UNITED STATES DISTRICT COURT
SOUTHERN DIVISION OF TEXAS
HOUSTON DIVISION

JOHN STRANGMEIER, INDIVIDUALLY, and on behalf of a Class of All Similarly Situated Persons,	)(	
Plaintiff,	)(	**CIVIL ACTION NO.: 4:11-cv-3463**
V.	)(	
THE CITY OF HOUSTON, TEXAS, and MAYOR ANNISE PARKER, INDIVIDUALLY;	)(	**JURY TRIAL**
	)(	**RESPONSE TO MOTION TO DISMISS**
Defendants.	)(	

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS

TO THE HONORABLE LYNN N. HUGHES, presiding:

NOW COMES Plaintiff JOHN STRANGMEIER and responds to defendants' motion to dismiss and will show the Court the following:

PROCEDURE

This case was filed. September 23, 2011, and assigned to Hon. David Hittner.

Hon. David Hittner recused himself September 23, 2011.[1]

The case was assigned by agreement of judges to Hon. Lynn Hughes on October 5, 2011[2]

[1] Hon. David Hittner's son, George Hittner, is corporate counsel for American Traffic Solutions, Inc., which has showed in the in-chambers hearing of October 14, 2011, in this case and is monetarily interested in several issues in the instant case.

[2] Hon. Lynn Hughes had previously ruled on a major issue in another case (which is still pending and interlocutory appeal on the ruling of election invalidity has been denied) which is at issue in this case--whether Houston's Charter Amendment vote in November, 2010, which won by a majority and was certified by the City and the Mayor was valid. See **Civil Action No.: 4:10-cv-4545.**

who then set a status conference for 10:30 a.m. on October 14, 2011.

The defendants filed a motion to dismiss at 2:05 p.m. in the afternoon of October 13, 2011.

At the status conference of 10:30 a.m. held in chambers the Court then proceeded to hear the defendants' motion to dismiss. Plaintiff appeared only by undersigned counsel. Plaintiff objected that the motion to dismiss had just been filed the afternoon before and plaintiff needed time to research the motion. The Court, however, proceeded on the motion to dismiss and indicated it was going to dismiss the case. Plaintiff objected strenuously that he should be allowed to amend the complaint, *as a matter of course,* pursuant to FRCP 15(a)(1)(A) which allows for 21 days after the filing of an initial FRCP 12(b)(6) motion and that amendment would not be futile.

Although plaintiff's counsel unequivocally requested the opportunity to amend the Court then indicated that it would sanction the plaintiff if the amendment was not "useful" and allow only 7 days to amend. Furthermore, the Court required that the plaintiff declare by October 18, 2011, whether he would actually amend. Presumably since plaintiff's counsel unequivocally stated he wanted to amend at the hearing the Court wanted the plaintiff to hear about the potential sanction before amending.

Plaintiff amended, *as a matter of course*, pursuant to FRCP 15 and pursuant to Court Order October 21, 2011.

The defendants filed a motion to dismiss October 27, 2011.

MOTION TO DISMISS STANDARD/ARGUMENT AND AUTHORITIES

When reviewing a motion to dismiss, the Court accepts "all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *Capital Parks, Inc. v. Southeastern*

Advertising & Sales Sys., Inc., 30 F.3d 627, 629 (5th Cir. 1994); *Fernandez-Montes v. Allied Pilots Ass'n*, 987 F.2d 278, 284-85 (5th Cir. 1993); *Lindquist v. City of Pasadena, Texas,* 525 F.3d 383, 386 (5th Cir. 2008). Plaintiff must plead "only enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 644 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all allegations in the complaint are true (even if doubtful in fact)", and the Court should deny a motion to dismiss even if it appears *"that a recovery is very remote and unlikely"*. *Id.* at 1965 (internal citation and footnote omitted), following *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974).

The Supreme Court unanimously, expressly, and repeatedly has rejected a "heightened pleading standard" for 42 U.S.C. § 1983 cases against municipal governments. A recent case reversing dismissal (which also challenged medical care in prison), the Supreme Court reaffirmed, "[s]pecific facts are not necessary; the [Complaint] need only 'give the defendant fair notice of what the … claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 127 S.Ct. 2197, 2200 (2007) (per curiam), quoting *Bell Atlantic*, 127 S.Ct. at 1964 (additional citations omitted). Plaintiff Strangmeier's live complaint easily meets the fair notice requirement.

NO HEIGHTENED PLEADING STANDARD

By seeking dismissal because of an alleged lack of details than those already in the original complaint, the defendants' motion to dismiss requests this Court to impose a heightened pleading requirement that, in the same context of a 42 U.S.C. § 1983 claim against a municipality, the Supreme Court has unanimously rejected. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit,* 507 U.S. 163, 168 (1993).

In that case, the Fifth Circuit had found that plaintiff "fail[ed] "to state any facts with respect to the adequacy (or inadequacy) of the police training." 954 F.2d 1054, 1058 (5th Cir. 1992)(emphasis added). The Supreme Court rejected that approach. *Leatherman,* 507 U.S. at 167-68. Justice Rehnquist explained that, in § 1983 constitutional cases, nothing requires plaintiffs to "set out in detail the facts upon which he bases his claim", and that to impose such a requirement would be "impossible to square … with the liberal system of 'notice pleading' set up by the federal rules". Id. at 168 (citation and internal quotation omitted). "In the absence of … amendment [to the federal rules], federal courts and litigants must rely on summary judgment and control of discovery to weed out unmeritorious claims sooner rather than later." Id. at 168-69. The Supreme Court reaffirmed *Leatherman's* holding in *Swierkiewicz v. Sorema* N.A., 534 U.S. 506, 513 (2002) (because Federal "Rule 9(b) makes no mention of municipal liability under Rev. Stat. §1979, 42 U.S.C. § 1983"); accord, e.g., *Bell Atlantic,* 127 S.Ct. at 1973 n.14. In *Bell Atlantic,* the Court expressly reconfirmed "we do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face." 127 S.Ct. at 1974; see also supra Part III, quoting *Erickson,* 127 S.Ct. at 2200 ("[s]pecific facts are not necessary", only "fair notice").

Strangmeier's live complaint has ample facts for denial of the motion to dismiss.

Objection to Facts Recited in Defendants' Motion To Dismiss

Plaintiff does not agree to any of facts alleged by defendants in their motion to dismiss that are not in complete agreement with the facts alleges in plaintiff's "Complaint Allegations" below.

COMPLAINT ALLEGATIONS

Plaintiff set forth the following allegations in his live complaint:

6. John Strangmeier has never been convicted of any crime in his life.

7. John Strangmeier lives in the neighborhood called the Highlands in Harris County, Texas. While Highlands is unincorporated John lives in the extraterritorial jurisdiction (ETJ) of the City of Houston (a five mile band around the City general purpose political boundaries). Within the ETJ the Houston ordinances apply which regulate development appearances with requirements on street right-of-ways, lot sizes and setbacks. Chapter 42, Houston City Code of Ordinances. Within the ETJ and the City also has authority to consent to the creation and expansion of other governmental entities such as municipal utility districts (often referred to as MUDs). Annexation is the other key authority the City has within its ETJ.

8. John .Strangmeier owns one vehicle--a 2006 Dodge Pickup--to get to work where he makes $48 per hour, get groceries and other items to maintain his home and for recreation. John must drive in the City of Houston to go to work, for recreation. In order to drive to work John Strangmeier drives his vehicle through the City of Houston intersection on the service road of the Gulf Freeway at El Dorado Boulevard.

9. In 2006 the City of Houston passed an ordinance that allowed automatic cameras installed at certain intersections to photograph the license plates of cars which entered the intersection after the light had turned red and installed the first of an eventual 70 red light cameras (RLCs) at 50 Houston intersections. Houston signed a contract with American Traffic Solutions. Inc. (ATS) of Arizona May 31, 2006, effective on June 28, 2006, to erect and maintain the cameras. Prior to the passage of the RLC ordinance then Mayor Bill White stated that the City contract with ATS would not be a contract where ATS received a percentage of each RLC ticket issued. The tickets were for $75.00 and $10.00 additional for an appeal. If the fine is not paid the City of Houston will stop the registration of the ticketed vehicle making it illegal to drive.

10. One of the RLCs installed at the City of Houston intersection was on the service road of the Gulf Freeway at El Dorado Boulevard.

11. The City and ATS originally entered into their Contract on May 31, 2006, effective on June 28, 2006 (The Contract). See Exhibit 1 to Plaintiff's 1ST Amended Original Complaint & Request For Class Certification**.** *The Texas Legislature enacted a new statute authorizing cities to pass Red Light Camera ordinances, Texas Transportation Code § 707.003, which became effective on September 1, 2007.* [3]

---

[3] Language in this filing may be identical or similar to filings in this court by attorney David Furlough who is an expert witness for the undersigned attorney in many cases including a Texas open records lawsuit filed and won--*Kallinen, et al. v. City of Houston; Cause No.: 2008-75633*-- in the 295th State District Court in Harris County, Texas, regarding RLC-related open records. In that case the City was found liable for over $95,000 in legal expenses for withholding RLC documents. David Furlough had provided undersigned counsel with his filings and permission to use same in these proceedings. See Exhibit 4 to Plaintiff's 1ST Amended Original Complaint &

12. The City and ATS entered into a contractual novation styled the First Amendment to the Contract on May 27, 2009 (the "Novation"). See Exhibit 2 to Plaintiff's 1ST Amended Original Complaint & Request For Class Certification. *Paragraph Three of the Novation, titled "Entire Agreement," states that the First Amendment and the Agreement "should be read together and construed as one agreement provided that, in the event of any conflict or inconsistency between the provisions of this First Amendment and the provisions of the Agreement, the provisions of this First Amendment shall control."*

13. Paragraph 3 of the First Amendment also states that, "[a]ll other terms and conditions of the Agreement, except as amended in this First Amendment [the Novation], shall continue in full force and effect." The City and ATS entered into the Contract twice. First by entering into a contract on May 31, 2006, effective on June 28, 2006. And again on May 27, 2009, with revisions under the Novation. Between the two, the Novation incorporates the terms and provisions of the 2006 Contract by reference.

14. The Contract provides that "[a]ll fees due to Contractor under this Agreement shall only be paid from Collection Revenue." See ATS Contract at page 19, art. IV.A. "Collection Revenue" is defined to mean "revenue collected solely from the issuance of Citations, less court fees and returned check fees, as defined by City policy." See ATS Contract at page 5, art. II.

15. Under Exhibit G to the Contract, titled Payments to Contractor and Service Level Performance Standards, section 2.1.2, the City and ATS agreed that ATS is to be paid a monthly "per citation fee." See ATS Contract, Ex. G., at 1, § 2.1.2. The Contract states, "the City shall pay Contractor a Citation fee amount for each Citation issued." See ATS Contract, Ex. G., at 1, § 2.1.2. "This fee is dependent upon the number of Citations issued each month as identified in Section 10, Item 2(b), Contractor's Fees, below." See ATS Contract, Ex. G., at 1, § 2.1.2.

16. The fee schedule in Exhibit G reflects an agreement between the City and ATS that the fewer the number of citations the City and ATS issued, the greater the per-citation fee, and the greater the number of citations issued, the less the per-citation fee.

17. The Contract further states "This Agreement is subject to the laws of the State of Texas, the City Charter and Ordinances, the laws of the federal government of the United States, and all rules and regulations of any regulatory body or officer having jurisdiction." See ATS Contract at 23, art. VI.D (emphasis supplied).

18. After traffic data showed that Houston's red light cameras were dangerous and accidents were increasing at the red light camera intersections

---

Request For Class Certification.

(while overall accidents in Houston were decreasing) safety-conscious Houston citizens overwhelmingly signed a petition to put a charter amendment on the November, 2010 ballot to outlaw the dangerous revenue generating cameras. The petition was so popular that more than 10,000 extra signatures of Houston registered voters were obtained beyond the approximate 25,000 needed to put the issue on the ballot.

19. The red light camera charter amendment ballot language was then constructed by the City of Houston itself and the Houston City Council voted overwhelmingly to put the charter amendment on the November, 2010 ballot. In the months leading up to the election The City and the Arizona red light camera company vendor spent millions and had a paid Houston Police Officer Union official speak in favor of the dangerous red light camera system. The election campaign by the amendment's opponents was false and misleading stating the red light cameras increased safety when this was blatantly false.

20. A majority of safety-conscious Houston citizens (over 180,000) voted out the red light cameras by charter amendment in the November, 2010 City election. After the successful election the Mayor and the City certified the election results and the cameras were turned off in November of 2011. The entire red light camera charter amendment process was legal.

21. The City then filed a lawsuit in the instant federal court against ATS seeking a declaration of contract rights. The City of Houston v. American Traffic Solutions, Inc.; Civil Action H:10-cv-4545; the Hon. Lynn Hughes, presiding. American Traffic Solutions, Inc. (ATS) countersued saying the election was invalid. ATS is from Arizona, is a corporation and not a Houston citizen, taxpayer or voter and, therefore, had no standing to challenge the election results. Red light camera petition organizers, Houston voters and taxpayers attempting to intervene to provide legal assistance and assert their rights were not allowed to intervene. Such motion to intervene denial appeal is currently pending in the U.S. Fifth Circuit Court of Appeals with oral argument set for January, 2011. ***Case No.: 11-20068.*** *Hon. Lynn Hughes eventually ruled the election invalid in a 6 page opinion. See* Exhibit 5 to Plaintiff's 1ST Amended Original Complaint & Request For Class Certification. *The case is still pending and the City's request for interlocutory appeal to the U.S. Fifth Circuit Court of Appeals was denied by Judge Hughes. Plaintiff avers Judge Hughes' opinion is incorrect and will be overturned upon any appeal.*[4]

22. Citing a City budget crunch (and not safety issues) on July 9, 2011, Mayor Parker unilaterally, with no notice whatsoever, turned the RLCs cameras back on without Houston City Council input and on July 24, 2011, the City began issuing red light camera tickets at the 70 red light camera locations until August 24, 2011--a total of 46 days. Based upon historical data this would be at least 15,000 (FIFTEEN THOUSAND) RLC tickets. John Strangmeier would have

[4] A full critique of the ruling encompasses dozens of pages and is not necessary for an initial complaint.

contacted the City of Houston Mayor and Council members and petitioned them not to turn the cameras back on had he had any notice they would be turned back on. ATS has deposited in this court's registry over $498,000 in disputed funds collected from the invalid RLC tickets. Plaintiff avers that money comes from invalid RLC tickets and should be held for disbursement to class members in the instant case and there is no guarantee that if plaintiff and the class succeed that the moneys will then be available.

23. Houston's RLCs cameras were shown to increase accidents and the total number of red light citations increased in the last year of operation--2010. Many RLC-controlled intersections had their yellow light times so short that the citations were up to ten times that of comparable red light camera controlled intersections with TxDOT standard yellow light times.

24. Around September 9, 2011, John Strangmeier received a RLC violation notice from the city of Houston that alleged he ran a red light at the City of Houston intersection on the service road of the Gulf Freeway at El Dorado Boulevard on August 18, 2011, and ordering that he pay $75 to the City of Houston. The ticket went on to claim that John Strangmeier committed a violation of Houston Ordinance Article XIX, Chapter 45 for failure to stop at a red light. The ticket went on to claim the facts are true and punishable by a fine of up to $75.00.

25. John Strangmeier set a hearing date with the City to challenge the ticket as allowed under the ordinance and a hearing was held at 1:00 p.m. September 29, 2011, at the Houston Municipal Court building at 1400 Lubbock, Houston, Texas. John traveled around 60 miles to and from 1400 Lubbock to attend the hearing. John Strangmeier traveled around 45 miles roundtrip to visit the undersigned attorney and to hire to represent him on his RLC ticket. The undersigned attorney has spent more than 30 hours on this case.

26. At the hearing John Strangmeier's arguments that the RLC ordinance was no longer in effect and that the police affidavit was conclusory were not considered as per Houston City policy. See Exhibit 3 to Plaintiff's 1ST Amended Original Complaint & Request For Class Certification. *The conclusory affidavit did not recite that facts of the vehicle's progression through a red light but merely concludes that the vehicle "was operated in violation of the traffic control signal" and that "the owner of the vehicle is liable for a civil penalty." The hearing officer found John Strangmeier liable based upon the void RLC ordinance and the City's RLC hearing procedures and the well established conclusory affidavit.*

27. Around May 19, 2008, two RLC tickets were dismissed by a Houston municipal court judge because the affidavits used to prove the validity of the RLC tickets were conclusory and such was presented by a brief in that case to a Houston municipal court judge and reported in the press local including Houston ABC affiliate Channel 13. A City of Houston lawyer received the information that affidavits were conclusory yet no changes were made. The 2008 conclusory affidavits and John Strangmeier's conclusory affidavits were materially the same.

CAUSES OF ACTION

Violations of the First, Fourth, Fifth and Fourteenth Amendment

28. The Fourth Amendment guarantees everyone the right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV. Fourth Amendment violations are actionable under 42 U.S.C. Section 1983.

29. Defendants violated John Strangmeier's Fourth Amendment rights, at least, when they sent him notice of a violation causing him to at least have to read the notice, go on-line to see the alleged violation, and then contact the City of Houston to schedule a hearing. To then actually drive many miles to hire a lawyer and attend the hearing paying for gas and the wear and tear on his vehicle. These acts John did not want to do and they violated his liberty interests.

30. The Fifth Amendment guarantees everyone the right to due process before property is taken or liberty denied. U.S. Const. amend. V. Fifth Amendment violations are actionable under 42 U.S.C. Section 1983. The red light camera system was nullified by the Houston voters yet John is still required to defend himself against the ticket, attend hearings and this violates due process as does many other elements of Houston's red light camera ordinance and procedure including that the affidavits used to enforce the citations are conclusory.

30. The First Amendment guarantees everyone the right to petition the government for redress of grievances." U.S. Const. amend. I. First Amendment violations are actionable under 42 U.S.C. Section 1983. The red light camera system was nullified by the Houston voters and turned off and then without any chance to be heard or petition by anyone were turned back on by the Mayor and tickets were commanded to be issued.

ATS/CITY CONTRACT VIOLATES TEXAS TRANSPORTATION CODE § 707.003(b)

31. Contractual terms must be given their plain, ordinary, and generally accepted meaning, unless the instrument requires otherwise. Natural Gas Clearinghouse v. Midgard Energy Co., 113 S.W.3d 400, 407 (Tex. App.—Amarillo 2003, pet denied). Courts must construe a contract to understand, harmonize, and effectuate all of its provisions. Id.

32. Courts cannot change the contract clauses and terms because the court or one of the parties believes something else should be in its place. Id. Documents incorporated into a contract by reference become part of that contract (In re 24R, Inc., 324 S.W.3d 564, 567 (Tex. 2010) (orig. proceeding)).and the documents must be read together. In re C&H News Co., 133 S.W.3d 642, 645-46 (Tex. App.—Corpus Christi 2003, orig. proceeding).

33. Integration clauses are not needed for terms in a separate writing to be incorporated by reference, an as long as the signed document clearly references the other writing. Castroville Airport, Inc. v. City of Castroville, 974 S.W.2d 207, 211 (Tex. App.—San Antonio 1998, no pet.).

34. The Novation is a contract between the City and ATS, executed in 2009, which incorporates by reference the provisions of the 2006 Contract.

35. Thus, the provisions of the 2006 Contract are part of the 2009 First Amendment and they must be read together as one agreement. It is clear that the parties intended for the 2009 First Amendment to be the effective agreement between the City and ATS because the Novation controls the relationship between ATS and the City if there is any inconsistency or conflict between the two documents. Further, the Contract is "subject to" the laws of the State of Texas. "Subject to" means "subordinate to," "subservient to" or "limited by." See Cochrell v. Texas Gulf Sulphur Co., 299 S.W.2d 672, 676 (Tex. 1957). Case law consistent with this clause provides that persons "contracting with the governmental unit are charged by law with notice of the limits of their authority and are bound at their peril to ascertain if the contemplated contract is properly authorized." City of Bonham v. Southwest Sanitation, Inc., 871 S.W.2d 765, 767 (Tex. App.—Texarkana 1994, writ denied). ATS thus agreed, from the outset of its contractual relationship with the City, to be bound by the City's Charter and Texas law, without reservation. If the City's Charter or the Texas Transportation Code changed in the future, so, too, would ATS's contractual rights and duties.

36. ATS cannot complain of a charter amendment it agreed to in advance. A party who signs such an agreement to be bound by state, federal and municipal law, including a city's charter, agrees to be bound by all of that city's future charter amendments. In Energy Reserves Group v. Kansas Power & Light (459 U.S. 400, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983)) the Court noted that, "the contracts [at issue] expressly recognize the existence of extensive regulation by providing that any contractual terms are subject to relevant present and future state and federal law. This latter provision could be interpreted to incorporate all future state price regulation, and thus dispose of the Contract Clause claim…" Id., 459 U.S. at 416, 103 S. Ct. at 707, footnote omitted; Interstate Marina Development Co. v. Cty. Of Los Angeles, 155 Cal. App. 3d 435, 448, 202 Cal. Rptr. 377 (1984) (a general lease provision making lessees subject at all times to ordinances of the county "arguably" authorizes adoption by county of rent control law subsequent to entry into lease agreement as simple matter of contract interpretation).

37. Thus, when the City of Houston and ATS amended their Contract in 2009, they agreed that their Novation, as a contract, would be subordinate to, subservient to, or limited by, the laws of the State of Texas.

38. Texas Transportation Code § 707.003(b), which was codified into the laws of the State of Texas before the 2009 Novation, expressly prohibits the City from agreeing to pay a red-light camera contractor a specified percentage of, or dollar amount from, each civil penalty collected. 10 But that is exactly what the City did when it entered into the Novation, a contract. Under the Contract, ATS earns a fee based on the number of civil penalties collected. ATS can only be paid out of Collection Revenue, and ATS earns a fee for each Citation issued. The rate of the fee varies depending on the number of citations issued in a given month.

39. Therefore, the City/ATS Contract, as amended and restated,

clearly violates Texas Transportation Code § 707.003(b).

In addition to arguments made above, which were included in the live complaint, plaintiff adds:

Ultra Vires

11th Amendment immunity does not prevent an action in federal court against a state official for *ultra vires* actions beyond the scope of statutory authority, or pursuant to authority deemed to be unconstitutional. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 101-102 (1984); *Scham v. District Courts*, 967 F. Supp 230, 232-233 (S.D.Tex. 1997). In this context, *ultra vires* actions are those "without any authority whatever;" claim rests on the officer's lack of delegated power. *Pennhurst,* supra, 465 U.S. at 101-102, n. 11.

The Mayor's act of turning the cameras back on are *ultra vires* wholly lacking in any authority as the Red Light Camera City Charter Amendment vote had been certified by the City including Mayor Parker and all but one voting City Council member. These acts caused the conversion of $75 per person and the 4th Amendment, 14th Amendments and 5th Amendment civil rights damages suffered by plaintiff and other ticketed individuals. As such the Mayor is personally liable.

Furthermore, since the mayor is the City's policymaker the City is also liable for the Mayor's acts.

City of Houston Liability

The Constitutional violations that plaintiff suffered were the result of policies, practices, customs and procedures of the City of Houston implementing its red light camera system. The Contract was signed by the Mayor, a policymaker, and the RLC ordinance as a law is a policy of

the City. The Mayor is a policymaker and her unilateral decision without notice turning the RLC cameras back on subject the City to liability.

Punitive Damages

Mayor Parker is sued individually and is liable for punitive damages as The Mayor was consciously indifferent to the plaintiff's constitutional rights and she did the acts knowingly, such acts being extreme and outrageous and shocking to the conscious. To cause over 15,000 void RLC tickets to go out and have people pay them after a certified election voided the RLC law is unconscionable, extreme and outrageous and shocking to the conscious. This very Court has put in it's registry over a half million dollars of the citizen's money that never should have been collected.

Class Action

The number of red light camera citations issued after the City and Mayor started re-issuing tickets is so numerous as to make joinder impractical-over 15,000. Common issues of fact and law prevail as to all members of this purported class whose civil rights were violated as enumerated above. Plaintiff requests the court to certify a class of all individuals receiving red light camera citations after July 9, 2011, and will file a motion after this motion to dismiss has been ruled upon.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff John Strangmeier requests that the Court DENY CITY OF HOUSTON'S AND MAYOR ANNISE PARKER'S RULE 12(b)(6) AND 12(b)(1) MOTION TO DISMISS PLAINTIFF'S FIRST AMENDED ORIGINAL COMPLAINT and Grant such other and further relief as appears reasonable and just, to which, Plaintiff shows himself entitled.

RESPECTFULLY SUBMITTED,

/S/ Randall L. Kallinen

_____

Randall L. Kallinen
LAW OFFICE OF RANDALL L KALLINEN PLLC
State Bar of Texas No. 00790995
U.S. Southern District of Texas Bar No.: 19417
Admitted, Fifth U.S. Circuit Court of Appeals
Admitted, U.S. Eastern District of Texas
511 Broadway Street
Houston, Texas 77012
Telephone: 713/320-3785
FAX: 713/893-6737
E-mail: AttorneyKallinen@aol.com
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion was served in accordance with the Federal Rules of Civil Procedure on this the 17th Day of November, 2011.

Elizabeth L. Stevens, atty.
Andrea Chan, atty.
City of Houston Legal Department
P.O. Box 368
Houston, Texas 77001-0368

/S/ Randall L. Kallinen

_____

Randall L. Kallinen