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STATE OF MICHIGAN
IN THE COURT OF CLAIMS

BARBARA ANN LAPHAM-PLATTER,
Plaintiff,

Case No. 04-
Hon.

vs.

CITY OF WESTLAND POLICE DEPARTMENT,
KYM WORTHY, and WAYNE COUNTY PROSECUTOR'S OFFICE

Defendants.

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**COMPLAINT FOR CLAIM AND DELIVERY, REQUEST FOR MANDAMUS, AND
REQUEST FOR TEMPORARY RESTRAINING ORDER, INJUNCTIVE RELIEF,
AND DECLARATORY RELIEF**

There is no pending or resolved civil action arising out of
the transaction or occurrence alleged in the complaint.

NOW COMES the Plaintiff, BARBARA ANN LAPHAM-PLATTER, and for the
Complaint against Defendants, CITY OF WESTLAND POLICE DEPARTMENT, KYM
WORTHY, and WAYNE COUNTY PROSECUTOR'S OFFICE, states as follows:

PARTIES, JURISDICTION, AND VENUE

1. That Plaintiff, BARBARA ANN LAPHAM-PLATTER, is the owner a certain vehicle described as a 1998 Black Chevy Blazer, VIN 1GNCT18W9WK246021 (herein "the vehicle").
2. That Defendant, CITY OF WESTLAND POLICE DEPARTMENT, is a local law

enforcement agency in the County of Wayne and the “seizing agency” in this case.

3. That Defendants, KYM WORTHY, Wayne County Prosecuting Attorney, and WAYNE COUNTY PROSECUTOR’S OFFICE, are politically elected officials in the County of Wayne publishing and disseminating policies and procedures for law enforcement officials in the County of Wayne.
4. That jurisdiction and venue are proper based upon the nature of the claims and relief requested herein.

COMMON FACTUAL ALLEGATIONS

5. That on October 12, 2004, Defendant Wayne County Prosecuting Attorney Kym Worthy announced a new policy (hereinafter “the policy”) of seizing vehicles pursuant to MCL 257.625n. See Exhibit A.
6. That the Defendant Wayne County Prosecutor’s Office was ill-prepared and ill-equipped to process and prosecute these claims, publishing a form that does not comply with its own statements and fails to adequately describe the rights and duties of property owners to contest forfeiture proceedings. See Exhibit B.
7. That the Defendant Wayne County Prosecutor’s Office has apparently based its policy upon the provisions of MCL § 333.7522, using similar forms and procedures that might be used in the “PUSH-OFF” program, which permits seizure without process.
8. That forfeiture procedures pursuant to MCL 257.625n are distinctly different from the provisions of MCL 333.7522, because the controlled substance forfeiture statute explicitly anticipates seizure without process.
9. That seizure without process is not anticipated by the provisions of MCL 257.625n.

10. That the Defendant Wayne County Prosecutor's Office has instructed local law enforcement agencies to perform seizures of vehicles without a Court order pursuant to the provisions of MCL 257.625n (herein "the statute), promising that the Wayne County Prosecutor's Office will *prospectively* obtain an ex parte order from a court of proper jurisdiction.
11. That the Defendant Wayne County Prosecutor's Office interpretation and description of the law regarding the forfeiture provisions of MCL 257.625n was and is factually and legally deficient.
12. That Defendant Kym Worthy and Defendant Wayne County Prosecutor's Office have directed their agents and local law enforcement officials to seize vehicles suspected of being used in certain offenses under MCL 257.625 for "drunk driving."
13. That the policy of seizing vehicles pursuant to MCL 257.625n without a court order is without legal authority.
14. That the Defendant Wayne County Prosecutor's Office has ***no real or actual intention*** of obtaining or seeking an order from a court of proper jurisdiction unless an individual challenges the seizure.
15. That, as a result, local law enforcement officials refuse to permit a seized vehicle to be returned to the lawful owner even though no court order has been entered or other legitimate forfeiture or seizure has occurred.
16. That, as a result, local law enforcement officials are seizing vehicles without process.
17. That, as a result, local law enforcement officials are unwittingly seizing vehicles illegally outside the provisions of the statute in contemplation of forfeiture based upon the Wayne

County Prosecutor's Office's wrongful interpretation of the statute.

18. That on October 22, 2004, Plaintiff's vehicle was seized pursuant to the policy.
19. That the seizure occurred incident to arrest of a third party allegedly using the vehicle in violation of MCL 257.625.
20. That Plaintiff immediately offered to pay the incidental costs of storage and/or towing fees.
21. That Defendants have failed and refused to release the vehicle, relying upon the policy.
22. That, but for reliance on the policy, Defendant CITY OF WESTLAND POLICE DEPARTMENT would return the vehicle forthwith.
23. That the unlawful, unconstitutional, and unauthorized policy adversely affects Plaintiff as well as the citizenry of Wayne County.
24. That the seizure of Plaintiff's vehicle was and remains without legal authority and without process, contrary to the provisions the statute and in violation of the Michigan Constitution Art. I, Sec. 17.
25. That MCL 257.625n anticipates only three legitimate forms of forfeiture proceedings under the statute, two of which occur only after a criminal conviction and one being through a court order. MCL 257.625n states in relevant part that:

(1) Except as otherwise provided in this section and in addition to any other penalty provided for in this act, the **judgment of sentence for a conviction** for a violation of section 625(1) described in section 625(8)(b) or (c), a violation of section 625(3) described in section 625(10)(b) or (c), a violation of section 625(4), (5), or (7), or a violation of section 904(4) or (5) **may require 1 of the following with regard to the vehicle used in the offense** if the defendant owns the vehicle in whole or in part or leases the vehicle:

(a) Forfeiture of the vehicle if the defendant owns the vehicle in whole or in part.

(b) Return of the vehicle to the lessor if the defendant leases the vehicle.

(2) The vehicle may be seized pursuant to an order of seizure issued by the court having jurisdiction upon a showing of probable cause that the vehicle is subject to forfeiture or return to the lessor.

....

(4) Within 14 days after the defendant's conviction for a violation described in subsection (1), the prosecuting attorney may file a petition with the court for the forfeiture of the vehicle or to have the court order return of a leased vehicle to the lessor. The prosecuting attorney shall give notice by first-class mail or other process to the defendant and his or her attorney, to all owners of the vehicle, and to any person holding a security interest in the vehicle that the court may require forfeiture or return of the vehicle.

26. That, as a result, the three forms of forfeiture might be generally described as 1) Court ordered forfeiture upon conviction [257.625n(1)], 2) Court ordered forfeiture based upon probable cause [257.625n(2)], and 3) Post-conviction petition by the prosecuting attorney's office [257.625n(4)].

27. That the statute anticipates that the prosecuting attorney may file a claim pursuant to the provisions of MCL 257.625n(2) while criminal proceedings are on-going, permitting the owner of the property to file a motion to challenge that seizure under MCL 257.625n(5), which states:

(5) If a vehicle is seized before disposition of the criminal proceedings, a defendant who is an owner or lessee of the vehicle may move the court having jurisdiction over the proceedings to require the seizing agency to file a lien against the vehicle and to return the vehicle to the owner or lessee pending disposition of the criminal proceedings. The court shall hear the motion within 7 days after the motion is filed. If the defendant establishes at the hearing that he or she holds the legal title to the vehicle or that he or she has a leasehold interest and that it is necessary for him or her or a member of his or her family to use the vehicle pending the outcome of the forfeiture action, the court may order the seizing agency to return the vehicle to the owner or lessee. If the court orders the return of the vehicle to the owner or lessee, the court shall order the defendant to post a bond in an amount equal to the retail value of the vehicle, and shall also order the seizing agency to file a lien against the vehicle.

28. That, on information and belief, Defendants Kym Worthy and Wayne County Prosecutor's Office take the position that a criminal defendant may file a motion described in MCL 257.625n(5) in the district court where the criminal proceedings *might* be underway.

29. That Plaintiff herein is not charged with any crime.

30. That Plaintiff herein has no ability to file a motion because she is not a party to any civil or criminal proceeding.

COUNT I -- CLAIM AND DELIVERY

31. Plaintiff herein incorporates each and every of the above allegations as if set forth herein word for word.

32. That Plaintiff is lawfully entitled to possession of the vehicle, with an estimated value of \$850.00.

33. That the property is the sole vehicle owned and used by Plaintiff.

34. That the Plaintiff is otherwise without the ability to travel to and from work.

35. That Plaintiff is otherwise adversely affected by the seizure.

36. That Plaintiff has suffered and will continue to suffer great hardship as a result of deprivation of the use of the vehicle.

37. That the property claimed is an independent piece of property.

38. That the vehicle is held without statutory authority.

39. That the vehicle is held without an order by a court.

40. That the vehicle is held without legal authority.

41. That Plaintiff has and will incur significant out-of-pocket expenses and attorney fees as a result of the unlawful seizure.

42. That Plaintiff claims damages in the amount of her actual damages, costs, and attorney fees as result of the unlawful seizure.

WHEREFORE, Plaintiff, BARBARA ANN LAPHAM-PLATTER, requests that this Court enter Judgment against Defendant, CITY OF WESTLAND POLICE DEPARTMENT, compelling Defendant to release the vehicle, plus monetary damages as might be deemed reasonable, together with costs, interest and attorney fees, along with any additional and further relief that may be deemed appropriate and just.

COUNT II -- MANDAMUS

43. Plaintiff herein incorporates each and every of the above allegations as if set forth herein word for word.

44. That Plaintiff has a clear legal right to return of the automobile, which is held without legal authority.

45. That Defendants are under an obligation to return the vehicle.

46. That Defendants' obligation to return the vehicle is ministerial, requiring Plaintiff only to pay reasonable towing and storage charges.

47. That despite Plaintiff's attempts to pay the reasonable towing and storage charges, Defendants refuse to release the vehicle, claiming that an ex parte application for forfeiture will be forthcoming.

48. That Defendants have been in possession of the automobile since October 22, 2004, and continue to refuse its release.

49. That no order or application for an order has been sought by any of the Defendants herein to the date of filing of this Complaint.

50. That Plaintiff submits that the Defendants have not acted in accordance with the statutory provisions of MCL 257.625n and will continue to apply the policy against property owners similarly situated.

51. That a writ of mandamus directing Defendants to properly apply the statutory provisions of MCL 257.625n is warranted in this case, as Plaintiff and others similarly situated will be adversely affected by the unlawful seizures and retention of vehicles in contradiction of the statutory provisions.

WHEREFORE, Plaintiff, BARBARA ANN LAPHAM-PLATTER, requests that this Court enter Judgment against Defendants, CITY OF WESTLAND POLICE DEPARTMENT, KYM WORTHY, and WAYNE COUNTY PROSECUTOR'S OFFICE, issuing a writ of mandamus compelling Defendants to comply with the statutory provisions of MCL 257.625n, along with any additional and further relief that may be deemed appropriate and just, specifically ordering that Defendants must:

- a) Seize and/or forfeit vehicles only in accordance with the statutory provisions, requiring that seizure occur only after a showing of probable cause is made to a court with proper jurisdiction issuing an order of seizure, or upon application by the prosecuting attorney following conviction;
- b) Release all property unlawfully held through the policy by Defendants and/or any other seizing agency;
- c) Cease and desist from enforcing the unlawful policy of seizing property without an order of seizure.

**COUNT II -- TEMPORARY RESTRAINING ORDER, INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

52. Plaintiff herein incorporates each and every of the above allegations as if set forth herein word for word.
53. That, on information and belief, the policy is being used against an undetermined number of property owners in Wayne County, Michigan, potentially affecting upwards of 9,000 people annually based upon recent drunk driving audit information.
54. That the Defendants, through the policy, will continue to misapply the statutory provisions unless or until this Court enjoins the unlawful practices.
55. That the policy clearly denies the right to a prompt and reasonable opportunity to be heard and fails to provide minimal due process requirements.
56. That the policy is subject to arbitrary and capricious enforcement because the initial seizure is not subject to judicial review for an initial determination of probable cause.
57. That none of the Defendants in this action risk suffering any harm by compelling compliance with the statute.
58. That the policy, as currently enforced, is clearly not anticipated by the statutory provisions, permitting seizure without process, and will harm an indeterminate number of property owners.
59. That a temporary restraining order pending hearing on the merits in this action is warranted by the substantial hardship and harm that vehicle seizure poses to Plaintiff.

WHEREFORE, Plaintiff requests that this Honorable Court:

- (a) Enter a Temporary Restraining Order restraining and enjoining Defendants and their

agents, servants, employees, representatives, and attorneys and those persons in active concert or participation with any of them who receive actual notice of the Temporary Restraining Order by personal service or otherwise from:

- 1) engaging in the practice of pre-conviction seizures of vehicles without an order of seizure from a court of proper jurisdiction;
 - 2) refusing to release, according to standard procedure, vehicles that may be subject to future forfeiture proceedings unless an order of seizure is granted by a court of proper jurisdiction.
- (b) enter an order to show cause why a preliminary injunction shall not be issued under same terms and conditions described in paragraph (a) above;
 - (c) enter a preliminary injunction enjoining Defendants from acting as described in paragraphs (a) above;
 - (d) enter a permanent injunction enjoining Defendants as described in paragraphs (a) above, after a trial on the merits;
 - (e) declare that the policy as enforced, being without statutory authority and avoiding judicial review, is unconstitutional and in violation of Art. I Section 17 of the Michigan Constitution; and,
 - (g) enter an Order declaring and granting other relief as is just and equitable.

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Dated: November 5, 2004