



Defendant asked that the Court dismiss this frivolous suit and award Defendant its costs and fees of defense. FED. R. CIV. P. 12(b)(2), (5), (6), and (7).

2. Plaintiff responded on March 10, 2006, asserting a number of misplaced arguments in response. Docket No. 7. Because the arguments raise no issues that require additional briefing, Defendant elected not to file a Reply brief.

3. However, on March 17, 2006, Plaintiff filed the motion now before the Court, asking it to certify the matter as a class action under FED. R. CIV. P. 23(a), (b). Because the Court has not yet decided the pending challenge to its jurisdiction over Defendant or determined that the Complaint does state a cognizable cause of action against it, Plaintiff's motion is premature. As a result, Defendant elects not to respond on the merits at this time, choosing not to waste the resources of Defendant or the Court in responding fully to the specious arguments for class certification raised in the motion to certify.

4. Should the Court decide to take up the motion to certify as a class action prior to ruling on the motion to dismiss, Defendant reserves the right to respond fully upon direction from the Court.

5. Based upon these factors, Defendant responds to Plaintiff's motion to certify, asking the Court to deny Plaintiff's motion at this time. If the Court finds it more equitable to do so, it should deny the motion without prejudice to re-filing, upon the Court's resolution of the pending jurisdictional issues. In the alternative, Defendant asks that the Court hold the motion to certify under Rule 23 in abeyance pending resolution of the 12(b) motions.

### **CONCLUSION**

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests the Court deny Plaintiff's Motion for Order Determining That Action Be Maintained as Class-Action,

resolve the merits of the pending Motion to Dismiss (Docket No. 4), and award Defendant any further relief to which it is otherwise justly entitled.

Respectfully submitted,

By: 

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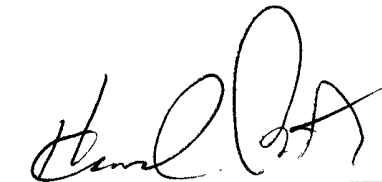
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**COUNSEL FOR DEFENDANT, BOARD OF TRUSTEES OF  
THE METROPOLITAN RAPID TRANSIT AUTHORITY OF  
SAN ANTONIO**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Response to Plaintiff's Motion for Order Determining That Action be Maintained as Class-Action** was served on Plaintiff, proceeding *pro se*, this 23<sup>rd</sup> day of March, 2006, via certified mail, return receipt requested:

Alfred E. Ehm  
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