UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MELISA INGRAM, STEPHANIE WILSON, and ROBERT REEVES Plaintiffs, v. COUNTY OF WAYNE, Defendant.	No. 2:20-cv-10288-AJT-EAS **Class Action**

FIRST AMENDED COMPLAINT

INTRODUCTION

1. This civil-rights lawsuit challenges the constitutionality of Wayne County's vehicle seizure and civil forfeiture practices.

2. Named Plaintiffs Melisa Ingram, Stephanie Wilson, and Robert Reeves are lifelong Detroiters who represent a class of similarly situated individuals seeking declaratory and injunctive relief based on the county's systematic violation of rights guaranteed by the Fourth, Eighth, and Fourteenth Amendments to the U.S. Constitution.

3. Wayne County has an official policy of unreasonably seizing cars and other property, without probable cause to believe that the property is connected to a crime.

4. The Wayne County Prosecutor's Office is responsible for impounding cars (and other property) seized by the Wayne County Sheriff's Department, Detroit Police Department, or Michigan State Police within the county.

5. The county operates a Vehicle Seizure Unit and Asset Forfeiture Unit, both of which work at the direction and under the authority of the Wayne County Prosecutor's Office.

6. As a result of the county's policy and practices, it is now standard procedure for police and sheriff's deputies in Wayne County to seize cars simply because they are driven into, or out of, an area subjectively known for a generalized association with crime.

7. For example, the county has seized cars, impounded them for the better part of a year, and even forfeited them in the following situations: a boyfriend borrowed a car and drove it to a house suspected of harboring drugs or prostitution; a construction worker drove to a job site where someone else may have stolen something; an innocent person allegedly drove into the "wrong neighborhood." In each of these situations, no one is arrested—not the vehicle owner or the person driving at the time of seizure.

8. From the point of seizure forward, innocent property owners and criminal suspects are treated alike. The Wayne County Prosecutor's

Office impounds their car (and any personal property within it), until the owner pays a "redemption fee," plus any towing and storage expenses.

9. The redemption fee is not tied to the gravity of a person's alleged misconduct. In every case, the county demands $900 for a first seizure, $1,800 for a second, and $2,700 for a third, regardless of the severity of the alleged conduct and the owner's alleged role. It makes no difference that the owner may have no connection to criminal activity. The owner need not have had any involvement. Nor does it matter if, at the time of seizure, the owner was flagrantly violating drug or prostitution laws. Everyone pays the same redemption fee.

10. If someone wishes to contest a vehicle seizure and, ultimately, the county's power to forfeit their property, they must claim ownership and declare their intention to litigate within 17 calendar days—no sooner than three business days and no later than 20 calendar days after seizure.

11. When a property owner does not act within 17 (or fewer) days—for any reason—the county automatically forfeits the property. In such cases, an automatic transfer of ownership to the county occurs with zero judicial oversight.

12. Owners who affirmatively contest seizure are referred to the Vehicle Seizure Unit or Asset Forfeiture Unit.

13. Both Units uniformly tell property owners they have three options: abandon the property, wait for prosecutors to decide what to do, or pay the redemption fee.

14. When property owners are unwilling or unable to abandon their property or pay the redemption fee, they are made to wait six months or more before county prosecutors initiate civil forfeiture proceedings.

15. When forfeiture proceedings begin, the property owner is compelled to attend a "pre-trial conference." These conferences function like mediation without the mediator. No judge or intermediary is involved. Alone in a room with the property owner, prosecutors attempt to persuade him or her to pay the redemption fee, towing costs, and storage fees, pointing out that storage fees accrue daily.

16. When a property owner refuses to pay, they are compelled to attend more pre-trial conferences.

17. Property owners must attend four or more pre-trial conferences before the county will begin to litigate a forfeiture action.

18. If a property owner fails to attend even one conference, the property is automatically forfeited, and title transfers to the county with zero judicial oversight.

19. Conferences occur once a month. This means that for property seized on January 1, judicial proceedings can be expected to begin no earlier than October 1.

20. For example, Plaintiff Stephanie Wilson had her car seized on June 24, 2019. She timely contested the seizure expecting to see a judge. Instead, she has thus far been compelled to attend four pre-trial conferences. As of the filing of this complaint, the county has not begun to litigate judicial forfeiture proceedings.

21. County prosecutors have told Stephanie that the way to resolve the situation is to pay an $1,800 redemption fee.

22. Redemption fee payments support the budget of the Wayne County Prosecutor's Office, Wayne County Sheriff's Department, and Detroit Police Department.

23. There is no means of pursuing an interim judicial hearing for the return of property when the property has been seized based on—as four of the seizures in this case were—an alleged connection to drugs or prostitution. *Compare* MCL 600.4705 (providing innocent property owners with a means of requesting an interim hearing) *with* MCL 600.4701(a)(viii) (limiting application of this procedure to a series of crimes, excluding drug and nuisance-abatement offenses).

24. While interim-hearing procedures are available for a limited set of seizures, like those based on receiving or concealing stolen property under MCL 750.535, *see* MCL 600.4701(a)(viii)(A), the county's policy and practice in such cases is to: (a) not inform the property owner of the specific crime on which seizure is based; (b) not inform the property owner of the availability of an interim hearing; and (c) not comply with its attendant obligation to release property within 35 days of seizure or obtain a judicial warrant for continued impoundment, *see* MCL 600.4706.

25. The county's seizure and impoundment practices are not designed to get at the truth or maximize public safety; they are designed to maximize revenue.

26. Plaintiffs bring a broad constitutional challenge to the county's seizure and impoundment policies and practices prior to the involvement of a judge in state judicial proceedings.

27. The county's policies and practices are unconstitutional because they economically incentivize the seizure of property without probable cause, cause the unreasonable detention of vehicles without probable cause, deny property owners (innocent and suspect alike) due process of law, deny a prompt, post-seizure hearing, impose excessive fines, and (in the case of nuisance-abatement forfeitures) deny innocent owners *any* expeditious

opportunity to demonstrate that they did not know about or consent to the crime on which the county's forfeiture action is based.

SUMMARY OF CLASS CLAIMS

28. Named Plaintiffs and a proposed class of similarly situated individuals ask the Court to declare unconstitutional and enjoin the following:

a. The county's policy and practice of unreasonably seizing and impounding the vehicles of innocent owners for offenses committed by other people.

b. The county's policy and practice of unreasonably seizing and impounding vehicles (and other property) for being in an area subjectively known for drugs or prostitution.

c. The county's policy and practice of unreasonably seizing and impounding vehicles (and other property) based on proximity to other people's alleged crimes.

d. The county's policy and practice of imposing fines and fees on innocent owners for offenses committed or allegedly committed by other people.

e. The county's policy and practice of requiring the owner of a seized vehicle to pay an arbitrary redemption fee, plus towing and storage fees, to regain possession of their property.

f. The county's policy and practice of denying due process to owners of seized vehicles and other property.

g. The county's policy and practice of using constitutionally inadequate notice to owners and lien-holders when vehicles are seized while someone other than the owner is driving.

h. The county's application of the absence of any innocent-owner protections in Michigan's nuisance-abatement law, *see* MCL 600.3815(2), to deny innocent owners an opportunity to regain possession of their vehicles (or other property) by demonstrating they did not know about or consent to the alleged misuse of their property.

i. The county's policy and practice of seizing everything in a person's car when there is not probable cause to believe that personal property within the car has any connection to an alleged crime.

j. The county's policy and practice of unreasonably delaying the initiation of civil forfeiture proceedings for months, or even years, when an owner invokes his or her right to contest forfeiture.

k. The county's policy and practice of not informing property owners of the specific crime on which seizure is based.

l. The county's policy and practice of not informing property owners of the availability of an interim hearing in the limited circumstances where state law provides for an interim hearing.

m. In cases in which an interim hearing is available, the county's policy and practice of non-compliance with its attendant obligation to release property within 35 days of seizure or obtain a judicial warrant for an extended impoundment.

SUMMARY OF INDIVIDUAL CLAIMS

29. In addition to their other claims, Plaintiffs Melisa Ingram and Stephanie Wilson seek compensatory damages and an injunction ordering the payment of restitution, under 42 U.S.C. §§ 1983 and 1988, based on the unconstitutional redemption fees, towing, and storage expenses imposed on them by the county.

30. In addition to her other claims, Plaintiff Stephanie Wilson seeks return of her 2006 Saturn Ion, and the property within, based on this Court's equitable powers under 28 U.S.C. § 1331 and Rule 41(g) of the Federal Rules of Criminal Procedure.

31. Stephanie individually seeks compensatory damages and an injunction ordering the payment of restitution, under 42 U.S.C. §§ 1983 and 1988, based on the county's unconstitutional seizure and continued impoundment of her property and the unconstitutional procedures to which she has been subjected.

32. Plaintiff Robert Reeves individually seeks compensatory damages and an injunction ordering the payment of restitution, under 42 U.S.C. §§ 1983 and 1988, based on the damage sustained to his vehicle while in the county's custody (in the amount of $3,576) and the fee imposed to retrieve the vehicle from the impound lot ($100).

JURISDICTION AND VENUE

33. Plaintiffs bring this action under the Fourteenth Amendment to the U.S. Constitution; the Civil Rights Act of 1871, 42 U.S.C. §§ 1983 and 1988; the Declaratory Judgments Act, 28 U.S.C. §§ 2201 and 2202; this Court's equitable powers under 28 U.S.C. § 1331; and Rule 41(g) of the Federal Rules of Criminal Procedure.

34. This Court has jurisdiction under 28 U.S.C. § 1331.

35. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2).

36. Detroit is the proper place for holding court. *See* E.D. Mich. LR 83.10(a)(1), (b)(3)–(4) and (b)(6)–(7).

PARTIES

Melisa Ingram

37. Plaintiff Melisa Dawn Ingram is a lifelong resident of the Detroit area. She lives in the City of Southfield, Oakland County, Michigan.

Stephanie Wilson

38. Plaintiff Stephanie Grace Wilson is a lifelong resident of the Detroit area. She lives in the City of Taylor, Wayne County, Michigan.

Robert Reeves

39. Plaintiff Robert Terrell Reeves is a lifelong resident of the City of Detroit, Wayne County, Michigan, where he lives with his wife and five children.

Defendant, Interested Parties, Service of Process

40. Defendant, the Charter County of Wayne, Michigan, is a local government organized under the laws of the State of Michigan. The county is headquartered in Detroit, where it can be served through its Corporation Counsel at 500 Griswold Street.

41. The State of Michigan cannot be named as defendant under the Eleventh Amendment.

42. The State may, however, be interested to join in this litigation. One of Plaintiffs' nine claims is that MCL 600.3815(2) violates the Fourteenth Amendment's procedural and substantive due process

guarantees by denying any innocent-owner protections in nuisance-abatement actions. Plaintiffs have notified the Attorney General of the State of Michigan of the constitutional questions raised by this case and have sent this amended complaint to the Attorney General's office by certified and registered mail. *See* Fed. R. Civ. P. 5.1(a).

Class Members

43. Named Plaintiffs seek to certify a class of similarly situated individuals under Rule 23 of the Federal Rules of Civil Procedure. The class is defined as follows for Counts I, IV, and V:

> All persons who own a vehicle (or other property within a vehicle) that has been or will be seized by Defendant Wayne County on or after February 5, 2018 and before the date of class certification, whether pursuant to Michigan's Controlled Substances Act (MCL 333.7521, et seq.), the Public Nuisances chapter of the Revised Judicature Act of 1961 (MCL 600.3801, et seq.), or the so-called Omnibus Forfeiture Act (MCL 600.4701, et seq.). "Seizure" includes Wayne County's impounding of vehicles prior to a judicial determination of forfeiture.

See ¶ 235 *below*.

44. Named Plaintiffs also seek to certify a subclass of similarly situated individuals under Rule 23. The subclass is defined as follows for Counts I through VI:

> All persons who own a vehicle (or other property within a vehicle) that has been or will be seized by Defendant Wayne County on or after February 5, 2018 and before the date of class certification, whether pursuant to Michigan's Controlled

> Substances Act (MCL 333.7521, et seq.), the Public Nuisances chapter of the Revised Judicature Act of 1961 (MCL 600.3801, et seq.), or the so-called Omnibus Forfeiture Act (MCL 600.4701, et seq.) when the owner was not present at the time of seizure or, although present, not suspected of wrongdoing.

See ¶ 236 *below*.

FACTUAL ALLEGATIONS

Melisa's Experience

45. Melisa Ingram has lived in and around Detroit her whole life. She is a 50-year-old single mother of two adult children.

46. Melisa works full-time at BlueCross/BlueShield in downtown Detroit. She is currently the team leader for a group of claims adjustors.

47. Despite the COVID-19 pandemic, Melisa continues to work from her office downtown every day, while wearing a mask.

48. She is attending night school to earn a Bachelor of Arts in health and human services. This ordinarily requires her to attend classes after work, four nights per week, and it requires that she study and complete assignments on her own time. Her school responsibilities continue, as all academic programs are moved to remote instruction.

49. In late 2018, Melisa loaned her 2017 Ford Fusion to her then-boyfriend, Edland Turner, so that he could look for a job.

50. After dropping Melisa off at work, Edland allegedly used the car for something she never would have allowed: picking up a prostitute.

51. Two Wayne County Sheriff's deputies seized the car on the spot, without arresting anyone.

52. The car was towed to Martin's Towing—one of several private companies through which the county operates impoundment facilities around metro Detroit.

53. The Wayne County Prosecutor's Office controls whether a seized vehicle remains in impound. Private tow companies have no say in whether a vehicle is released or whether its owner can retrieve personal belongings. With respect to seized vehicles, the tow companies effectively work for the prosecutor's office.

54. Several days after the seizure, Edland told Melisa the truth: her car had been seized because county Sheriff's deputies thought it was connected to prostitution. He denied anything untoward, saying he was only giving a woman a ride as an act of kindness.

55. Melisa received the seizure notice from Edland. *See* Exhibit A: Notice of Seizure & Intent to Forfeit (Nov. 20, 2018).

56. The county did not initially notify Melisa by mail as required by MCL 600.4704 (vehicle seizures require notification to the registered owner).

57. Exhibit A is a true and correct copy of the seizure notice that Edland gave to Melisa, with necessary redactions. *See* Fed. R. Civ. P. 5.2(a).

58. The notice explains that Melisa's car was seized based on Michigan's nuisance-abatement law. *See* MCL 600.3801, et seq. That law makes it irrelevant whether Melisa knew about, or consented to, the alleged illegal use of her car. On the contrary, it allows the government to forfeit property even when the owner had no idea it was being used for an illegal purpose. *See* MCL 600.3815(2) ("proof of knowledge of the existence of the nuisance on the part of 1 or more of the defendants is not required").

59. Based on instructions in the notice, Melisa went downtown to the Vehicle Seizure Unit of the Wayne County Prosecutor's Office.

60. The Vehicle Seizure Unit operates a window on the tenth floor of the Frank Murphy Hall of Justice. The Unit is open Monday through Friday from 9 am to 4:30 pm, with a lunch closure between noon and 1:30 pm.

61. Melisa went to the Unit several times asking them to return her vehicle. She needed her car to get to work and school in the cold Michigan

winter. She also needed the personal property that happened to be in the car when it was seized.

62. She was told by county employees that it would be at least four months before her case could come before a judge.

63. With no other means of getting her car back quickly, Melisa agreed to pay $1,355 to the Wayne County Prosecutor's Office—a $900 "redemption fee," plus towing ($175) and storage ($280) fees paid to Martin's Towing.

64. Upon payment, the county promptly released the car.

65. Melisa was not sure whom to believe about Edland's behavior. Regardless, she made it crystal clear that he was never to use her car for any illegal purpose, especially prostitution. Edland promised that he would not.

66. In June 2019, Melisa again loaned her car to Edland, for the purpose of attending a friend's barbecue. As he was leaving the barbecue, alone, the same two Wayne County Sheriff's deputies pulled him over.

67. The deputies alleged that the house Edland was leaving was connected to drugs or prostitution—they were not specific about it.

68. Edland was not arrested.

69. Melisa's vehicle was seized on the spot, including her personal belongings.

70. On information and belief, no further action was taken against the owners of the home suspected by Sheriff's deputies of having a connection to drugs and/or prostitution.

71. One of the deputies drove off with Melisa's car (and everything inside, including Melisa's clothes, CDs, and other personal property having no possible connection to crime).

72. Exhibit B is a true and correct copy of the seizure notice that sheriff's deputies gave to Edland, with necessary redactions. *See* Fed. R. Civ. P. 5.2(a).

73. The county did not notify Melisa by mail as required by MCL 600.4704 (vehicle seizures require notification to the registered owner).

74. When a vehicle is seized, it is the county's policy and practice to serve notice of the seizure on the driver of the vehicle, in person, at the scene, rather than notifying the vehicle's registered owner by mail.

75. This being the second time Melisa's vehicle had been seized, the Vehicle Seizure Unit required a redemption fee of $1,800.

76. The Vehicle Seizure Unit told Melisa that she would have to pay towing and storage fees, although her vehicle was not towed from the scene.

77. Melisa did not have that kind of money, especially after paying $1,355 to get the same vehicle back six months earlier.

78. She had only just begun bankruptcy proceedings at that time. The U.S. Bankruptcy Court for the Eastern District of Michigan ultimately adopted a Chapter 13 bankruptcy plan under which Melisa surrendered her interest in the car to the lien holder—Ford Motor Credit.

79. If not for the first seizure, Melisa would not have declared bankruptcy.

80. The second seizure only compounded her financial problems and led her to release the vehicle to Ford in bankruptcy.

81. Despite Melisa's formal surrender of her interest in the car—and her repeatedly informing the county of that fact—the Wayne County Prosecutor's Office filed a civil complaint to initiate forfeiture proceedings.

82. The county's forfeiture action named Melisa, not Ford, as the vehicle owner and claimant.

83. If forfeiture had been part of a criminal action, Melisa would have been provided with a public defender. But because this was a civil forfeiture proceeding, Melisa was forced to retain an attorney to file an answer to the county's forfeiture complaint within 20 days, lest she lose the

property by default and fail in her obligations to her creditor, in violation of bankruptcy orders.

84. At the time of filing, the county obtained a court order from the Wayne County Circuit Court compelling Melisa to attend a so-called "pre-trial conference."

85. As a matter of practice, pre-trial conferences are attended by prosecutors and the vehicle owner only. No judge or mediator is present.

86. At her pre-trial conference, prosecutors told Melisa they would not speak with her because she had filed an answer to their forfeiture complaint.

87. Had Melisa not yet filed an answer, on information and belief, it is the county's practice for prosecutors to encourage the vehicle owner to pay redemption fees by any means necessary, sometimes offering to waive towing and storage fees on behalf of the impound facilities.

88. For seven months, the county would not allow Melisa to retrieve her personal belongings from the impound facility, despite numerous requests—in person and in writing.

89. In late 2019, Melisa's lawyer persuaded county prosecutors that Ford, not Melisa, was the proper claimant to the vehicle.

90. In January, the Wayne County Circuit Court adopted an agreed order dismissing the county's forfeiture action with prejudice and giving Melisa 14 days within which to retrieve her things.

91. Although Melisa was able to retrieve her personal belongings, she was inexplicably told that her license plates must remain with the vehicle.

92. After the second seizure, Melisa and Edland broke up.

Stephanie's Experience

93. Stephanie Wilson is a 29-year-old single mother. She is currently studying to become a nurse at Wayne County Community College. Classes continue for her during the pandemic, on a remote basis.

94. The father of Stephanie's child is a friend from high school, Malcolm Smith. The two do not live together and they have not been a couple for several years.

95. Malcolm is, at times, a homeless drug addict and he occasionally asks Stephanie for help. She sometimes helps out of pity for Malcolm and concern for their child's future relationship with his father.

96. Stephanie does not do drugs and she has never helped Malcolm buy, find, use, or sell drugs.

97. In January 2019, Malcolm called Stephanie from a gas station near downtown Detroit, saying he was cold and hungry and desperate for a ride to his mother's house.

98. Stephanie agreed to pick him up on her way to school. She drove to a Marathon station on West Warren Avenue and McGraw Avenue.

99. Moments after Malcolm got into Stephanie's Brown 2002 Chevy Malibu, Detroit Police officers surrounded the vehicle and ordered them to get out.

100. There was no explanation for the stop.

101. No drugs were found.

102. No guns were found.

103. No cash was found.

104. No one was arrested.

105. The car was, however, seized without explanation.

106. Exhibit C is a true and correct copy of the seizure notice that Stephanie received at the scene, with necessary redactions. *See* Fed. R. Civ. P. 5.2(a).

107. The notice informs her that her vehicle was seized for a "push-off violation" of Michigan's Controlled Substances Act, MCL 333.7521, et seq., for "either 1) the sale, receipt, or transportation or intended sale,

receipt, or transportation of narcotics; OR 2) the facilitation of a violation of the State's drug laws." Exhibit C.

108. Stephanie took the bus for the first time in her life to get home.

109. Stephanie tried to contact the Vehicle Seizure Unit the next day, but vehicle owners must wait three business days after a seizure before the county will speak with them. *See* Exhibit C.

110. Vehicle owners must, however, act within 20 calendar days of the seizure, or they forfeit the vehicle forever. *See id.*

111. Four days after the seizure, Stephanie and her father (who had to take off work) went to the tenth floor of the Frank Murphy Hall of Justice to visit the Vehicle Seizure Unit and discuss the return of her car.

112. The Unit could not find her paperwork and asked her to come back another time.

113. On her second visit, two weeks later, she was told that it was too late to contest the seizure.

114. She agreed at that point to abandon the vehicle.

115. Stephanie spent a little over a month without a car, during which she relied on her parents for transportation for both her and her child.

116. When she got her tax refund in May, a cousin arranged for Stephanie to buy a silver 2006 Saturn Ion from a tow yard for $1,000.

117. Last June, Malcolm again called Stephanie, this time from a Citgo gas station on Michigan Avenue on the West side of Detroit near I-94.

118. She drove her new Ion there to meet him.

119. Shortly after Malcolm got into the car, Detroit police pulled them over on the I-94 service drive—the West Edsel Ford Service Drive—near Chopin Street.

120. Stephanie's understanding is that officers may have found five empty syringes in Malcolm's pants.

121. Again, no drugs were found.

122. No guns were found.

123. No cash was found.

124. While Malcom and Stephanie were detained, Officer Rivers arrived—the officer who had ordered the seizure of Stephanie's Chevy Malibu five months earlier.

125. On information and belief, Officer Rivers is charged with seizing vehicles allegedly connected to drug activity, as part of Operation Push-Off—a joint effort of the Wayne County Prosecutor's Office, Detroit Police Department, and Wayne County Sheriff's Department.

126. Officer Rivers told Stephanie that she was in the wrong neighborhood—she remembers it as something to the effect that they "shouldn't be here."

127. Officer Rivers seized Stephanie's Ion.

128. No one was arrested.

129. Malcolm was allowed to leave with his syringes.

130. Exhibit D is a true and correct copy of the seizure notice that Stephanie received for the second seizure, with necessary redactions. *See* Fed. R. Civ. P. 5.2(a).

131. Again, the notice informs Stephanie that her vehicle has been seized for a "push-off violation" of Michigan's Controlled Substances Act, MCL 333.7521, et seq., for "either 1) the sale, receipt, or transportation or intended sale, receipt, or transportation of narcotics; OR 2) the facilitation of a violation of the State's drug laws." Exhibit D.

132. Stephanie's vehicle was towed away by a private tow company working on behalf of Wayne County.

133. Stephanie walked some distance alone in what officers described as a "bad neighborhood" to find a bus stop.

134. She has been without a car ever since, although, for a time, she rented a U-Haul pickup truck and was able to borrow a friend's truck to get around.

135. Stephanie pleaded with prosecutors to allow her to retrieve her child's car seat from the Ion, to no avail. An employee of the tow company took pity on her and allowed her to retrieve the car seat, acknowledging that doing so was against county rules.

136. Because it was the second seizure, the Vehicle Seizure Unit told Stephanie that she would have to pay an $1,800 redemption fee, plus towing and storage fees, to get her car back.

137. Stephanie insisted on a hearing before a judicial officer.

138. The Vehicle Seizure Unit told her that she was scheduled for a judicial hearing on July 10, 2019. But no hearing was set.

139. Stephanie called the Vehicle Seizure Unit several times over the next four months, each time being told that she would need to wait for the county to initiate forfeiture proceedings against her car.

140. In October, the Wayne County Prosecutor's Office filed a forfeiture complaint against Stephanie's vehicle, naming her as a party.

141. At the same time, prosecutors obtained a routine order from a Wayne County Circuit Court judge ordering Stephanie to appear at a pre-trial conference in November.

142. At this pre-trial conference, the only people present were Stephanie and two prosecutors. No judge was there.

143. This is the standard practice for vehicle seizure cases in Wayne County based on the Controlled Substances Act and public-nuisance laws—before a vehicle owner can bring their case before a judge, they must wait for county prosecutors to file a forfeiture action and then must endure numerous pre-trial conferences at which they meet only with prosecutors.

144. At the first pre-trial conference Stephanie attended, prosecutors pressured her to pay the redemption fee and warned that it could be up to four months before she had a judicial hearing.

145. At a second pre-trial conference, in February 2020, Stephanie told prosecutors that it would be impossible for her to pay for the car's return because she did not have the money. Prosecutors asked how much she could come up with, offering to waive towing and storage fees if she could come back with a reasonable amount of money.

146. Stephanie insisted on a judicial hearing.

147. Prosecutors obtained orders for her to attend two more pre-trial conferences—a total of four.

148. As of today, Stephanie is still waiting for a judicial hearing to be scheduled. She has had no opportunity to speak with a judge.

Robert's Experience

149. Robert Reeves is 29 years old. He works construction and fixes cars.

150. He has lived in Detroit his whole life. He lives with his wife and her four children, whom he is raising as his own, and with one child from his previous marriage.

151. In early 2019, Robert purchased a 1991 Chevrolet Camaro for $5,500 cash. Over the next several months, he spent over $9,000 improving the vehicle—repainting, installing an air-intake scoop, new audio equipment, and wheels, tires, and rims, among other improvements. He was hoping to sell the car for a profit and to use the proceeds to start another car project.

152. In July 2019, a man with whom Robert sometimes works asked him to visit a job site where he was clearing rubbish. The man had a skid-steer loader at the site and wanted to know if Robert knew how to operate

it. Robert demonstrated how to use the equipment and the two men planned to meet the next day to begin their work.

153. Robert then drove to a nearby gas station and went inside to purchase a bottle of water. As he was leaving, officers surrounded him and demanded to know what he knew about a skid steer that was allegedly stolen from Home Depot.

154. Robert knew nothing other than that the other man had rental paperwork from Home Depot, which was consistent with Robert's understanding that the equipment had been rented.

155. After several hours of detention in a police car and at a local jail, Robert was let go.

156. Police seized Robert's Camaro, however, along with two cell phones and $2,280 that he had in his pocket.

157. No one was arrested for the alleged skid-steer theft at the time, but police seized the other man's truck and briefly arrested him for allegedly violating his parole.

158. No warrant was obtained for the seizure or impoundment of Robert's property.

159. For more than six months, no forfeiture complaint was filed against Robert's vehicle (and other property), and he was given no

opportunity to contest the seizure. In fact, the county's seizure notice advises that "[a] civil forfeiture matter may follow the criminal proceeding which will require further process of which you will be notified" and invites questions. *See* Exhibit E.

160. Exhibit E is a true and correct copy of the notice, with necessary redactions. *See* Fed. R. Civ. P. 5.2(a).

161. Robert called the numbers listed on the notice dozens of times. He was eventually told by the Vehicle Seizure Unit that he would need to get an attorney if he wanted answers.

162. Robert hired an attorney, but employees of the Vehicle Seizure Unit and Wayne County Prosecutor's Office refused to speak with his attorney. No one would take their calls, despite dozens and dozens of attempts to learn more.

163. On February 4, 2020, Robert filed his original complaint in this federal action seeking, among other things, the return of his vehicle and cash.

164. The day after Robert filed this case, the Wayne County Prosecutor's Office wrote to a state taskforce—the Western Wayne Criminal Investigation Forfeiture Unit—instructing it to release Robert's property.

See Def.'s Mot. to Stay, Ex. 2: Omnibus Forfeiture Property Release Letter (ECF No. 9-2).

165. When Robert received a copy of this letter, he began calling the Michigan State Police to obtain his vehicle, cash, and cell phones. He was told it would take some time to return his money and vehicle and that he should wait to be contacted by the police.

166. On February 19, the state police sent Robert a check in an amount equivalent to the seized cash.

167. On February 20, Robert received a call from Stadium Towing—the private tow company where his vehicle was impounded—telling him to come and pick up his car.

168. When he arrived, Stadium Towing required that Robert pay $100 to extract the car from others surrounding it in the impound lot.

169. Robert was annoyed, but agreed to pay the $100.

170. A true and correct copy of the bill for towing is attached as Exhibit F.

171. Robert immediately took the vehicle to two mechanics, driving directly to the first from the tow yard and then to the second.

172. Two ASE-certified mechanics inspected the vehicle and estimated that it would need $3,576 in work, apparently due to towing and being stored outside.

173. A true and correct copy of the estimated damage found by the mechanics is attached as Exhibit G.

174. On March 11, 2020, counsel for Defendant in this case contacted Plaintiffs to inform them that Wayne County was likely to charge Robert with felony possession of stolen property.

175. Defendant's counsel represented that the county had attempted to obtain an arrest warrant for Robert and been denied. She represented that the county would try again soon.

176. On March 12, the Wayne County Circuit Court issued an arrest warrant for Robert.

177. However, Robert was not arrested until May 8, 2020, when he was pulled over for a broken taillight and taken into custody based on the outstanding warrant.

178. Robert had attempted to turn himself in for arraignment seven weeks earlier, on March 23. He wanted to trigger a probable-cause hearing, obtain the information on which the county bases its criminal action, and challenge the charging decision.

179. On March 23, he was told by court security officers that the Wayne County Circuit Court would remain closed until further notice.

180. Plaintiffs' counsel requested the investigation file from the county and was told that it would not be turned over.

181. Seven weeks later, Robert was arrested and, from Friday afternoon to Sunday afternoon, confined to a group setting in a Detroit jail known for spreading COVID-19. He was released on $1,000 bond and sent home to his family.

Named Plaintiffs' Experiences Are Common

182. What happened to Named Plaintiffs is not the exception; it is the rule in Wayne County. Every year, hundreds of people—including innocent people like Melisa, Stephanie, and Robert—find themselves ensnared in the county's unconstitutional system of seizures and forfeitures.

183. The county's practices are encouraged by the fact that Michigan law permits seizing agencies to keep up to 100% of the proceeds of property they seize and forfeit. *See* MCL 333.7524(1)(b)(ii).

184. Over two years, Wayne County forfeited no fewer than 2,600 cars and collected not less than $1.2 million in revenue by selling them. *See* Tyler Arnold, *Wayne County Doubling Down on Forfeiture as Legislature*

Moves to Reform It, Mich. Cap. Confidential (Mar. 28, 2019), https://bit.ly/2WMAnpN.

185. The county's policies and practices are not calculated to get at the truth, nor keep the public safe; they are calculated to ensure that forfeiture activity financially benefits the county.

The County Systematically Violates Constitutional Rights

186. At the time of seizure, police serve a vehicle's driver with a Notice of Seizure and Intent to Forfeit.

187. If the vehicle owner is someone other than the driver, county prosecutors routinely fail to serve notice on the vehicle's registered owner, despite a statutory obligation to do so. *See* MCL 333.7523(1)(a), 600.4704(1).

188. A seized car remains impounded until the owner either abandons the vehicle (and any property within it) or pays what the county calls a "redemption fee" of no less than $900, plus towing and storage fees, which can total $640 or more in a single month.

189. In vehicle seizure cases based on Michigan's Controlled Substances Act, *see* MCL 333.7521, owners are given just 20 days in which to pay the county's demand, contest forfeiture, or abandon the property, *see, e.g.*, Exhibit A.

190. In vehicle seizure cases based on the nuisance-abatement law, *see* MCL 600.3801, owners are given 30 days in which to pay the county's demand, contest forfeiture, or abandon the property, *see* Exhibit A.

191. The county's failure to properly serve vehicle owners virtually guarantees that innocent people will unintentionally abandon their vehicles when the person driving does not give them the seizure notice. And it guarantees that people who pay to get their cars back will pay more in storage fees than they would have, had they been given prompt notice.

192. The county's requirement that vehicle owners wait three business days to speak to someone guarantees that storage fees will accrue even if a driver is diligent in attempting to retrieve their property.

193. When property is seized based on the so-called Omnibus Forfeiture Act, MCL 600.4701, et seq., there is no similar timeline. Instead, the county's seizure notice advises owners that "[a] civil forfeiture matter may follow the criminal proceeding which will require further process of which you will be notified." Exhibit E. Property owners and their attorneys are invited to contact the Asset Forfeiture Unit of the Wayne County Prosecutor's Office. But when an owner or attorney does so, they are frequently ignored.

194. Due process is systematically denied to property owners by the county. Few (if any) seizures lead to forfeiture cases resolved by a judge. In most cases, property owners agree to pay the county for the return of their property with zero judicial oversight. When property is abandoned or its owner cannot afford to pay, the Vehicle Seizure Unit and Asset Forfeiture Unit administratively forfeit the property with zero judicial oversight.

195. When an owner manages to contest a seizure, prosecutors frequently wait six months or longer before filing a forfeiture complaint.

196. If forced to file a complaint, county prosecutors obtain an order from a judge of the Wayne County Circuit Court compelling the property owner to attend a so-called "pre-trial conference."

197. This pre-trial conference does not involve a judge; it is a meeting between prosecutors and property owner. If the owner fails to appear, the property will be deemed abandoned and forfeited to the county, with no further process. If the owner attends, he or she will be pressured to do one thing: pay the redemption fee, plus towing and storage. The prosecutors doing that pressuring stand to gain financially from the transaction. Owners are told that the only way to obtain the pre-judgment release of their car is to pay the redemption fee, plus towing and storage.

198. The redemption fee is nonnegotiable. *See* Exhibit A.

199. According to the county's standard Notice of Seizure and Intent to Forfeit, redemption fees escalate as follows: "$900.00 (1st seizure), $1,800.00 (2nd seizure), $2,700.00 (3rd seizure), etc. plus towing and storage." *Id.*

200. Towing fees are generally between $100 and $300.

201. The storage fee accrues at a rate of $15 per day, adding up to $465 in a typical month.

202. It is the county's policy and practice to allow the Vehicle Seizure Unit and Asset Forfeiture Unit to resolve seizures in this way until the fourth encounter with an individual vehicle owner, at which point prosecutors must be consulted.

203. Property owners are not given an opportunity to recover personal property from their vehicles, unless they make payment in full and the vehicle is returned.

Injury to Named Plaintiffs

204. Despite having done nothing wrong, the county deprived Named Plaintiffs of their vehicles for half a year or longer.

205. Named Plaintiffs have found the Vehicle Seizure Unit and Asset Forfeiture Unit to work like an adversarial DMV—where government employees are unwilling to answer questions or help solve problems;

rather, the employees of those units are routinely rude, unhelpful, suspicious, and seemingly concerned with one thing: maximal financial recovery for the county.

206. The county's policies required Named Plaintiffs to appear in person multiple times to challenge the seizure of their vehicles. This caused them to miss work, school, time with their families, and opportunities to better themselves by, for example, studying.

207. Named Plaintiffs all endured a great deal of stress attempting to navigate this system. They each began by making dozens of calls to the county. Melisa sent many emails, statements, and paperwork. Stephanie called dozens of times, visited the Vehicle Seizure Unit twice, and has been compelled to attend four pre-trial conferences. Robert estimates that he has called more than 100 times after his vehicle was seized. Melisa and Robert had to quickly interview and engage lawyers to call multiple times on their behalf.

208. For all her efforts, it took nearly seven months for Melisa to persuade the county of two simple facts—that Ford owned the vehicle and that she should be permitted to retrieve her personal belongings from the car.

209. No progress has been made toward resolving the seizure of Stephanie's property, despite the county having taken it from her more than ten months ago and despite its having scheduled four pre-trial conferences.

210. Without obtaining a warrant, the county held onto Robert's property for more than six months before returning it to him shortly after the filing of this case. A day after returning his property, in an apparent act of retaliation, the Wayne County Prosecutor's Office charged him with a crime based on allegedly stealing property.

211. At no point during the impoundment of their vehicles (and other property) did the county provide Named Plaintiffs with the opportunity to assert an innocent-owner defense.

212. The county subjected Named Plaintiffs to the retention of their cars (and other personal belongings) without an opportunity for a prompt, post-seizure hearing—that is, a reasonably prompt opportunity to contest seizure and impoundment of property before a neutral decisionmaker.

213. Melisa had to pay $1,355 to get her car back after the first seizure.

214. Stephanie abandoned her vehicle after the first seizure and had to purchase a new car for $1,000.

215. The second time her car was seized, the Vehicle Seizure Unit told Stephanie she would have to pay an $1,800 redemption fee, plus towing and storage fees, as of the day that her car is released.

216. As of today, towing and storage fees for the second seizure would total at least $4,945—*i.e.*, at least $100 for towing and $15 per day for the 323 days the vehicle has been impounded by the county, which greatly exceeds the resale value of Stephanie's car.

217. Each passing day adds $15 to the storage fee.

218. Melisa and Stephanie repeatedly asked county employees and agents to allow them to access their cars long enough to retrieve their personal belongings. Both were told that retrieving their belongings required them to pay all fees. After she begged and pleaded, a tow-company employee allowed Stephanie to retrieve her child's car seat, while emphasizing that it was against county rules to do so.

219. Melisa would not have declared bankruptcy if it were not for the first seizure and the effect that it had on her finances.

220. Stephanie would not have needed to purchase a new car but for the first seizure.

221. Stephanie has been without a car since the time of the second seizure, forcing her to rely on her parents, rented vehicles, and the kindness of friends and family to get around.

222. The seizure of his Camaro caused Robert to lose out on a potential sale of the vehicle several weeks after the seizure.

223. Robert put approximately $9,000 of work into his Camaro after purchasing it for $5,000. He planned to resell the vehicle and begin another car-restoration project.

224. Robert's money and his labor are largely wasted now that his car has sat on an impound lot, exposed to the elements, for more than six months.

225. Robert's vehicle sustained approximately $3,576 in damage while in the county's custody.

226. Robert was required to pay $100 to a private tow company to retrieve his vehicle.

227. At the time of seizure, Robert saw that police intended to tow the Camaro using a method incompatible with a small sports car. Robert warned the police that towing the car in this way would likely result in the axle being cracked or otherwise broken, but the police persisted with their chosen towing method.

228. Several weeks after retrieving his vehicle, Robert had to replace the rear axle at a cost of approximately $900.

229. Robert has been deprived of the use of his business cell phone and his personal cell phone, although he has continued to make payments on both. Neither cell phone has been returned.

230. For more than seven months, Robert was denied the use of his $2,280, which police unreasonably seized.

231. The county never informed Robert of his right to pursue an interim-hearing for return of property under MCL 600.4705, and did not comply with its attendant obligation under MCL 4706 to either obtain a warrant for impoundment or release the property within 35 days of seizure.

232. Robert has been charged with a felony in state court in an effort to intimidate and retaliate against him for pursuing this action in federal court.

CLASS ACTION ALLEGATIONS

233. Named Plaintiffs seek to maintain this action on behalf of themselves and all others similarly situated under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

234. The county's conduct toward Named Plaintiffs is part of a broader policy and practice under which the county seizes vehicles,

including from innocent owners, fails to provide adequate notice or opportunity to be heard, and continues holding them until the owner pays a redemption fee, towing, and storage fees. The purpose of these practices is to maximize revenue generated from seizures.

235. Named Plaintiffs are representative of a proposed class with the following definition for Counts I, IV, and V:

> All persons who own a vehicle (or other property within a vehicle) that has been or will be seized by Defendant Wayne County on or after February 5, 2018 and before the date of class certification, whether pursuant to Michigan's Controlled Substances Act (MCL 333.7521, et seq.), the Public Nuisances chapter of the Revised Judicature Act of 1961 (MCL 600.3801, et seq.), or the so-called Omnibus Forfeiture Act (MCL 600.4701, et seq.). "Seizure" includes Wayne County's impounding of vehicles prior to a judicial determination of forfeiture.

236. Named Plaintiffs are also representative of a proposed subclass with the following definition for Counts I through VI:

> All persons who own a vehicle (or other property within a vehicle) that has been or will be seized by Defendant Wayne County on or after February 5, 2018 and before the date of class certification, whether pursuant to Michigan's Controlled Substances Act (MCL 333.7521, et seq.), the Public Nuisances chapter of the Revised Judicature Act of 1961 (MCL 600.3801, et seq.), or the so-called Omnibus Forfeiture Act (MCL 600.4701, et seq.) when the owner was not present at the time of seizure or, although present, not suspected of any wrongdoing.

Plaintiffs refer to this as the Innocent Owner Subclass.

237. Named Plaintiffs and members of the class have faced, or will face, the following pattern of behavior by the county. First, the county seizes and impounds a vehicle without a warrant or probable cause. No one is arrested. Notice is provided to the driver on the spot, regardless of whether the driver is the owner of the vehicle. Police drive the vehicle away or have it towed. The county impounds the vehicle. Next, the county pressures the owner to pay a redemption fee, plus towing and storage fees, without any judicial process. The county almost never obtains a judicial warrant for the continued seizure and impoundment of the property. Instead, the county retains the vehicle for months or even years until the owner completes payment, defaults, or abandons the property.

238. Throughout this process, Named Plaintiffs and members of the class struggle to overcome the county's inadequate notice to vehicle owners and the requirement of multiple in-person appearances to challenge the seizure. At no point in the process is a judicial officer involved until prosecutors deem it appropriate to pursue an order of forfeiture.

239. Members of the class have suffered the same and similar injuries as those suffered by the Named Plaintiffs. *See* ¶¶ 205–232 *above*.

240. Named Plaintiffs and members of the class have not, and will not be able to, assert innocence as a defense to the seizure of their

vehicles—both as a practical matter and as a matter of law under Michigan's nuisance-abatement statute. *See* MCL 600.3815(2).

241. Named Plaintiffs and members of the class have been, or will be, injured by these policies and practices, which violate the Fourth, Eighth, and Fourteenth Amendments to the U.S. Constitution.

242. The class satisfies all requirements for class certification set forth in Rule 23(a) of the Federal Rules of Civil Procedure.

243. **Numerosity.** The proposed class is so numerous that individual joinder of all members is impracticable. In the last two years alone, the county has forfeited no fewer than 2,600 cars. *See* Arnold, *above* ¶ 184.

244. **Commonality.** This action presents questions of law and fact common to the proposed class, resolution of which will not require individualized determinations of the circumstances of any one Plaintiff.

a. Common questions of fact include, but are not limited to:

i. Does the county routinely or purposely fail to notify a vehicle's owner of the seizure when the vehicle is seized from a non-owner?

ii. Does the county impose at least partly punitive financial penalties and fees on innocent vehicle owners?

iii. Does the county seize, impound, and forfeit vehicles based on coercive settlement agreements?

iv. Does the county seize, impound, and forfeit vehicles and other property without probable cause to believe the property is connected to a crime?

v. Does the county charge storage fees for periods when the owner does not have notice of seizure?

vi. Does the county charge storage fees for the three days after seizure before property owners are allowed to redeem a vehicle?

vii. Does the county require repeated personal appearances by people whom the county knows may not have a vehicle and automatically forfeit the property if a person fails to appear?

viii. Does the county seize vehicles and delay the initiation of forfeiture proceedings for unreasonably long

periods of time in the hope that the owner will agree to pay for the vehicle's return?

ix. How long has the county had such policies and practices?

x. Does the county depend financially on proceeds from seizure and forfeiture proceedings?

b. Common questions of law include, but are not limited to:

i. Does the county's imposition of financial penalties on innocent vehicle owners violate the Eighth and Fourteenth Amendments to the U.S. Constitution?

ii. Does the county's forfeiture of vehicles based on coercive settlement agreements violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution?

iii. Does the county's insufficient notice to vehicle owners violate the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution?

iv. Does the county's continued seizure of vehicles until owners complete payment of fines and fees violate the Fourth Amendment to the U.S. Constitution?

v. Do the county's pecuniary interests in seizing and forfeiting vehicles and other property create and unconstitutional conflict of interest?

245. **Typicality.** Named Plaintiffs' claims are typical of the claims of the proposed class.

a. Named Plaintiffs' claims arise out of the same policy and practices that the class is challenging. Their experiences typify the county's unconstitutional conduct because they follow the same pattern of unreasonable seizure, denial of due process, arbitrary fines and fees, and coercive settlement negotiations, all of which impact hundreds of Detroiters every year.

b. Named Plaintiffs' claims are based on the same legal theories as those of the proposed class.

c. The harms to the proposed class are the same harms suffered by Named Plaintiffs.

d. Named Plaintiffs are seeking the same relief for themselves and the proposed class.

246. **Adequacy.** Named Plaintiffs will fairly and adequately protect the interests of the class they seek to represent. Named Plaintiffs are members of the proposed class and subclass, and their interests are aligned

with the interests of other class members. Named Plaintiffs' interest is ending the county's practices of seizing the vehicles of innocent owners and charging these owners fines and fees. Additionally, Named Plaintiffs have an interest in ending the county's practice of holding vehicles ransom for payment of fines and fees. Further, Named Plaintiffs have an interest in securing constitutionally adequate procedures when facing the deprivation of their property rights. Named Plaintiffs seek declaratory and injunctive relief for the injury caused by these practices. These interests are ensuring that the county's policies and practices of seizure and forfeiture comply with the constitutional rights of car owners and securing relief for those constitutional rights already violated. Those interests are shared by all class members. The county will have no defenses to the Named Plaintiffs' claims that would not equally apply to the claims of the proposed class and subclass.

247. **Ascertainability.** Those belonging to the proposed class and subclass are objectively ascertainable. County records will reflect when, since February 2018, vehicles have been seized—whether from the vehicle owner or someone else—and impounded based on the Controlled Substances Act, Public Nuisances chapter of the Revised Judicature Act of 1961, or so-called Omnibus Forfeiture Act. County records will also reflect

when, if ever, someone has been charged with a crime in connection with the seizure and impoundment of a vehicle.

248. **Class Counsel.** The attorneys for Named Plaintiffs will fairly and adequately represent the class. Named Plaintiffs are represented *pro bono* by Wesley Hottot, Kirby Thomas West, and Jaimie Cavanaugh of the Institute for Justice and by Barton Morris, an experienced Michigan litigator. The Institute is a 501(c)(3) non-profit with experience litigating class-action lawsuits around the country, including civil-rights cases involving similar claims litigated in federal court in Chicago, Illinois; Philadelphia, Pennsylvania; and Pagedale, Missouri. Mr. Hottot recently handled a forfeiture case in the U.S. Supreme Court as counsel of record for the petitioner—a case in which he argued and won a unanimous reversal. *See Timbs v. Indiana*, 139 S. Ct. 682 (2019). Institute attorneys, including the undersigned, have litigated dozens of constitutional challenges to seizures and forfeitures across the country.

249. The class is entitled to the requested declaratory relief, injunctive relief, and attorneys' fees and costs.

250. The class satisfies the requirements of Rule 23(b)(2) of the Federal Rules of Civil Procedure because the county has both acted and refused to act on grounds that apply generally to the class, so that final

injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole. Indeed, civil-rights actions are particularly well suited to certification under Rule 23(b)(2).

251. Specifically, the county has a policy and practice of unreasonably seizing property from class members without probable cause connecting the property to a crime as set forth below.

252. The county has a policy and practice of depriving all class members—innocent and suspect alike—of procedural due process and substantive due process as set forth below.

253. The county has a policy and practice of imposing constitutionally excessive financial penalties on the Innocent Owner Subclass as set forth below.

254. The county's policy and practice of seizing vehicles and (regardless of the factual circumstances) returning them to their owners based on an arbitrary redemption fee, towing, and storage fees virtually guarantees that no member of the subclass will individually challenge the systematic deprivation of constitutional rights described in this complaint. On the contrary, the county gives individual property owners every incentive to pay the fees required to quickly release their vehicle or other

property, rather than paying to litigate the systematic constitutional violations described in this complaint.

255. Plaintiffs are aware of two challenges to aspects of the county's policy and practices that are at issue in this case. First, a case is pending before the Sixth Circuit in which the plaintiff asserts a right to a prompt, post-seizure hearing in his individual circumstances. *See Nichols v. Wayne Cty.*, No. 19-1056 (6th Cir argued Oct. 16, 2019). Although *Nichols* was originally filed as a class action, the class claims have since been abandoned. Second, a case is pending in this Court, in which the plaintiff asserts a violation of the Excessive Fines Clause of the Eighth Amendment to the U.S. Constitution in the individual circumstances of her seizure. *See Sisson v. Charter Cty. of Wayne*, No. 4:18-cv-13766-MFL (E.D. Mich. filed Dec. 5, 2018). Neither case asserts the systematic constitutional violations at issue in this case. Neither case involves class claims. Neither case proposes to challenge the county's unconstitutional policy and practice in a comprehensive manner. Either case could be mooted by way of settlement, without the class seeing any benefit.

256. Litigation concerning the class claims at issue should be concentrated in Wayne County because the county's seizure policy and practices lie at the heart of this case.

257. Few (if any) difficulties are likely to arise in managing a class action of this kind in this forum.

CONSTITUTIONAL VIOLATIONS

Count I
(Fourth Amendment to the U.S. Constitution—Unreasonable Seizure and Unreasonable Retention)

258. Plaintiffs incorporate Paragraphs 1 through 257 by reference as though fully alleged in this paragraph.

259. The Fourth Amendment to the U.S. Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no [w]arrants shall issue, but upon probable cause, supported by [o]ath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

260. The Fourth Amendment's prohibition on unreasonable searches and seizures applies to state and local governments through the Fourteenth Amendment.

261. A seizure occurs when there is some meaningful interference with an individual's possessory interests in his or her property.

262. Even if law enforcement has justification for the initial seizure, the government's continued detention of property is equally subject to the protections of the Fourth Amendment. Thus, a seizure violates the Fourth

Amendment if it is unreasonable at the time of seizure or if it later becomes unreasonable with the development of events, based on new information, or with the passage of time.

263. The county unreasonably seizes cars (and other property) without probable cause to believe that the property is connected to a crime for which the owner can be held accountable. This practice imposes quickly accruing fees—at least $1,100 in the first two days alone—on those innocent people who, for whatever reason, wish to pay the county to quickly release their car (and other property).

264. The county also unreasonably keeps cars (and other property) by conditioning their release on the owner's payment in full of a redemption fee, plus towing and storage fees.

265. The county routinely takes an unreasonable amount of time to file forfeiture proceedings against cars (and other property) and, by doing so, unreasonably seizes cars (and other property) far beyond constitutionally permissible time limits.

266. The county may not condition the return of Plaintiffs' personal property on the payment of a "redemption fee," as well as the payment of fees that accrue only because the county refuses to release the vehicle.

267. The county's policy and practice of seizing and impounding cars based simply on their presence in an area subjectively known to officers as having a connection to prostitution or drugs are the cause of unconstitutional seizures that violate the Fourth Amendment to the U.S. Constitution.

268. The county's policy and practice of seizing and impounding cars based simply on their proximity to crimes allegedly committed by someone other than the driver and owner of the car are the cause of unconstitutional seizures that violate the Fourth Amendment to the U.S. Constitution.

269. Declaratory and injunctive relief is necessary to remedy the county's unconstitutional conduct of unreasonably seizing vehicles. Without appropriate declaratory and injunctive relief, the county's unconstitutional policies and practices will continue.

Count II
(Eighth Amendment to the U.S. Constitution—
Excessive Fines and Forfeitures)

270. Plaintiffs incorporate Paragraphs 1 through 257 by reference as though fully alleged in this paragraph.

271. The Eighth Amendment to the U.S. Constitution provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."

272. The Excessive Fines Clause applies to state and local governments through the Fourteenth Amendment.

273. The financial penalties imposed under the county's seize-and-ransom policy, as set forth above, are at least partly punitive and thus within the protections of the Excessive Fines Clause.

274. The Excessive Fines Clause prevents the government from levying disproportionate penalties and protects innocent people from punishment.

275. Because an innocent owner—who did not authorize or know about the crime of another—has not violated any law, *any* punishment levied upon him or her is *per se* disproportionate and in violation of the Excessive Fines Clause.

276. The county's demand that innocent owners pay penalties for crimes allegedly committed by another violates the Excessive Fines Clause.

277. Declaratory and injunctive relief is necessary to remedy the county's policy and practice of imposing unconstitutionally excessive fines. Without such relief, the county's unconstitutional practice will continue.

Count III
(Fourteenth Amendment to the U.S. Constitution—
Lack of Protections for Innocent Owners)

278. Plaintiffs incorporate Paragraphs 1 through 257 by reference as though fully alleged in this paragraph.

279. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law."

280. Michigan law unconstitutionally denies innocent owners due process in nuisance-abatement actions by not requiring "proof of knowledge of the existence of the nuisance on the part of 1 or more of the defendants." MCL 600.3815(2). Regardless of state law, Defendant has an obligation under Section 1 of the Fourteenth Amendment to guarantee due process of law to anyone it seeks to deprive of property.

281. The U.S. Supreme Court has held that MCL 600.3815(2) does not violate the substantive due process protections of the Fourteenth Amendment, *Bennis v. Michigan*, 516 U.S. 442 (1996), but it does not follow that the county's current policy and practices under that statute survive modern due-process analysis.

282. Except in limited circumstances under MCL 600.4701, et seq., individuals whose cars are seized and impounded for reasons other than

nuisance abatement likewise have no ability to assert a defense of innocence to avoid forfeiture or the payment of a redemption fee, plus towing and storage costs.

283. MCL 600.3815(2) violates the Fourteenth Amendment's procedural and substantive due process guarantees by denying any innocent-owner protections in nuisance-abatement actions.

284. The county violates the Fourteenth Amendment's procedural and substantive due process guarantees by denying innocent owners any means of demonstrating their blamelessness in nuisance-abatement actions and by denying innocent owners in other types of actions any means of doing so prior to the county's initiation of civil forfeiture proceedings.

285. Declaratory and injunctive relief is necessary to remedy the county's unconstitutional policy and practice of failing to provide adequate protection for innocent vehicle owners. Without such relief, the county's unconstitutional practice will continue.

Count IV
(Fourteenth Amendment to the U.S. Constitution—
Lack of Prompt, Post-Seizure Hearing)

286. Plaintiffs incorporate Paragraphs 1 through 257 by reference as though fully alleged in this paragraph.

287. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution protects the right of people to promptly be heard by a neutral judicial officer after the government seizes property.

288. After seizing vehicles, Wayne County violates the Fourteenth Amendment's procedural guarantees by denying property owners (innocent and suspect alike) a prompt, post-seizure hearing at which the owner has an opportunity to contest the legality of the seizure before a neutral judicial officer.

289. As a matter of course, the county unreasonably seizes property without a warrant and continues to impound the property until its owner pays or defaults, or until a final judgment of forfeiture has been entered.

290. The county unreasonably deems the owner of every seized vehicle responsible for the crime that it contends subjects the vehicle to forfeiture. County prosecutors make this self-interested determination without any judicial involvement or particularized investigation, even when the vehicle owner clearly was not involved in the alleged crime.

291. When a property owner formally objects to a seizure, the county tells them they must wait for the county prosecutor's office to decide what to do. The county routinely delays six months after the initial seizure, or longer, before commencing forfeiture proceedings.

292. The county has a policy and practice of then unreasonably delaying civil forfeiture proceedings, while prosecutors and Unit employees pressure the property owner to pay the redemption fee and expenses.

293. The county almost never obtains a judicial warrant to seize property and it routinely does not seek a judicial warrant to impound a vehicle pending forfeiture proceedings.

294. In the months or years between seizure and forfeiture proceedings, a property owner is given no meaningful opportunity to be heard regarding the validity of the county's continued deprivation of property.

295. In some circumstances, Michigan law provides for an interim hearing within 28 days of the date on which a property owner files a special action challenging the county's probable-cause determination, *see* MCL 600.4705, but this procedure does not apply to seizures—like those at issue in this case—based on the Controlled Substances Act or the Public Nuisances chapter of the Revised Judicature Act of 1961, *see* MCL 600.3805.

296. While interim-hearing procedures are available for a limited set of seizures under the Omnibus Forfeiture Act, *see* MCL 600.4701, et seq., the county has a policy and practice in such cases of: (a) not informing the

property owner of the specific crime on which seizure is based; (b) not informing the property owner of the availability of an interim hearing; and (c) not complying with its attendant obligation to release property within 35 days of seizure or obtain a judicial warrant for continued impoundment, *see* MCL 600.4706.

297. When forfeiture proceedings begin, the county has a policy and practice of obtaining an order from a judge of the Wayne County Circuit Court ordering the property owner to appear in person for a "pre-trial conference." Uniformly, there is no judge at this conference and, instead, county prosecutors pressure the property owner to pay the redemption fee, towing fees, and continuously accruing storage fees.

298. If a property owner, at this stage, declines to pay the county's fines and fees, the county has a policy and practice of compelling the owner to come back for four or more of the monthly conferences before prosecutors take any steps in the civil forfeiture action.

299. At each of the several conferences a property owner must attend, county prosecutors pressure him or her to pay the redemption fee, plus towing and storage. Prosecutors represent that paying is the only expeditious means of obtaining the release of their property.

300. It violates the right to due process of law under the Fourteenth Amendment to the U.S. Constitution for the county to seize and impound vehicles before a final judgment of forfeiture without providing a means for a property owner to obtain a prompt, post-seizure hearing before a judicial officer.

301. An individual owner has a constitutionally protected property interest in retaining his vehicle (and other property inside) prior to final judgment.

302. As the injuries to the Named Plaintiffs and class members illustrate, depriving a person of his car for the months (or even years) it takes the county to initiate civil forfeiture or nuisance-abatement proceedings can have a devastating effect on a person's life, education, and career.

303. A property owner's interest in continued possession and use of his vehicle is substantial. Having access to a car is a vital tool for mobility and protection from the elements in Wayne County and, without one, vehicle owners are greatly inconvenienced, if not incapable of going to work, going to school, or interacting with others.

304. The risk of erroneous deprivation of vehicles under the county's forfeiture program is great. On information and belief, police officers and

sheriff's deputies regularly seize vehicles based solely on their proximity to a crime or a high-crime area.

305. Considering the revenue generated by forfeiture (or, more commonly, by settlements paid by vehicle owners), officers have a financial incentive to seize vehicles with the intent to forfeit, even where forfeiture would be inappropriate.

306. Rather than waiting six months or longer for the county to bring forfeiture or nuisance-abatement proceedings, the only seemingly rational decision for innocent owners is to pay the county's required fees (if that is economically possible) and get their vehicle back.

307. By contrast, providing prompt, post-seizure hearings would provide procedural safeguards to ensure that the county's seizure and retention of property is not directed at individuals who have done nothing wrong.

308. The costs and administrative burden of making prompt, post-seizure hearings available to property owners are reasonable considering the added value that procedural safeguard would provide.

309. Declaratory and injunctive relief is necessary to remedy the county's unconstitutional policy and practice of denying property owners

prompt post-seizure hearings. Without such relief, the county's unconstitutional practice will continue.

Count V
(Fourteenth Amendment to the U.S. Constitution—Arbitrary and Irrational Fines and Fees)

310. Plaintiffs incorporate Paragraphs 1 through 257 by reference as though fully alleged in this paragraph.

311. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution prohibits imposition of irrational fines and fees.

312. The county's seize-and-ransom policy irrationally requires innocent people to pay fines and fees based on the actions of others.

313. Under its seize-and-ransom policy, the county irrationally releases vehicles (and other property) to those who can afford to pay fines and fees, regardless of the seriousness of the underlying allegations.

314. At the same time, the county irrationally refuses to release vehicles (and other property) to those who cannot—or will not—pay the same fines and fees, regardless of the lack of seriousness of the underlying allegations.

315. The county irrationally determines whether vehicles (and other property) should be seized and impounded based, not on public safety

concerns, but on whether the owner of the property pays substantial fines and fees to the county.

316. The county's seize-and-ransom policy irrationally prioritizes revenue from fines and fees over both public safety and the rights of the accused and innocent owners alike.

317. No legitimate governmental interest supports the county's seize-and-ransom policy.

318. The county's fee matrix is arbitrary and irrational, and no legitimate governmental interest supports it.

319. The county's policy of charging a towing fee for vehicles that are driven away from the site of a seizure is arbitrary and irrational, and no legitimate governmental interest supports it.

320. The county's policy is driven by its desire to raise revenue.

321. Declaratory and injunctive relief is necessary to remedy the county's unconstitutional policy and practice of imposing arbitrary and irrational fines and fees. Without such relief, the county's unconstitutional practice will continue.

Count VI
(Fourteenth Amendment to the U.S. Constitution—
Lack of Adequate Notice to Property Owners)

322. Plaintiffs incorporate Paragraphs 1 through 257 by reference as though fully alleged in this paragraph.

323. The Due Process Clause of the Fourteenth Amendment to the U.S. Constitution prohibits the deprivation of property and the imposition of fines and fees without adequate procedural protections, including effective and meaningful notice to property owners.

324. The county routinely provides inadequate notice to car owners whose cars (and other property) are seized while someone else is driving.

325. The county provides inadequate notice to property owners that fees begin to accrue immediately upon seizure and increase with each passing day.

326. The county's policy and practice of providing constitutionally inadequate notice to property owners who are not driving at the time of seizure means that such owners incur additional fines and fees.

327. The county's policy and practice of providing constitutionally inadequate notice violates the procedural due process protections of the Fourteenth Amendment to the U.S. Constitution.

328. Declaratory and injunctive relief is necessary to remedy the county's unconstitutional policy and practice of failing to provide adequate notice of seizures. Without such relief, the county's unconstitutional practice will continue.

Individual Claims

Count VII
(Plaintiffs Melisa Ingram and Stephanie Wilson's Claim for Damages)

329. On their own behalf, Plaintiffs Melisa Ingram and Stephanie Wilson re-allege and incorporate by reference the allegations set forth in Paragraphs 1 through 221 above as though fully alleged in this paragraph.

330. Melisa and Stephanie individually bring this claim for damages, under 42 U.S.C. §§ 1983 and 1988, based on the redemption fees, towing, and storage expenses the county unconstitutionally imposed on them.

Count VIII
(Plaintiff Stephanie Wilson's Claim for Return of Property)

331. On her own behalf, Plaintiff Stephanie Wilson re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 221 above as though fully alleged in this paragraph.

332. Stephanie individually brings this claim for the return of her property unconstitutionally seized and held by Defendant as set forth in Paragraphs 93 through 148 above.

333. Stephanie is entitled to the immediate return of her car and its contents.

334. Stephanie's property must be returned because, as described in Paragraphs 258 through 309 above, the ongoing seizure of her property violates the Fourth, Eighth, and Fourteenth Amendments to the U.S. Constitution.

335. Because the seizure of her property was unlawful, Stephanie is entitled to the return of her property under this Court's equitable powers under 28 U.S.C. § 1331 and Rule 41(g) of the Federal Rules of Criminal Procedure.

Count IX
(Plaintiff Robert Reeves's Claim for Damages)

336. On his own behalf, Plaintiff Robert Reeves re-alleges and incorporates by reference the allegations set forth in Paragraphs 1 through 232 above as though fully alleged in this paragraph.

337. Robert individually brings this claim for damages, under 42 U.S.C. §§ 1983 and 1988, based on damage sustained to his vehicle while in the county's custody and the fee he was charged to retrieve his vehicle from impound.

REQUEST FOR RELIEF

Named Plaintiffs request the following relief:

A. An order certifying this action as a class action under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure;

B. Appointment of Named Plaintiffs as representatives of the class;

C. Appointment of the Institute for Justice and Barton Morris as class counsel;

D. A declaratory judgment in favor of Plaintiffs and against Defendant providing that the imposition of fines and fees on innocent owners is unconstitutional both on its face and as applied to Plaintiffs and is, therefore, void and without effect;

E. A declaratory judgment in favor of Plaintiffs and against Defendant providing that the county's policy of requiring a car's owner to pay a redemption fee, plus fees that accrue only because the county refuses to release the car, in order to regain possession of his vehicle is unconstitutional both on its face and as applied to Plaintiffs and is, therefore, void and without effect;

F. A declaratory judgment in favor of Plaintiffs and against Defendant providing that its application of MCL 600.3815(2) is unconstitutional and is, therefore, void and without effect;

G. A permanent injunction in favor of Plaintiffs and against Defendant prohibiting Defendant or its officers or agents from enforcing the county's policy and practice of unconstitutionally seizing property;

H. A permanent injunction in favor of Plaintiffs and against Defendant prohibiting Defendant or its officers or agents from enforcing the county's policy and practice of unconstitutionally impounding property;

I. A permanent injunction in favor of Plaintiffs and against Defendant prohibiting Defendant or its officers or agents from providing constitutionally inadequate notice to car owners whose vehicles have been seized;

J. A permanent injunction in favor of Plaintiffs and against Defendant prohibiting Defendant or its officers or agents from imposing arbitrary and irrational fines and fees on property owners;

K. An order or permanent injunction requiring Defendant to return Plaintiff Stephanie Wilson's car. In the alternative, if the car and other personal property has been disposed of or cannot be returned to Stephanie for any reason, an order or permanent injunction in favor of Stephanie and against Defendant for restitution equivalent to the value of the property on the day it was seized;

L. An order or permanent injunction requiring Defendant to pay restitution to Plaintiff Robert Reeves in the amount of $3,676;

M. An order or permanent injunction in favor of Plaintiffs Melisa Ingram and Stephanie Wilson and against Defendant requiring Defendant to pay restitution for all redemption fees, towing fees, and storage fees paid;

N. An award of Plaintiffs' costs and expenses, together with reasonable attorneys' fees, pursuant to 42 U.S.C. § 1988; and

O. Further relief as this Court may deem just and proper.

Dated: May 11, 2020

Respectfully submitted,

/s/ Wesley Hottot

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