

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
C.A. NO. 09-2799-G

PAUL W. COTE, WILLIAM E. GANNON, II, *
MICHAEL D. LONGTIN, VINCENT A. SILVIA, *
AND LAWRENCE CAHILL, *

Plaintiffs *

V. *

CITY OF BOSTON, MASSACHUSETTS, *
THOMAS M. MENINO, in his official *
capacity as Mayor of the City of Boston, *
BOSTON CITY COUNCIL: *
SALVATORE LAMATTINA, BILL *
LINEHAN, MAUREEN FEENEY, *
CHARLES C. YANCEY, ROB CONSALVO, *
JOHN TOBIN, CHUCK TURNER, *
MICHAEL P. ROSS, MARK CIOMMO, *
MICHAEL FLAHERTY, JOHN R. CONNOLLY, *
STEPHEN J. MURPHY, SAM MOON, in their *
official capacity as Councilors of the City of *
Boston; BOSTON POLICE DEPARTMENT, *
EDWARD DAVIS, in his official capacity as City *
of Boston Police Commissioner, JOHN DOE AND *
JANE DOE, fictitious names of Officials who are *
not known to the Plaintiffs at this time, *

Defendants *

**PLAINTIFFS PAUL W. COTE’S REQUEST FOR ADMISSIONS TO
DEFENDANT SALVATORE LAMATTINA**

NOW COMES the Plaintiff in the above-entitled matter, and, pursuant to Rule 36, Massachusetts Rules of Civil Procedure, requested that the Defendants Admit or Deny the truth of the following Requests for Admission (Requests). The Defendants' Admissions or Denials and Objections, if any, to such Requests for Admissions are to be

filed upon Counsel for the Plaintiff, at his address of record, within thirty (30) days from the date of these Requests for Admissions or other time as may be allowed by law.

INSTRUCTIONS

In each of your answers to these Requests for Admissions, you are requested to Admit or Deny the truth of each Request for Admission presented, which if not answered within the time period stated will result in each request being deemed to be admitted by you. In the event you are able to admit a part of any particular Request, please indicate that part admitted and that part denied and state the reason for your inability to provide the remainder. If you object to or otherwise decline to answer any portion of any Request, please provide an admission or denial called for by that portion of the Request to which you do not object or to which you do not decline to answer. If you object to a Request on the grounds that it is too broad (i.e. that it calls both for an admission which is relevant to the subject matter of the action and an admission which is not), please provide such admissions or denials as are conceding relevant. If you object to a Request on the ground that to provide an admission or denial would constitute an undue burden, please provide such requested admission or denial as can be supplied without undertaking an undue burden. For those portions of any Request with which you object or otherwise decline to answer, state the reason for such objection or declination.

These Requests are continuing and to the extent that the denials may be enlarged, diminished or otherwise modified by information received by you subsequent to the filing of your initial answers hereto, you are requested to serve promptly thereafter and file supplemental admissions or denials reflecting such changes or modifications.

These Requests seek all information that is known to you, your employees, representatives, agents, servants or investigators and unless otherwise privileged, your counsel and your counsel's employees, representatives, agents, servants, investigators or consultants.

Where a Request refers to any tangible object, the Defendant is requested to set forth a time and place where the Plaintiff can inspect, copy, test and sample each object in accordance with Rule 36.

ADMISSIONS

1.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you had verbal communications with employees, servants, agents and/or officials of:

- a.) The Federal Environmental Protection Agency;
- b.) The Massachusetts Department of Environmental Protection;
- c.) The Massachusetts Office of Environmental Police;
- d.) The Massachusetts Registry of Motor Vehicles;
- e.) The Massachusetts State Police;
- f.) The Boston Police Department;
- g.) Any Police Department within the Commonwealth of Massachusetts;
- h.) The Office of the Mayor of the City of Boston;
- 1.) Any other Boston City Councillors and/or their staff;
- j.) The office of the Clerk of the City of Boston;
- k.) Any person in the City of Denver, Colorado;

- l.) Any person in the City of Green Bay, Wisconsin;
- m.) Any person in the City of New York City, New York;
- n.) Any person within the American Motorcyclists Association;
- o.) Any person within the Massachusetts Motorcycle Association;
- p.) Any citizen advocacy group, (e.g., NoiseOff.org);
- q.) Any citizens within the City of Boston.
- r.) Any Commonwealth of Massachusetts employee.

2.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you had written communications with employees, servants, agents and/or officials of:

- a.) The Federal Environmental Protection Agency;
- b.) The Massachusetts Department of Environmental Protection;
- c.) The Massachusetts Office of Environmental Police;
- d.) The Massachusetts Registry of Motor Vehicles;
- e.) The Massachusetts State Police;
- f.) The Boston Police Department;
- g.) Any Police Department within the Commonwealth of Massachusetts;
- h.) The Office of the Mayor of the City of Boston;
- i.) Any other Boston City Councillors and/or their staff;
- j.) The office of the Clerk of the City of Boston;
- k.) Any person in the City of Denver, Colorado;
- l.) Any person in the City of Green Bay, Wisconsin;

- m.) Any person in the City of New York City, New York;
- n.) Any person within the American Motorcyclists Association;
- o.) Any person within the Massachusetts Motorcycle Association;
- p.) Any citizen advocacy group, (e.g., NoiseOff.org);
- q.) Any citizens within the City of Boston.
- r.) Any Commonwealth of Massachusetts employee.

3.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you had photographs or other documents depicting motorcycle exhaust systems that you used in making your decision to support City of Boston Docket No. 0658, An Ordinance regulating the noise levels of motorcycles.

4.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you spoke with at least one person who would be charged with its enforcement, which afforded you a level of assurance the same could be reasonably enforced.

5.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you had knowledge of a method the City of Boston would employ, how “notice” of its enactment would be given to the 180,000 owners of registered motorcycles in the Commonwealth of Massachusetts, and the 250,000 owners of registered motorcycles in the give (5) area other New England states.

6.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you had not read 40 CRF Section 205, subparts C and D, in their entirety.

7.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you personally inspected at least one (1) motorcycle in search of its “readily visible” EPA stamp.

8.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you were not aware the City of Boston Police Motorcycles did not have “readily visible” EPA stamps.

9.) Admit that you have never been licensed to operator a motorcycle.

10.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you had contact and/or visited at least one (1) motorcycle dealer and/or motorcycle shop, for the purpose of inspecting and attempting to locate, the EPA stamp or imprint on a motorcycle exhaust system.

11.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you had not read or reviewed a copy of Massachusetts General Laws, Chapter 90, Sections 7T, 7S and 7U.

12.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you had not read or reviewed 540 Massachusetts Code of Regulations, 3.00, 3.01, 3.02, and 3.03.

13.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you had not read or reviewed 540 Massachusetts Code of Regulation, Section 4.06.

14.) Admit that prior to your vote to support the enactment of City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, you prepared or participated in the drafting or review, or did review, a document(s) showing calculations of expected revenue, benefit and/or rewards to the City of Boston, as a result of enacting City of Boston Docket No. 0658, An Ordinance regulating the noise levels of motorcycles.

15.) Admit that 40 CRF Section 205, subparts A, B, C and D, is not a “consumer standard” but rather is a “manufacturer standard.”

16.) Admit that after the installation of motorcycle exhausts systems, the manufacturer or the consumer may add other equipment that can conceal the EPA stamp upon the exhaust system, making it not ‘readily visible.

17.) Admit that after an “acoustic assurance period” of one (1) year or 3,730 miles, a motorcycle exhaust system may not meet the EPA standards contained within 40 CFR 205, subparts C and D.

18.) Admit that a motorcycle with no “readily visible” EPA stamp upon its exhaust system may be within or under the decibel standards and requirements imposed by the Commonwealth of Massachusetts, for compliance.

19.) Admit that City of Boston Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, creates a “new” standard.

20.) Admit that you, prior to voting in support of City of Boston Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, relied upon other colleagues, being Boston City Councillors and/or there staff, that adequate research had been conducted by them.

21.) Admit that, since new information and documentation has been provided, that it is your belief City of Boston, Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, should be repealed and/or rescinded.

22.) Admit that it would be unfair for citizens lawfully operating and parking motorcycles in the City of Boston, who are in compliance with State Statutes and Regulations, to be cited and required to appeal citations as a result of alleged violations

City of Boston Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, where an EPA stamp is not “readily visible.”

23.) Admit that you are willing to work with motorcycle professionals, who are not residents of the City of Boston, in a joint effort, to address excessive motorcycle noise and other motorcycle parking issues of concern.

24.) Admit that City of Boston Docket No. 0658, An Ordinance regulating the noise levels of motorcycles, was, after reflection, hastily enacted, and/or was arbitrary and capricious.

25.) Admit that, given the opportunity to revisit this issue, you would have requested more information, documentation, and input from others, prior to voting in support of City of Boston Docket No. 0658, An Ordinance regulating the noise levels of motorcycles.

26.) Admit that citizens have a freedom to travel from city and town, within the Commonwealth of Massachusetts, with a reasonable expectation their mode of transportation if compliant with State Statues and Regulations, is compliant with local Ordinances.

Respectfully submitted,
The Plaintiff, Paul W. Cote,
By His Attorney,

Joseph S. Provanzano, Esquire
BBO # 407400
Law Offices Of
Joseph S. Provanzano
16 Bourbon Street, Suite C
Peabody, MA 01960-1338

Tel. : (978) 535 - 8222
Date : Monday, July 20, 2009
File : P09-2066

CERTIFICATE OF SERVICE

I, Joseph S. Provanzano, Esquire, hereby certify that on Monday, July 20, 2009, I served a copy of the foregoing pleadings upon the Defendant's Counsel of Record, by mailing same, via first class, postage prepaid to:

City of Boston Law Department
Attn: Sean Nehill , Esquire
Melissa A. Potvin, Esquire
1 City Hall Plaza, Room 616
Boston, MA 02201

Signed and sealed this Monday, July 20, 2009.

Joseph S. Provanzano, Esquire