art. IV, § 6. In addition, a

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1 superior court has “original jurisdiction” in all cases in equity, and in all cases at law which  
2 involve the legality of any municipal fine. RCW 2.08.010. In contrast, a municipal court has  
3 “exclusive jurisdiction” of matters arising from ordinances of the city. RCW 3.46.030. The  
4 municipal court shall also have jurisdiction to try violations of all city ordinances. RCW  
5 35.20.030. If a court has “exclusive original jurisdiction,” an action must be filed in that court  
6 and all that remains for any other court is appellate jurisdiction. City of Spokane v. County of  
7 Spokane, 158 Wash. 2d 661, 682, 146 P.3d 893 (2006).

8 Cases involving infractions that are before a municipal court are governed by the  
9 Infraction Rules for Courts of Limited Jurisdiction. IRLJ 1.1. A person who has been served  
10 with a notice of infraction must respond to the notice within 15 days. IRLJ 2.4; SMC 11.31.050.  
11 The person may choose to pay the penalty, in which case the municipal court will enter a  
12 judgment that the defendant has committed the infraction. Id. Alternatively, a person may  
13 request either a hearing or submit a written statement that either contests the infraction or  
14 provides an explanation of mitigating circumstances. After a hearing, a timely appeal from the  
15 municipal court’s “determination or order shall be to the superior court.” RCW 46.63.090(5).  
16 No other orders or judgments are appealable. Id. A notice of appeal must be filed in the court of  
17 limited jurisdiction. RALJ 2.4. This notice must be filed within 30 days of the final decision of  
18 the court of limited jurisdiction. RALJ 2.5.

19 There are several instances when a superior court may execute its original and appellate  
20 jurisdiction. When claims allege “system-wide violations of...statutory requirements” and  
21 “declaratory relief is based on...a state statute,” the “claims do not arise under a municipal  
22 ordinance and, therefore, are not within the exclusive jurisdiction of the Seattle Municipal  
23 Court.” Orwick v. City of Seattle. 103 Wash. 2d 249, 252, 692 P.2d 793 (1984). In such a case,  
24 a superior court has jurisdiction to hear the claims and grant equitable relief. However, the  
25 circumstances under which a court will exercise its equitable powers are limited, and equitable  
26 relief is available only if there is no adequate legal remedy. Id. When a municipal court  
27 dismisses a claim due to its finding that an ordinance is unconstitutional, a party may seek a  
28 declaratory judgment in superior court. Kennedy v. City of Seattle, 94 Wash. 2d 376, 378, 617

29 ORDER

1 P.2d 713 (1980). The Supreme Court noted that “the relitigation of an important public question  
2 of law...should not be foreclosed by collateral estoppel.” Id.

3 When there is “nothing more at stake than a nominal traffic fine,” the determination of a  
4 traffic infraction by a municipal court after a contested hearing “should not have a collateral  
5 estoppel effect in [a] subsequent civil action.” Hadley v. Maxwell, 144 Wash.2d 306, 308, 27  
6 P.3d 600 (2001). The Supreme Court reasoned that the nominal fine was too “little incentive to  
7 vigorously litigate the issue.” Id. Further, the Supreme Court explained that collateral estoppel  
8 “must not work an injustice” and “is not a technical defense to prevent a fair and full hearing on  
9 the merits.” Id. at 311-12.

10 This Court does not have appellate jurisdiction in this case. Although the Class received  
11 a final judgment from the Seattle Municipal Court, the record does not indicate that there were  
12 contested hearings and the record does not indicate that there were notices of appeal filed with  
13 the Seattle Municipal Court. Thus, the failure to file an appeal from a judgment against them in  
14 the Municipal Court deprives this court of appellate jurisdiction. The City presents a persuasive  
15 argument that final judgments following fee payments are not appealable to this Court because  
16 of the waiver of a contested hearing.

17 However, this Court does have original jurisdiction over the narrow issue regarding  
18 citations issued on days that are alleged to be legal holidays because this issue relates to the  
19 legality of a municipal fee. In this case, the City’s authority for its parking restrictions and  
20 limitations derives from a state statute, RCW 46.61.570(2), which states that “[p]arking or  
21 standing shall be permitted...at all other places except a time limit may be imposed or parking  
22 restricted at other places but such limitation and restriction shall be by city ordinance.” The City  
23 ordinance under which Turner and the Class were cited for violations is Subtitle I of Title 11 of  
24 Seattle’s Municipal Code. If a city’s parking enforcement is inconsistent with a city ordinance  
25 derived through state law, this court would have original jurisdiction to hear such a case.

26 Moreover, under the Kennedy analysis, although this case may not involve a  
27 constitutional issue, it does involve an important question of law. The importance of this legal  
28 issue was demonstrated by the Seattle City Council in 2006 when the Council chose to rewrite  
29 Title 11 to clarify the definition of legal holidays. [App. to Pl.’s Mot. for S.J.-36.] On

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1 September 18, 2006, the City Council passed Ordinance 122243 addressing the conflict in the  
2 City's parking meter enforcement of citations on legal holidays. The amended ordinance was  
3 subsequent to Turner's dismissal of her initial lawsuit challenging the City's meter enforcement  
4 on holidays. Additionally, under the Hadley analysis, although there were no contested  
5 hearings, this case involved nominal traffic fines. The costs of attending a hearing in terms of  
6 lost income could easily outweigh the possible benefit of having a relatively inexpensive  
7 infraction dismissed. Further, the average citizen would not ordinarily be aware that there was  
8 an issue regarding the actual legal holiday dates.

9 Thus, many citizens might reasonably assume that contesting such a citation at a  
10 contested hearing would not be worth the trouble. The 15 day required response time also may  
11 not be sufficient time for a citizen to make a determination of what may or may not be a legal  
12 holiday. It would not be in the interest of justice for this Court to hold that a citizen's failure to  
13 choose to pay a nominal fine within a 15 day period would disqualify that citizen from later  
14 appealing the default judgment issued solely due to payment of the fine, particularly when a  
15 matter of public importance is presented. Thus, this case is one of equity and of law, RCW  
16 2.08.010, and this court may hear it in order to determine the legality of the municipal fine that  
17 turns on the question of whether the citations were permissible on legal holidays.

18 Turner and the Class request a declaratory judgment that the legal holidays defined in  
19 SMC 11.14.277 were days when the city was not authorized to collect fees for parking  
20 violations as defined in Subtitle I of Title 11 of Seattle's Municipal Code. A declaratory  
21 judgment must be based on a justiciable controversy which consists of "(1) ... an actual, present  
22 and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant,  
23 hypothetical, speculative, or moot disagreement, (2) between parties having genuine and  
24 opposing interests, (3) which involves interests that must be direct and substantial, rather than  
25 potential, theoretical, abstract or academic, and (4) a judicial determination which will be final  
26 and conclusive." Walker v. Munro, 124 Wash. 2d 402, 411, 879 P.2d 920 (1994).

27 In this case, the City's argument that there is no justiciable controversy is not persuasive.  
28 There is clear evidence that an actual dispute existed between plaintiffs and the City of Seattle.  
29 The dispute was not potential nor academic. The legality of the City's action is an existing

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1 important question of law, and it is based on a final decision that was made by the municipal  
2 court when the Class paid their fines. Turner's claim is therefore justiciable.

3  
4 B. LACHES & WAIVER.

5 The City asserts that the Class is barred from bringing this case due to laches and waiver.  
6 Laches bars an action when there is an unreasonable delay in commencing an action. Carrillo v.  
7 City of Ocean Shores, 122 Wn. App. 592, 609, 94 P.3d 961 (2004). Waiver is the intentional  
8 and voluntary relinquishment of a known right. *Id.* at 612. The City's argument that laches and  
9 waiver should bar this suit is essentially another way of stating that this Court does not possess  
10 appellate jurisdiction. However, since this Court does possess original jurisdiction, the case is  
11 brought within the three-year statute of limitations period and there is no unreasonable delay.  
12 Further, the Class's payment of nominal fines within a mandatory 15 day period did not waive  
13 the right to question the important question concerning the legality of the City's determination  
14 of legal holidays. Hadley v Maxwell, *supra*.

15 III

16 THE CITY OF SEATTLE UNLAWFULLY CITED PLAINTIFFS  
17 ON DAYS THAT WERE LEGAL HOLIDAYS ACCORDING TO  
18 THE CITY TRAFFIC CODE.

19 Jurisdiction having been established, the issue before this court is whether the City of  
20 Seattle unlawfully cited Turner and the Class for overtime meter parking on a holiday. While  
21 the State of Washington defines prohibited parking in its statutes, the State leaves parking  
22 restrictions and limitations to municipal ordinances. RCW 44.61.570(2) The statute states:  
23 "Parking or standing shall be permitted...at all other places except a time limit may be imposed  
24 or parking restricted at other places but such limitation and restriction shall be by city  
25 ordinance." *Id.* When a statute specifies that a county establishes its authority to collect fees by a  
26 local ordinance, then if a filing fee is not established by a county ordinance, then "the fee has not  
27 been prescribed." Holt v. Gambill, 123 Wn. App. 685, 690, 98 P.3d 1254 (2004). Further, a  
28 county clerk does not have implied authority "to establish a fee sua sponte" unless an ordinance  
29 sets out a fee or authorizes the clerk to set a fee. *Id.* at 691.

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1 This case requires construction of the language of an ordinance. While the Supreme  
2 Court has not spoken directly to ordinances, the Court has provided guidance for construing  
3 statutes. See Qwest Corp. v. City of Kent, 157 Wash. 2d 545, 139 P.3d 1091 (2006). When  
4 interpreting statutes, the goal is to fulfill the intent of the legislature. Id. at 551. In determining  
5 the intent of the legislature, the language must be evaluated in the context of the entire statute.  
6 Further, interpretations that are strained, unlikely or unrealistic should be avoided. When the  
7 language of a statute is unambiguous, the legislative intent is apparent. Id. at 553. Further, when  
8 the legislature omits language from a statute, whether intentionally or inadvertently, a court shall  
9 not read into the statute the language it believes may have been omitted. Id.

10 In this case, the City of Seattle has established its ordinances for parking limitations and  
11 restrictions in Title 11, Subtitle I of Seattle's Municipal Code. The City informs its citizens of  
12 its restrictions and limitations through traffic control devices. See RCW 46.61.050(3). Traffic  
13 control devices include "signs, signals, markings and devices." RCW 46.04.611. The City of  
14 Seattle authorizes the Traffic Engineer to place signs and markings. SMC 11.16.300(D). The  
15 Traffic Engineer must "display" on parking payment devices the "days and hours when the  
16 requirement to make payment shall apply." Id. A reasonable interpretation of the Traffic  
17 Engineer's authorization is that signs are placed on streets to indicate to citizens which parts of a  
18 road are subject to an ordinance. This interpretation implies that signs do not create rules; rather,  
19 the signs merely inform citizens what parking activity is regulated by ordinance at a particular  
20 spot in the road. It follows logically that if a sign states a rule that is not in conformance with an  
21 ordinance, then the ordinance must control.

22 Seattle Municipal Code S 11.14.277 provides:

23 The following are legal holidays: Sunday; the first day of January, New Year's  
24 Day; the third Monday of January, the anniversary of the birth of Martin Luther King,  
25 Jr.; the third Monday of February, President's Day; the last Monday of May, Memorial  
26 Day; the fourth day of July, the anniversary of the Declaration of Independence; the first  
27 Monday in September, Labor Day; the eleventh day of November, Veterans Day; the  
28 fourth Thursday of November, Thanksgiving Day; the day immediately following  
29 Thanksgiving Day; and the twenty-fifth day of December, Christmas Day.

Whenever any legal holiday, other than Sunday, falls on Sunday, the following Monday  
shall be the legal holiday.

ORDER



1 Whenever any legal holiday falls upon a Saturday, the preceding Friday shall be the legal  
2 holiday. (emphasis added).

3 According to the City, the brief text in the parking meter bubble provides:

4 METER ENFORCED  
5 9AM TO 3PM MON-FRI  
6 8 AM TO 6PM SAT

7 EXCEPT Sun, Jan 1, 3<sup>rd</sup> Mon in Jan,  
8 3<sup>rd</sup> Mon in Feb, Last Mon in May,  
9 July 4, Labor Day, Nov 11, Thanksgiving  
10 Day, Dec 25

11 The holidays in the bubble's text and the holidays in SMC 11.14.277 are the same  
12 holidays with the exception of the "day immediately following Thanksgiving Day" which is not  
13 in the bubble's text. Otherwise, the holidays are the same. According to the City, the days  
14 listed in the parking meter's bubble such as "Jan 1" are the holidays, regardless of what day of  
15 the week it falls, but it has provided no legal or factual explanation why the bubble's date, "Jan  
16 1" for example, would not be interpreted in accordance with SMC11.14.277 when it falls on a  
17 Saturday, making Friday, December 31 (the day on which Turner was ticketed) the observed  
18 holiday or when it falls on a Sunday, making Monday, January 2<sup>nd</sup>, the observed holiday.

19 Similar to the Holt analysis, the Seattle Municipal Code does not explicitly state that the  
20 Traffic Engineer has the authority to establish the days and hours when payment must be made.  
21 See SMC 11.16.300(D). With respect to "hours," there is nothing in the code that guides a  
22 Traffic Engineer to define the hours when a regulation applies to a street. Thus, it appears that  
23 the Traffic Engineer is free to post hours based on traffic needs. However, the code does not  
24 authorize the Traffic Engineer to establish which "days" when payments must be made. Only  
25 city ordinances can determine "days" of payment.

26 Seattle's Municipal Code, prior to the changes in 2006, explicitly defined "legal  
27 holidays" in Subtitle I of Section 11. SMC 11.14.277. The definition of legal holidays has  
28 meaning "wherever used in this subtitle." SMC 11.14.005. Using the Qwest analysis, the City  
29 argues that if the term "legal holiday" or "holiday" is not used in a section of the code, then the  
term was purposefully omitted by the city council and should not be added in. However, the  
City's argument does not take into account the Supreme Court's admonition to examine the

ORDER

1 entirety of a statutory scheme or in this case, an entire subtitle. When looking at the subtitle as a  
2 whole, then the concept of legal holidays is included in Subtitle I of Title 11 in the definition  
3 section. Legal holidays are not omitted.

4 While the section on parking devices omits an exception for holidays, the Traffic  
5 Engineer, Wayne Wentz (“Wentz”), read into the ordinance that holidays apply. [See Second  
6 Decl. of Wentz.] Wentz states in his declaration that “[d]ays and dates on which parking  
7 restrictions apply vary depending on the parking management tool utilized...” [Id.-2.] The City  
8 in its brief [Def.’s Mot. for S.J.-1] and Wentz in his declaration [Id.-3] describe these days as  
9 “free days.” Yet, the concept of “free days” are not described and are omitted from the  
10 ordinance. Wentz speculated that “free days” were created by a “deliberative process  
11 undertaken by the Traffic Engineer”, but the documentation for that process could not be found  
12 by Wentz. [Id.-3.] Wentz justifies the determination of free days based on the fact that certain  
13 holidays are busy shopping days. [Id.-3.] Yet, while the concept of a free day might be beneficial  
14 to the city, the concept of a free day does not appear to be authorized in the City’s ordinance.

15 Indeed, the City’s own inconsistent enforcement practices during the relevant time  
16 period of this action indicate that Subtitle I of Title 11 of the Seattle Municipal Code is observed  
17 in part and disregarded in part depending on which day of the week it is. The City’s records  
18 show that when a holiday fell on a Sunday, the City complied with SMC 11.14.277, treated the  
19 following Monday as a holiday and did not ticket overtime meter parking. However, as in  
20 Turner’s and the Class’s situation, when the holiday fell on a Saturday, such as January 1, 2005,  
21 the City did not treat the Friday, December 31, as a holiday, as the city Council intended, and  
22 ticketed Turner and the Class for overtime meter parking. The City Council’s recognition of the  
23 inconsistency in meter holiday enforcement led to its amendment of the ordinance in September  
24 2006. That action was an acknowledgement by the City Council, and by the City, that a serious  
25 problem existed with how the City had been interpreting “legal holidays” in its parking meter  
26 enforcement.

27 Turner further argues that the record shows that the Seattle City Council clearly intended  
28 parking meters to be subject to the legal holidays defined in Subtitle I of Title 11. Plaintiff  
29 points to the year 2003 when the Council removed Lincoln’s birthday from the list of legal

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1 holidays in order to generate revenue lawfully. [Pl.'s Mot. for S.J.-9.] Similarly, when Martin  
2 Luther King Day was added as a legal holiday, the fiscal explanation indicated that there would  
3 be lost meter revenues. [App. to Pl.'s Mot. for S.J.-13.] Further, the Council in 2006 appeared  
4 surprised that the City enforced meter payments the day after Thanksgiving, even though this  
5 day was a legal holiday. [App. to Pl.'s Mot. for S.J.-36.] In fact, one council member questioned  
6 whether the City had the "authority to collect." [Id.] The City asserts that RCW 46.61.050 (3)  
7 requires the court to presume that the holidays posted in the parking meter informational bubble  
8 were by the lawful authority of the Traffic Engineer. Whatever legal effect such a presumption  
9 may have, it certainly cannot mean that a city administrative officer has the authority to post a  
10 list of holidays on parking meters that is at variance with the legal holidays published in SMC  
11 11.14.277.

12 Based on this record, it is apparent that the City exceeded its authority by citing this class  
13 of plaintiffs on December 31, 2004 and on other legal holidays in violation of the City's  
14 ordinance. A reading of the parking ordinance as a whole provides no indication that there are  
15 more than one set of legal holidays in Subtitle I of Title 11. The Traffic Engineer reading of  
16 holidays into the parking meter ordinance created a separate set of holidays than were defined in  
17 the ordinance. Finally, the legislative history indicates that the City Council itself expected its  
18 definition of legal holidays to be the same days that the Traffic Engineer posts on its signs.

19 It is further apparent that the City has selectively interpreted and enforced the traffic  
20 code's section on paid parking in such a way as to defeat the City Council's clear directive to  
21 exempt paid parking on "legal holidays" The City Council has clearly expressed itself in SMC  
22 11.14. 277 on this subject. Reading the Traffic Code as a whole compels the conclusion that  
23 creating two sets of holidays, one for payment and one for time limit, makes no logical sense  
24 and is a strained reading of the Code. It is manifestly evident that the City Council intended that  
25 meter revenue cannot be collected on the legal holidays. Any attempt to do so is in violation of  
26 the ordinance and RCW 44.61.570.

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29 ORDER

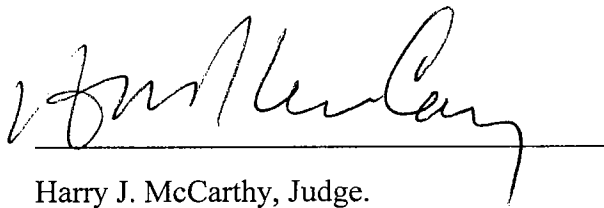
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IV

CONCLUSION

The City's Motion for Summary Judgment is DENIED. Plaintiff's Motion for Partial Summary Judgment is GRANTED.

Dated this 6 day of June 2007.

  
\_\_\_\_\_  
Harry J. McCarthy, Judge.

ORDER