

CAUSE NO. D-1-GN-12-001792

RUBICON EQUITY PARTNERS,
LLC,

PLAINTIFF,

v.

CITY OF AUSTIN, TEXAS,

DEFENDANT.

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IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

PLAINTIFF'S ORIGINAL PETITION

Plaintiff Rubicon Equity Partners, LLC ("Rubicon") files this petition against defendant the City of Austin, Texas (the "City"), and would respectfully show the Court, as follows:

I. DISCOVERY CONTROL PLAN

Pursuant to TEXAS RULE OF CIVIL PROCEDURE 190.4, Rubicon intends to conduct discovery under a Level 3 Discovery Control Plan.

II. PARTIES

1. Plaintiff Rubicon is foreign limited liability company registered to transact business in Texas.

2. Defendant, the City is an incorporated city in Travis County, Texas. The City may be served with process through its mayor, clerk, secretary, or treasurer at the City's offices at 301 West 2nd Street, Austin, Texas 78701.

III. JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to art. 5 §§ 1 and 8 of the Texas Constitution and Texas Government Code §§ 24.007 and 24.008.

4. Venue is proper in this district pursuant to TEX. CIV. PRAC. & REM. CODE § 15.002(a), as all or a substantial part of the events giving rise to the claims alleged herein occurred in Travis County, Texas.

IV. FACTUAL BACKGROUND

5. Rubicon provides consumer credit financing in the form of deferred presentment transactions and/or motor vehicle title loans (the "Transactions"). All of the Transactions are arranged by consumers through the assistance of a credit services organization ("CSO") and a credit access businesses ("CAB"). Rubicon has entered into Transactions with persons in Austin, Texas.

6. The City purported to pass Ordinance No. 20110818-075 (the "Ordinance"). The Ordinance purports to regulate, among other things, the cash advance and repayment terms of Transactions (the "Credit Restrictions").

7. In Texas, the Transactions and Credit Restrictions are exclusively governed by the Texas Constitution (the "Constitution") or Texas Finance Code (the "Code"). The Ordinance, including the Credit Restrictions, conflicts with and is preempted by the Constitution or the Code. In addition, the stated purpose, Credit Restrictions, penalty provisions, and defenses of the Ordinance are irreconcilably inconsistent, too vague, unreasonable, and arbitrary to be enforceable.

V. CAUSES OF ACTION

COUNT I – DECLARATORY JUDGMENT

8. Consumer Lending repeats and incorporates by reference the paragraphs above, as applicable, as if fully restated herein.

9. There is a real and substantial justiciable controversy between Rubicon and the City concerning their respective rights and obligation under the Ordinance, Constitution and

Code.

10. Accordingly, Rubicon seeks a judicial determination declaring that: (i) the Ordinance, in its entirety, is preempted and unenforceable because it conflicts with the Constitution and/or the Code; (ii) the Credit Restrictions are preempted and unenforceable because they conflict with the Constitution and/or the Code; (iii) the stated purpose, Credit Restrictions, penalty provisions, and defenses of the Ordinance are unenforceable because the same are unnecessary, unreasonable, and arbitrary, and therefore unconstitutional and void.

COUNT II – ATTORNEYS’ FEES

11. Rubicon repeats and incorporates by reference each of the preceding paragraphs above, as applicable, as if fully restated herein.

12. Rubicon is entitled to recover its reasonable and necessary attorneys’ fees pursuant to TEX. CIV. PRAC. & REM. CODE 37.009 and TEX. R. CIV. P. 131.

VI. JURY DEMAND

13. Rubicon demands a jury trial on all questions so triable.

VII. REQUEST FOR DISCLOSURE


14. Pursuant to TEXAS RULE OF CIVIL PROCEDURE 194, Rubicon requests that the City disclose within fifty (50) days of service of this request, the information or material described in Rule 194.2(a)-(l).

VIII. REQUEST FOR RELIEF

For the reasons set forth herein, Rubicon respectfully requests that the City be cited to appear and answer, and that upon final hearing, the Court award:

- A. Declaratory judgment as requested herein;
- B. Judgment in favor of Rubicon for all costs of court in this proceeding;
- C. Judgment in favor of Rubicon for its reasonable and necessary attorneys' fees in the prosecution of this action; and
- D. All such other and further relief, at law or in equity, to which Rubicon may be justly entitled.

Respectfully submitted,

By: 

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Texas Bar No. 24036981
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3000 Thanksgiving Tower
Dallas, Texas 75201
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Telecopier: (214) 999-4667

**ATTORNEYS FOR RUBICON EQUITY
PARTNERS, LLC**


CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

STYLED _____

(e.g., John Smith v. All American Insurance Co.; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing. This sheet, approved by the Texas Judicial Council, is intended to collect information that will be used for statistical purposes only. It neither replaces nor supplements the filings or service of pleading or other documents as required by law or rule. The sheet does not constitute a discovery request, response, or supplementation, and it is not admissible at trial.

1. Contact information for person completing case information sheet: Name: <u>Steven C. Lockhart</u> Email: <u>slockhart@gardere.com</u> <u>Gardere Wynne Sewell</u> Address: <u>1601 Elm St.</u> Telephone: <u>214 999 4668</u> <u>ste 3000</u> City/State/Zip: <u>Dallas, TX 75201</u> Fax: <u>214 999 3668</u> Signature:  State Bar No: <u>24036981</u>		Names of parties in case: Plaintiff(s)/Petitioner(s): <u>Rubicon Equity Partners, LLC</u> Defendant(s)/Respondent(s): <u>City of Austin, Texas</u> (Attach additional page as necessary to list all parties)		Person or entity completing sheet is: <input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____	
2. Indicate case type, or identify the most important issue in the case (select only 1):					
Civil			Family Law		
Contract Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	Injury or Damage <input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	Real Property <input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expropriation <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	Marriage Relationship <input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	Post-judgment Actions (non-Title IV-D) <input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:	
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input checked="" type="checkbox"/> Other: <u>see, Act</u>				
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:				
3. Indicate procedure or remedy, if applicable (may select more than 1):					
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input checked="" type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover			



Amalia Rodriguez-Mendoza
District Clerk, Travis County
Travis County Courthouse Complex
P. O. Box 679003
Austin, Texas 78767

Date: November 3, 2008

TO: All attorneys of record in cases pending in Travis County District Court

NOTICE OF ENTRY OF NEW E-FILE MANDATE ORDER

The 2008 Court Order Regarding E-filing is effective as of November 1, 2008. You can view this order by selecting the link near the top of the following web page:

http://www.co.travis.tx.us/district_clerk/default.asp

If you have not yet established an e-filing account, please refer to Texas Online's eFiling Main Information at:

<http://www.texasonline.com/portal/tol/en/info>

We are asking that you establish your account as soon as possible, but a grace period through the end of the year has been implemented to allow you adequate time to make e-filing preparations.

If you have any questions regarding the e-filing process or the order's application to any of your pending cases, you may call 512-854-FILE (512-854-3453) for assistance.

Thank you.

A handwritten signature in black ink that reads "Amalia Rodriguez-Mendoza".

Amalia Rodriguez-Mendoza
Travis County District Clerk

Travis County District Clerk's Office
Civil Division

Administrative Offices
(512) 854-9737
Fax: 854-4744

Civil and Family Division
(512) 854-9457
Fax: 854-6610

Criminal Division
(512) 854-9420
Fax: 854-4566

Jury Office
(512) 854-4295
Fax: 854-4457