

**In the Multnomah County Circuit Court
State of Oregon**

City of Portland
Plaintiff

versus

Brian Carr
Defendant

Parking Unit Citation U019204

Motion for
Summary Judgement

Based on the Memorandum of Law and Affidavit attached herewith and the entire case on file in this matter, the defendant, Brian Carr, *pro se*, hereby seeks the following relief.

1. Dismissing the parking citation in this matter,
2. Granting the defendant damages in the amount of \$131,
3. Granting the defendant costs in defending this matter, and
4. In the event that this court is not able to provide the relief sought, removing this matter to another court which can provide the relief sought.

As well as such other relief as the court deems reasonable and justified.

Respectfully submitted, August 18, 2008 (Portland, OR).

s/ Brian P. Carr
Signature of Defendant
Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
503-545-8357

**In the Multnomah County Circuit Court
State of Oregon**

City of Portland
Plaintiff

versus

Brian Carr
Defendant

Parking Unit Citation U019204

Defendant's Affidavit
In Support of
Motion for
Summary Judgement

I, Brian Carr, am the defendant in this matter, have knowledge of the facts of this matter, and make the following statements under oath and penalty of perjury.

- 1 1. On April 7, 2008 my car, a 1991 Toyota Camry with Washington plates 668-PXQ, was parked
2 at the Lloyd's Shopping Center in Portland, OR on the 14th Street ramp and was stolen from
3 that location. On that same date I reported the theft to Officer Jack Blazer (#37413) of the
4 Portland Police Bureau in case #08-032989.

- 6 2. On April 24, 2008, I received a call from the Portland Police Bureau that my car had been
7 recovered and was at Sergeant's Towing Lot in Portland, OR. There was a charge of \$131 to
8 retrieve my car which I paid to recover my car. I had no control of or access to my vehicle
9 during the intervening period.

- 11 3. On recovering my car, there was a fluorescent green 'Abandoned Vehicle' warning stuck on
12 the driver's window. The warning had apparently been rained on such that the hand written
13 date was illegible. Further, this warning was large (8.5" by 11") and had to be removed to
14 safely drive the vehicle. The warning was destroyed on removal.

- 1 4. In addition, parking violation citation U019204 by the City of Portland was under the
2 windshield wipers of my car for an abandoned auto violation and listing a fee of \$280. This
3 notice had also apparently been rained on and the written entries were substantially illegible. I
4 was not able to identify the identity of the officer issuing the citation nor the department of the
5 City of Portland which may have authorized this officer to issue parking violation citations.
6 The date and location of the citation also was unclear.
- 8 5. On or about April 25, 2008, I called the number on said notice, 503-988-3776, and learned
9 that the court parking unit had no record of the parking violation but that these notices
10 occasionally take a few days to be processed and that I should call back in a week or so.
- 12 6. On or about May 9, 2008, I again called the court parking unit and learned that the notice was
13 pending and that if the vehicle was stolen the matter could be dismissed. I also learned the
14 identity of the officer, Kathy Saunders, who wrote the violation though I was not told the
15 department of the City of Portland which she worked for nor any contact information for the
16 City of Portland or that department.
- 18 7. On May 23, 2008, I filed an Answer, Affirmative Defense, and Complaint with this court as
19 well as a Declaration and Interrogatories seeking copies of the police report of the stolen
20 vehicle as well as any records of the warning notice and parking violation notice (as the copies
21 I had were not legible).
- 23 8. On June 12, 2008, I served those papers of May 23, 2008 on the City of Portland and filed the
24 Acceptance of Service document with this court.
- 26 9. Shortly after I served the papers on the City of Portland I received a phone call from an
27 attorney with the City of Portland. He informed me that Officer Saunders was not from the
28 Portland Police Bureau but from some other department with which I was not familiar. As I
29 did not take notes during the phone call I do not remember the name of the department or of
30 the attorney I spoke with and there have been no other contacts from the City of Portland with
31 respect to this matter since that date.

1 supporting the very entity which knows that the citation is unfounded but it still pursues its
2 prosecution in pursuit of unjustifiable fines while collecting fees all along the way.

4 13. On August 7, 2008 I applied to Oregon Federal District Court in case Civil No. 3:08-CV-398-
5 HA for an order to prevent this court from entering a judgement against me in this matter until
6 I have:

- 7 a) been presented with the evidence against me,
b) a forum where I can present evidence in my defense, and
c) a hearing before an impartial authority
as well as other relief which included the removal of this matter from this court in the event
that this court was not able to process the matter with all the requirements of due process.

I certify under penalty of perjury under the laws of the states of Oregon and Washington and the
United States that the foregoing is true and correct.

Respectfully submitted, August 18, 2008 (Portland, OR).

s/ Brian P. Carr
Signature of defendant
Brian Carr
11301 NE 7th St., Apt J5
Vancouver, WA 98684
503-545-8357

SUBSCRIBED AND SWORN TO before me this _____ day of August, 2008, by
Brian P. Carr.

Notary Public For Oregon
My commission expires:
Commission No:

**In the Multnomah County Circuit Court
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Defendant's
Memorandum of Law
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- 1 1. The [Fourteenth Amendment](#) of the U.S. Constitution requires that Mr. Carr be provided with
2 due process with respect to life, liberty and property. While there are no absolute standards
3 for what is required for due process, it certainly requires '*the opportunity to be heard "at a*
4 *meaningful time and in a meaningful manner."* [Armstrong v. Manzo, 380 U. S. 545](#), 380 U. S.
5 552 (1965).¹ [Mathews v. Eldridge, 424 U.S. 319](#) (1976). Seizing Mr. Carr's vehicle, entering a
6 judgment to that effect, or requiring a payment of \$560 (a non-trivial sum even if refundable)
7 all are property considerations which require due process.
- 9 2. Mr. Carr has not been provided with the evidence against him, in particular the information to
10 determine if the person issuing the citation was authorized to issue the citation. While
11 Supplementary Local Rules (SLR) for Multnomah County Circuit Court [16A.196](#) allows
12 agencies to file citations electronically with the court in accordance with [ORS 153.770](#), it does
13 not provide for service of identifying information for the person authorized to issue the
14 citation as required [ORS 153.770](#). There is no provision for Mr. Carr to challenge the
15 individual issuing the citation as the citation he received does not provide information
16 required in [ORS 153.770](#).

1 copies of all documents provided to this court as well as the federal district court. It is beyond
2 question that the City of Portland knows that there is no basis for pursuing the prosecution of
3 this matter. The City of Portland could easily have resolved this matter by providing a report
4 as permitted by [SLR 17.025](#) (I) or simply providing the police report which Mr. Carr
5 requested. The failure of the City of Portland to respond for more than two months after
6 service warrants sanctions for prosecutorial misconduct which would include as a minimum
7 the costs which Mr. Carr has incurred in defending against this unfounded prosecution.

9 7. It is well understood that a significant percentage of vehicles which appear to be abandoned
10 are actually stolen vehicles which have been abandoned by the thieves, but which are
11 recovered property for their proper owners when they are discovered. There is no explanation
12 by the City of Portland for why there was no check of whether Mr. Carr's vehicle was stolen
13 before it was towed. Further, given the City of Portland's lack of responsiveness in this
14 matter, this court should grant the relief sought of damages in the amount of \$131 for the
15 unnecessary tow which the City of Portland negligently initiated.

Respectfully submitted, August 18, 2008 (Portland, OR).

s/ Brian P. Carr
Signature of Defendant
Brian Carr
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Vancouver, WA 98684
503-545-8357

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Acceptance of Service of
Motion for
Summary Judgement

I _____ certify that I am an authorized representative of the City Of Portland working in the Portland City Attorney's Office and hereby accept service on behalf of the City of Portland of the following documents:

1. Motion for Summary Judgment,
2. Defendant's Affidavit In Support of Motion for Summary Judgement, and
3. Defendant's Memorandum of Law In Support of Motion for Summary Judgement

All dated August 18, 2008.

Date:

Location: Portland, OR

City Attorney's Office
1221 SW 4th Ave Ste 430
Portland, OR 97204
