IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JOHN STRANGMEIER,	§	
	§	
Plaintiff,	§	
	§	**Civil Action No.: 4:11-CV-3463**
v.	§	
	§	
CITY OF HOUSTON, ET AL.	§	
Defendants.	§	

CITY OF HOUSTON'S AND MAYOR ANNISE PARKER'S
REPLY TO PLAINTIFF'S RESPONSE TO MOTION TO DISMISS

In response to the City of Houston's and Mayor Parker's motion to dismiss the complaint, Plaintiff John Strangmeier filed a response which misconstrues the standard of review, fails to address a single legal argument raised in the defendants' motion, and consists primarily of cutting and pasting Strangmeier's entire First Amended Original Complaint into his response. The City and Mayor Parker file this reply simply to clarify the standard of review applicable to the motion to dismiss, as Strangmeier has entirely failed to address any other argument raised in the motion.

I. Argument and Authorities

While it is true that the Supreme Court has rejected a "heightened pleading standard" in Section 1983 cases, the defendants' basis for dismissal of Strangmeier's complaint is not that more facts are needed to support Strangmeier's legal theories. Rather, the City's and Mayor Parker's argument is that, taking Strangmeier's factual allegations as true, there is simply no viable legal theory to support any of Strangmeier's claims. The question is not

whether enough facts have been stated, but whether the facts give rise to any claims.

As the Supreme Court explained in *Ashcroft v. Iqbal,* legal conclusions need not be accepted as true. 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009). And, "'when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, this basic deficiency should . . . be exposed at the point of minimum expenditure of time and money by the parties and the court.'" *Cuvillier v. Taylor,* 503 F.3d 397, 401 (5th Cir. 2007) (quoting *Bell Atlantic Corp. v. Twombly,* 550 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009)). In the context of prisoner and *in forma pauperis* lawsuits, the courts have noted that a claim should be dismissed if "it is based on an indisputably meritless legal theory, such as if the complaint alleges a violation of a legal interest that does not exist." *Samford v. Dretke,* 562 F.3d 674, 678 (5th Cir. 2009). *See, e.g., Spiko v. County of Harris, Texas,* 2011 WL 3300085 (S.D.Tex. Aug. 1, 2011) (unpublished opinion) (dismissing Section 1983 claims for wrongful arrest because the plaintiff failed to allege the elements necessary for municipal liability and failed to state claims that were constitutional violations).

II. Conclusion

As the defendants have shown in their motion to dismiss, Strangmeier's allegations arising out of his receipt of a civil citation for running a red light do not give rise to any viable constitutional or other claims and the complaint should be dismissed.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT CITY OF HOUSTON AND MAYOR ANNISE PARKER

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 23rd day of November, 2011.

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Via efiling

/s/ Elizabeth Stevens
Elizabeth Stevens